

# Narrative Summary of 2021 Legislative Updates to the Government Records Access and Management Act (GRAMA) Utah Code § 63G-2

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The 2021 Legislature modified the two definitions in GRAMA: the definition of a record and the definition of an initial contact report. It made modifications to the lists of private records, and changed or added a few items in the list of protected records. Access restrictions on certain information in the database of the Department of Child and Family Services are modified. In certain circumstances the Court can remand an appeal back to the State Records Committee.

## Updates to Definitions:

GRAMA identifies initial contact reports as normally public records. In order to clarify this classification, the law also provides a definition for “initial contact report.” An initial contact report is the initial written or recorded report which describes a law enforcement agency’s initial actions taken in response to a complaint or apparent discovery of a violation of the law (Utah Code Section [63G-2-103\(14\)](#)). The current change is clarification that traffic accident reports are not initial contact reports ([63G-2-103\(14\)\(c\)](#)).

Since GRAMA applies to government records, the law provides a definition of “record.” Record means information, regardless of format, that is prepared, owned, received or retained by a governmental entity and which is also reproducible. In order to provide further clarity, GRAMA includes a growing list of items that are identified as not records. Listing something as not a record provides more security than a just a restricted classification because it removes a governmental entity’s classification discretion as well as any appeal rights. The current addition to the “not a record” list is confidential communication about mental health care or diagnoses. By definition, this communication is between a licensed mental health care provider and a patient, a client, or a family member. Such communication is made in confidence and relates to the diagnosis or treatment of the patient or client. Relevant conversations include mental health care therapists, psychologists, behavior analysts and behavior specialists ([63G-2-103\(22\)\(b\)\(xviii\)](#)).

## Modifications to the lists of Private Records:

Certain elements of every voter’s registration record are private. These include each voter’s driver license number, Social Security number or last four digits, birthdate, and email address. The current addition to this list is voter phone numbers ([63G-2-302\(1\)\(l\)](#)).

During the 2020 legislative session, the Legislature specified that certain portions of the records counties maintain for administering property taxes are private. During this session, the Legislature revised some of the wording. Instead of “records concerning eligibility for tax exemption, deferral, abatement, or relief,” the law says, “records submitted by a tax payer to establish eligibility for tax exemption, and etc. Private information includes: email addresses, phone numbers, personal financial information related to payment methods, and any records related to an individual’s eligibility for exemption, deferral, abatement, or other relief (Utah Code § [63G-2-302\(1\)\(z\)\(aa\)](#)).

To the list of private records, the Legislature added copies of tax returns that the Tax Commission provides to governmental entities for the purpose of verifying collected revenue. (Utah Code § [63G-2-302\(1\)\(bb\)](#)).

#### **Changes and additions to the list of Protected Records:**

Previously, records in the Management Information System maintained by the Department of Child and Family Services (Utah Code Section [62A-4\(a\)](#)) were protected. Records related to reports of neglect or abuse have been limited to only the alleged perpetrator by 63G-2-202(10). The Legislature has removed this restriction and has removed records in this database from the list of protected records. This change will provide greater discretion for records officers to provide access to these records and potentially classify them as private or controlled. In particular unsubstantiated reports of neglect or abuse will potentially be provided to more than just the alleged perpetrator (([63G-2-202](#)) and [63G-2-305\(44\)](#)).

The Legislature has added mug shots to the list of protected records. Specifically, images that are taken as part of the process of booking an individual in jail are protected unless a) the individual is convicted of a criminal offense based on the conduct for which the individual was booked; b) the individual is fugitive or imminent threat and releasing the photo will assist in apprehending the individual or eliminating a threat, or c) a judge orders release in furtherance of a law enforcement interest. This change addresses the problematic practice of posting jail booking photographs to embarrass or to extract payment for the photographs to be taken down [63G-2-305\(81\)](#).

The Legislature has taken action to protect records about the negotiation of claims to the use of the water in the Colorado River. To the extent that these records relate to a judicial or administrative proceeding or negotiation with another state or the federal government they are protected if release would reveal a legal strategy affecting Utah's claim to use of the water, harm the ability of Utah representatives to negotiate the best terms, or give an advantage to another state or the federal government regarding use water in the Colorado River [63G-2-305\(82\)](#).

The Legislature has given the Governor's Office of Economic Development authority to identify as protected any records that if disclosed would result in economic harm to an applicant to the General Regulatory Sandbox program. Protection does not extend to a final contract [63G-2-305\(83\)](#).

#### **Modification to the appeals process:**

A party to a State Records Committee appeal may further appeal the Committee's decision in the district court. Previously, the court could not remand an appeal back to the Records Committee. But, the Legislature reversed this limitation. It is now possible for the court to remand an appeal back to the Committee if it is an issue that was not previously considered by the Committee and the court determines it to be in the interest of justice. For example, a court might make a decision related to a claim of unreasonable denial of a fee waiver, and then remand a records classification decision back to the Committee [63G-2-404\(7\)](#).