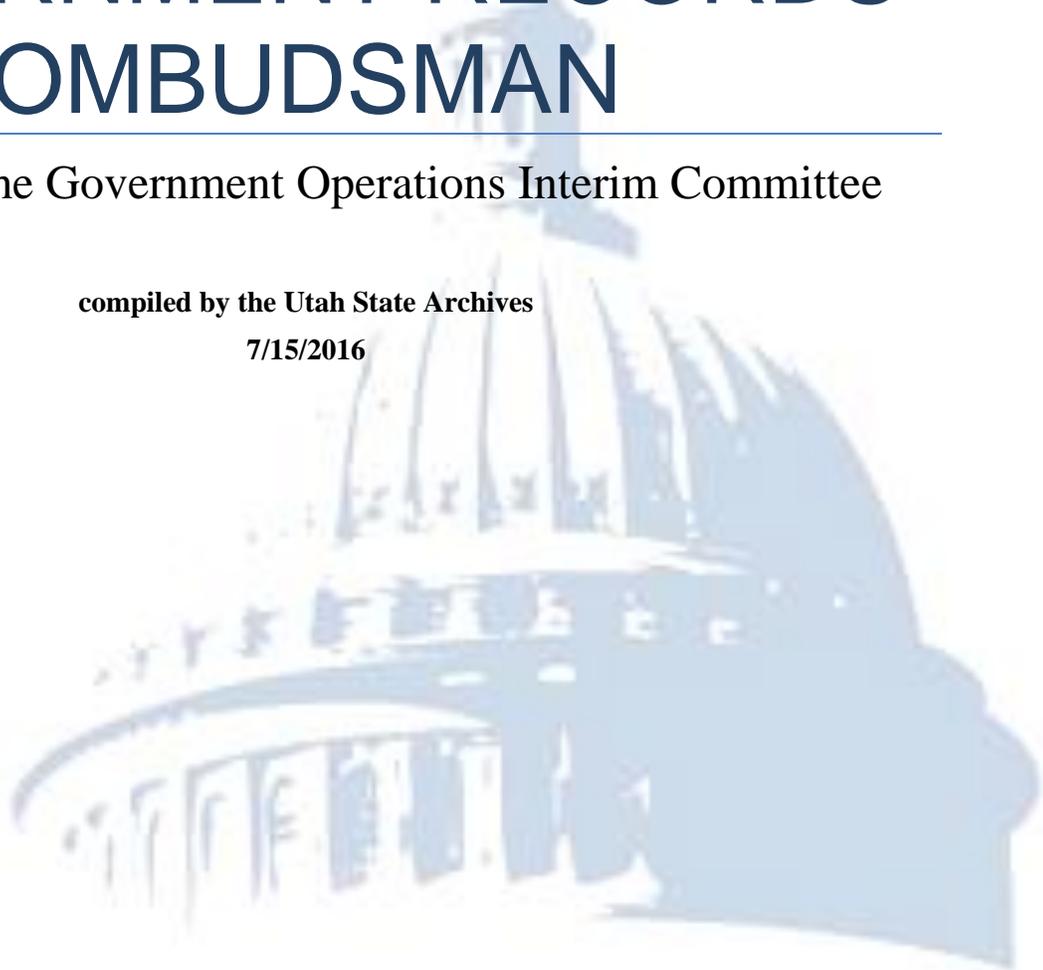


GOVERNMENT RECORDS OMBUDSMAN

Presented to the Government Operations Interim Committee

compiled by the Utah State Archives

7/15/2016



This report is required by Utah Code 63A-12-111, Public Records Management Act, Government Records Ombudsman.



Government Records Ombudsman

Department of Administrative Services

Utah State Archives

July 15, 2016

This report covers the work of the Government Records Ombudsman for the fiscal year 2015-2016, including July 1, 2015, to June 30, 2016. The Government Records Ombudsman acts as a resource for government employees who are responding to Government Records Access and Management Act (GRAMA) requests and for persons who are requesting records or appealing denial of requests for records or for fee waivers. The Government Records Ombudsman is authorized to mediate disputes between requesters and responders. These responsibilities are defined in [Utah Code 63A-12-111](#).

The Utah Legislature created the position of Ombudsman in 2012. At that time, Rosemary Cundiff was appointed Government Records Ombudsman. Each year since 2012, the workload of this position has increased. During the 2015-2016 fiscal year, Nova Dubovik, Executive Secretary for the State Records Committee, has assisted the Ombudsman by providing training about GRAMA. Nova also schedules hearings and provides support to the State Records Committee, and assists parties with the appeals process.

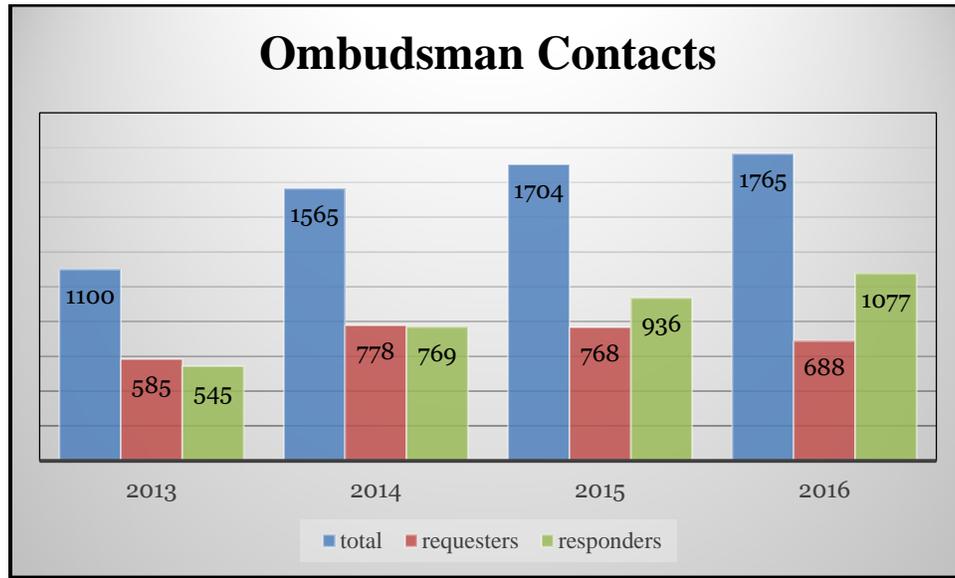
Activities and Services

During fiscal year 2015-2016 the Government Records Ombudsman provided **1,765** consultations, including mail, email, telephone, or in-person assistance about issues relating to records access or mediation. Of these **688** involved requesters (the public, the media, and other entities) and **1,077** involved responders who are employees of Utah governmental entities. The total number of consultations exceeds any previous year. However, the number of consultations with requesters has decreased compared to the past two years. The number of consultations with government responders continues to increase.

The Ombudsman is a valuable resource for both requesters and responders who need help understanding the Government Records Access and Management Act (GRAMA), who want a sounding board for discussion, or who want to participate in mediation. Although, not

specifically identified in the numbers reported, the Ombudsman notes an increase in calls from government legal counsel.

The following graph shows trends in Ombudsman contacts over the four years of the Ombudsman’s appointment:



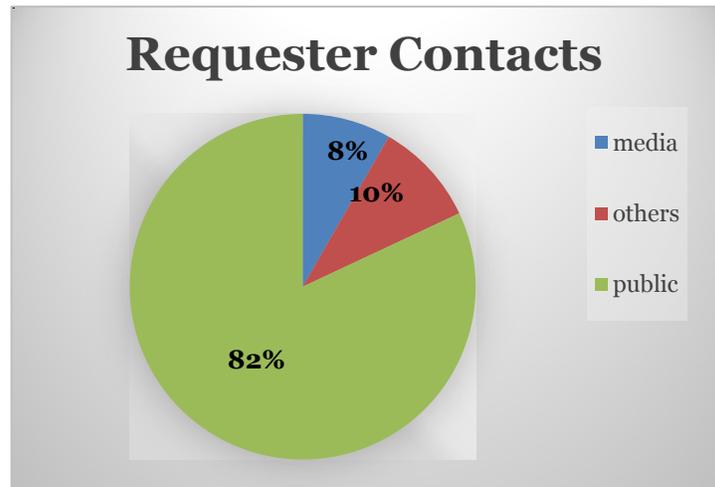
The Government Records Ombudsman, with help from State Records Committee Executive Secretary, has provided training about GRAMA at the Archives and in various venues around the state. This training reached 651 individuals. In addition, the Archives hosted an all-day seminar, “A Day with GRAMA,” which was attended by 323 participants.

The Ombudsman is involved in an advisory capacity with the ongoing development of the Open Records Portal, which is a central location from which the public will be able to make GRAMA requests to all governmental entities. On January 1, 2016, the portal opened for municipalities, counties, schools, and transit districts, with special districts to follow in 2017

The Ombudsman website has been updated. [Navigating the Appeals Process](#) (to include 2015 changes) and [Classifying Drafts](#) recently were added to the website.

Statistics about Contacts

REQUESTERS: During fiscal year 2015-2016, the Government Records Ombudsman provided **688** consultations with records requesters. Of these, **564** were members of the public (82 percent), **57** were representatives of the media (8 percent), and **67** represented corporations, non-profits, out-of-state governments, or other entities (10 percent). The following graph displays public requester contacts in percentages:



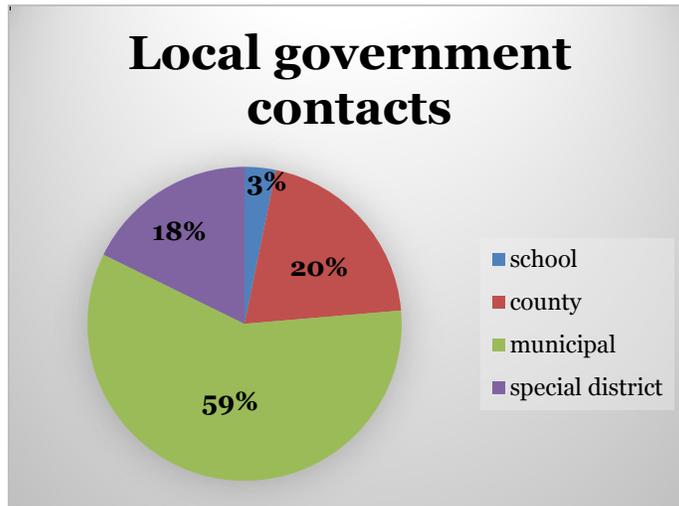
RESPONDERS: During fiscal year 2015-2016 the Government Records Ombudsman provided **1,077** consultations with government employees. Of these **485** represented state government (45 percent) and **592** represented local governmental entities (55 percent).

LOCAL GOVERNMENT RESPONDERS: In local government **592** consultations were with municipalities (59 percent), **121** were with counties (20 percent), **105** were with special districts (18 percent), and **19** were with school districts (3 percent).

STATE GOVERNMENT RESPONDERS: The **485** consultations with state government included 30 different state agencies. Of these the most frequent consultations were with the Department of Corrections (24 percent), Universities and the Board of Regents (13 percent), the Department of Human Resources and the Attorney General's Office (10 percent each), and the Health Department (5 percent).

¹ Others means corporations, interest groups, non-profits, and out-of-state government

The following graphs show categories of government responder contacts in percentages. What the percentages say only indirectly is that law enforcement agencies are the most frequent contacts for the Government Records Ombudsman, and incarcerated individuals and others seeking law enforcement records are among the most frequent requesters.



	Entities	Topic	Outcome
1	Public/state government	Email	Moved to SRC
2	Public/state government	AP&P criminal history records	Resolved in mediation
3	Public/housing authority	Contracts	Moved to SRC
4	Media/municipality	Employee resignation letter	Resolved in mediation
5	Public/municipality	Photographs	Resolved in mediation
6	Public/municipality	Internal investigation	Resolved in mediation
7	Corporation/state government	Personal contact information	Resolved in mediation
8	Public/university	Employee compensation records	Resolved in mediation
9	Public/county	Law enforcement records	Resolved in mediation
10	Public/special district	Video surveillance footage	Resolved in mediation
11	Public/state government	Human services case file	Moved to SRC
12	Public/municipality	Complaint file	Resolved in mediation
13	Public/municipality	Initial contact report	Moved to SRC
14	Public/municipality	Dash camera video	Moved to SRC
15	Public/county	Employee contact and more	Moved to SRC
16	Public/state government	Internal investigation	Resolved in mediation
17	Media/university	Student information	Moved to SRC
18	Public/state government	Government grant records	Resolved in mediation
19	Public/state government	DNA test results	Moved to SRC
20	Public/special district	Policies, email, research data	Resolved in mediation
21	Public/special district	Video surveillance footage	Resolved in mediation
22	Media/municipality	Fees	Resolved in mediation
23	Public/municipality	Attorney communications	Moved to SRC
24	Interest group/special district	Repayment plan	Moved to SRC
25	Public/state government	Personnel records	Resolved in mediation
26	Public/state government	Electronic health data	Moved to SRC
27	Public/state government	Policies	Resolved in mediation
28	Public/municipality	Hiring records	Moved to SRC
29	Public/county	Initial contact report	Resolved in mediation
30	Public/special district	Financial records	Resolved in mediation
31	Public/state government	Email	Pending
32	Public/municipality	Email	Moved to SRC
33	Public/university	Email and medical records	Moved to SRC
34	Public/state government	Informant information	Pending
35	Media/municipality	Police report	Resolved in mediation
36	Public/county	Criminal records	Resolved in mediation
37	Public/municipality	Criminal investigation records	Resolved in mediation
Total resolved in mediation		21	
Total moved to SRC		14	

Ombudsman's Observations about GRAMA

The Ombudsman discusses records access issues with both the public and government employees on a daily basis. Based on this experience, the Ombudsman makes the following observations about GRAMA and its application. This law has many nuances, but overall is well crafted and has served the State well for more than twenty years. As with all legislation, changes incident to time require legislative review in order to keep laws current and serviceable. The following issues are noted:

CLASSIFICATION ISSUES: As needs have been identified, changes and additions have been made to the lists of protected, private, and public records. The law is crafted to provide discretion in classifying information not specifically contemplated in the law. However, a few classification questions come up repeatedly. Perhaps foremost is a question about the privacy of juvenile records. Law enforcement agencies typically restrict access to the names of juveniles in law enforcement records. GRAMA makes no mention of privacy based on juvenile status.

ACCESS ISSUES:

Changing technology has complicated some components of access. Processes that worked for paper are less effective for electronic records. The following are some examples from Section 63G-2- 201, Access to Records.

GRAMA states that in response to a records request, a governmental entity is not required to create a record. GRAMA also states that format cannot hinder access. Information contained in a database is a record by definition, but that information is accessed by generating reports. Governmental entities program databases to generate reports to support the work and functions of government, which is not necessarily the same as the public might request. Is computer programming to create a report or to segregate restricted information in response to a GRAMA request “creating a record?” The requirement that in response to a request government is not required to create a record, and the requirement that format cannot hinder access seem in contradiction when applied to records in databases.

GRAMA states that governmental entities are not required to provide a record in a format not maintained by the governmental entity. When records exist only in proprietary software, this also seems to contradict the statement that format cannot hinder access.

GRAMA states that every person has a right to inspect a public record and take a copy during normal business hours. Databases make this concept difficult because government-maintained databases usually are not available for public perusal.

RECORD SHARING ISSUES:

Electronic formats have created additional challenges for sharing records within government. The provisions of Section 63G-2-206 govern how access should be handled when one governmental entity shares records with another. The originating entity is required to notify the recipient entity of the records classification and any access restrictions so that the recipient may abide by the same. Additionally, requesters are required to submit the request to the governmental entity that maintains the record.

These steps may work well for paper, but databases are shared across multiple agencies. In some cases, multiple agencies are using the same content management systems and have ready access to each other's records. Electronic records are easily copied. Because of these developments, requesters are confused about where to direct requests, and governmental entities sometimes are confused about which agency is responsible for providing access.