

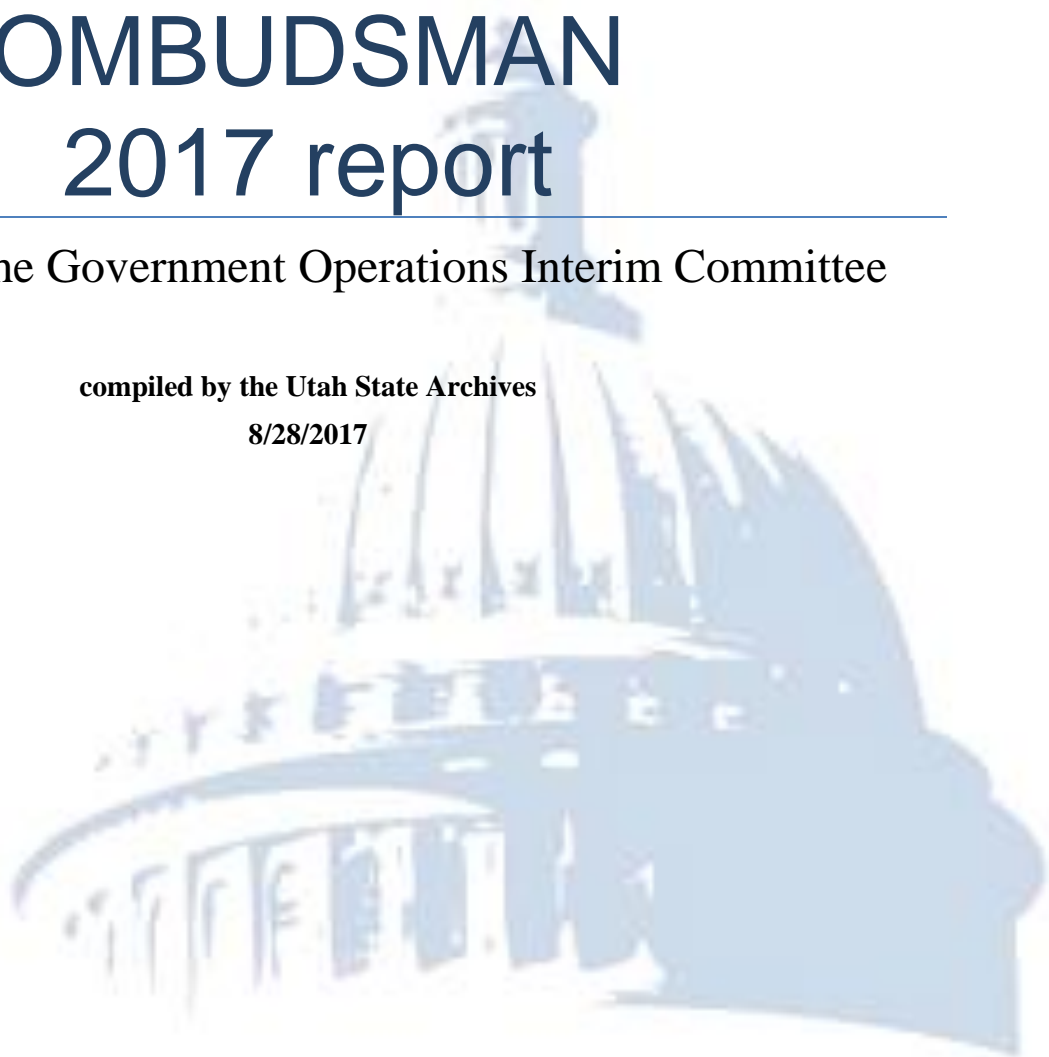
# GOVERNMENT RECORDS OMBUDSMAN 2017 report

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Presented to the Government Operations Interim Committee

compiled by the Utah State Archives

8/28/2017



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**

August 28, 2017

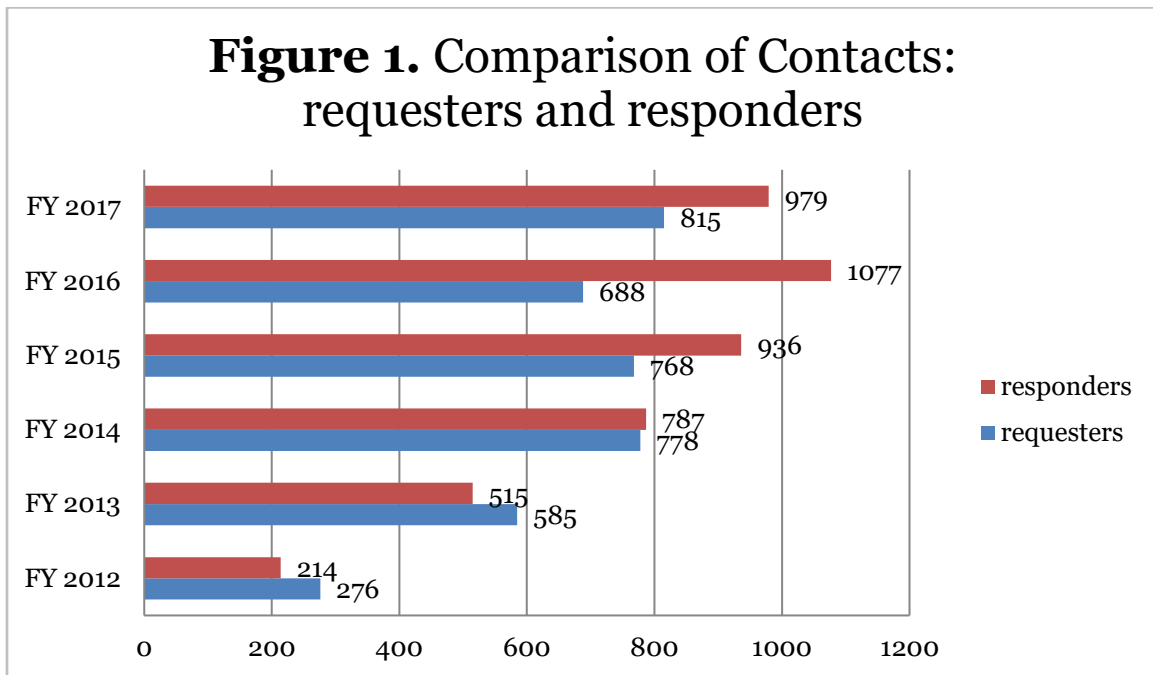
This report covers the work of the Government Records Ombudsman for fiscal year 2016-2017. The Government Records Ombudsman acts as a resource for government employees who are responding to Government Records Access and Management Act (GRAMA) requests as well as for persons who are requesting records or appealing denial of requests for records or for an unreasonable denial of a request for a fee waiver. 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, the State Archives director appointed Rosemary Cundiff as Government Records Ombudsman. The Ombudsman works with requesters and responders who ask for help understanding the Government Records Access and Management Act (GRAMA). The Ombudsman also is a sounding board for discussions about the application of the law and an advocate for anyone who wants to participate in mediation over records disputes. Nova Dubovik, Executive Secretary for the State Records Committee, provides training about GRAMA, and assists both requesters and responders with the appeals process. The Executive Secretary schedules hearings and provides support to the State Records Committee.

## Activities and Services

During 2016-2017 the Government Records Ombudsman arranged and conducted **40** mediation meetings and provided **1,794** consultations about issues relating to records access or mediation. Of these consultations, **815** involved requesters (the public, the media, and other non-government entities) and **979** involved responders who are employees of Utah governmental entities.

**Figure 1** shows trends in Ombudsman contacts over the five years of the Ombudsman's appointment:



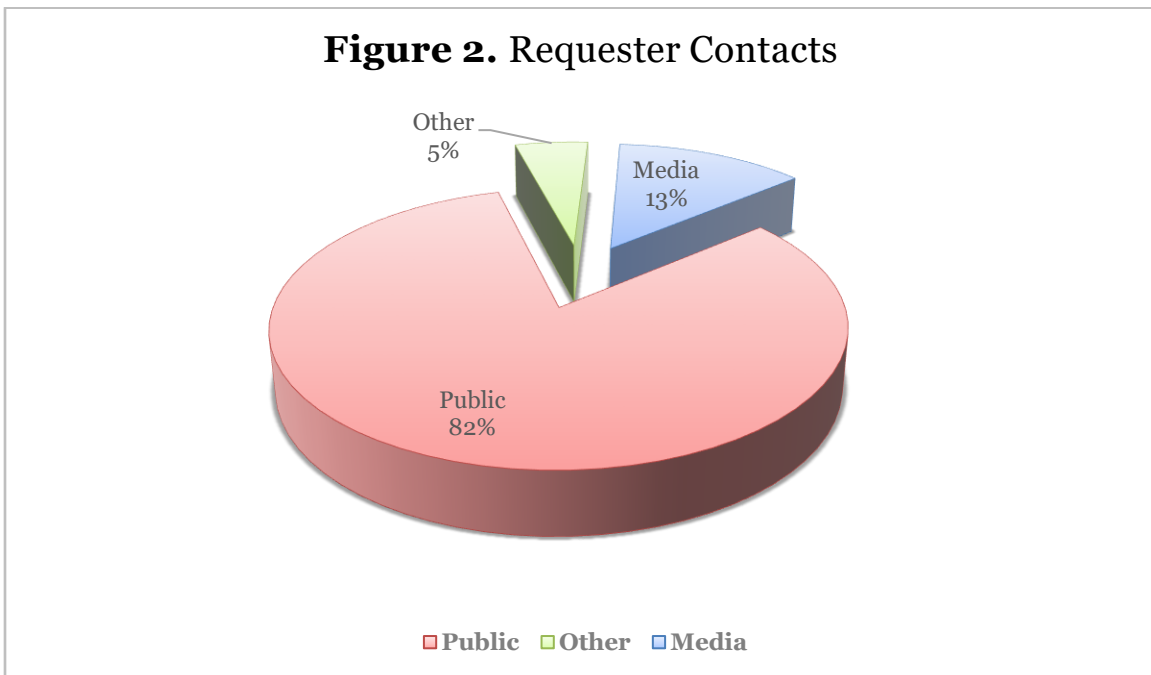
The Government Records Ombudsman, with help from the State Records Committee Executive Secretary, has provided training about GRAMA at the Archives and in various venues around the state. This training reached 572 individuals. The Ombudsman and Executive Secretary provided two webinars about legislative updates to GRAMA and recent State Records Committee decisions. Total online attendance at these webinars was 273.

The Ombudsman has been involved in an advisory capacity with the ongoing development of the Open Records Portal, which is a central location from which the public is able to make GRAMA requests to all governmental entities. On January 1, 2017, all legally required entities were included in the portal including municipalities, counties, schools, transit districts, and special districts. There is a total of 1,587 governmental entities in the Open Records Portal.

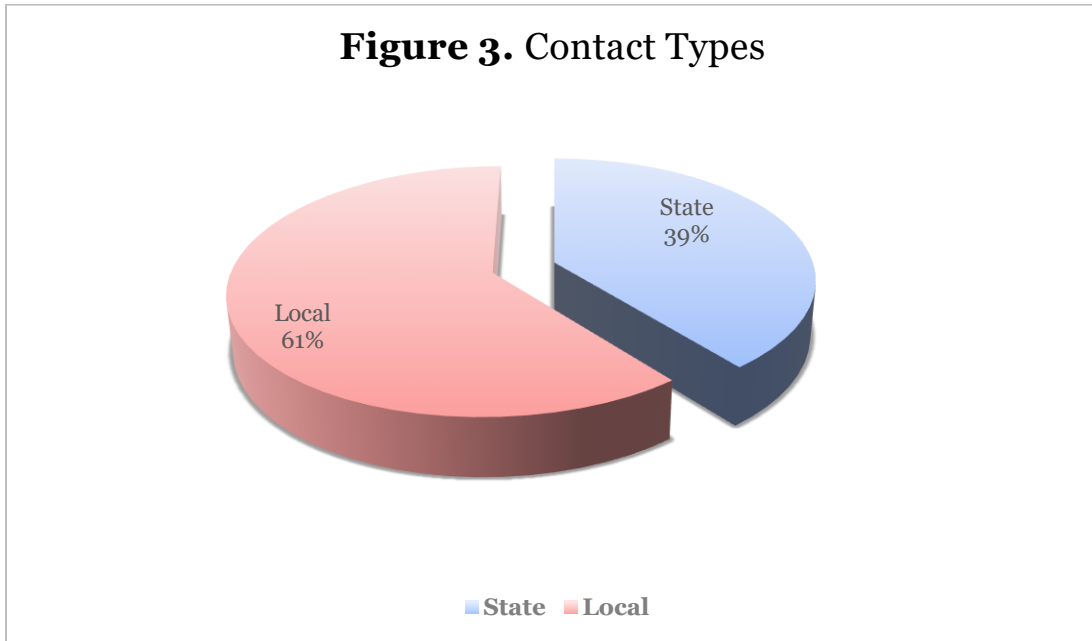
The Ombudsman website has been updated to include copies of GRAMA for each year since the law was passed in 1992. Resources have been updated to include updated helps for providing access to law enforcement records, and [GRAMA](#) and [Records Management Compliance](#) Checklists, and [Classifying Drafts](#).

### Statistics about Contacts

**REQUESTERS (Figure 2):** During fiscal year 2016-2017, the Government Records Ombudsman provided **672** consultations with records requesters. Of these, **539** were members of the public (83 percent), **106** were representatives of the media (13 percent), and **37** represented corporations, non-profits, out-of-state governments, or other entities (4 percent).



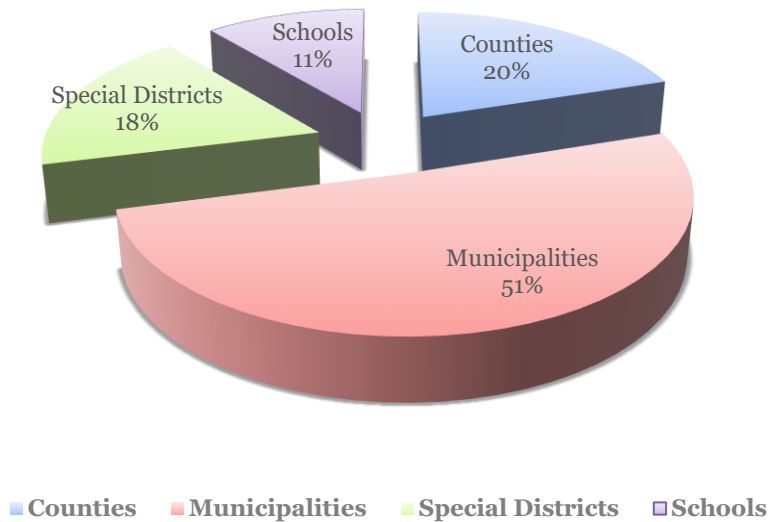
**RESPONDERS (Figure 3):** During fiscal year 2016-2017 the Government Records Ombudsman provided **979** consultations with government employees. Of these **400** represented state government (39 percent) and **579** represented local governmental entities (61 percent).



**LOCAL GOVERNMENT RESPONDERS (Figure 4):** Of **579** consultations with local governments, **295** were with municipalities (51 percent), **118** were with counties (20 percent), **105** were with special districts (18 percent), and **61** were with school districts (11 percent).

The following graphs show categories of local government responder contacts in percentages. Compared to previous years, there is increased interaction with school districts.

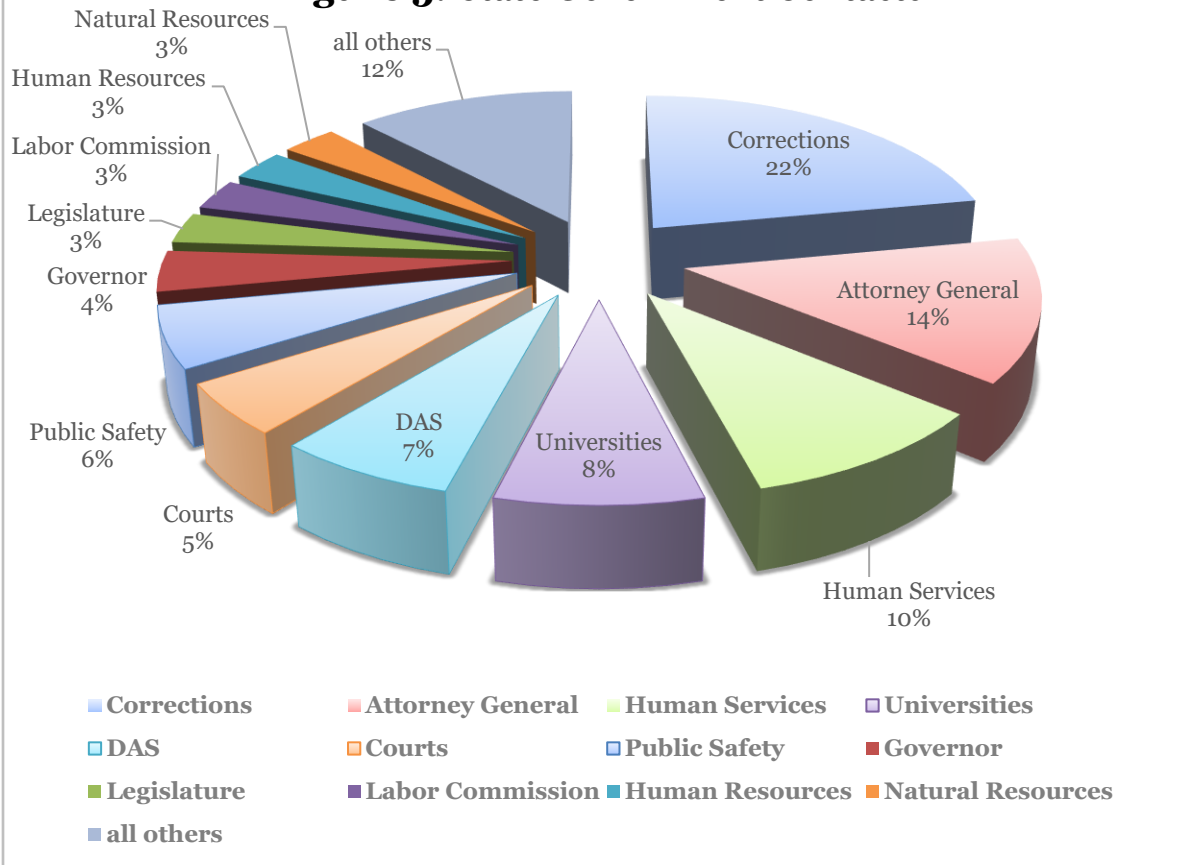
**Figure 4. Local Government Contacts**



**STATE GOVERNMENT RESPONDERS (Figure 5):** The **579** consultations with state government included 29 different state agencies. Of these the most frequent consultations were with the Department of Corrections (22 percent), the Attorney General’s Office (14 percent), and Department of Human Services (10 percent), colleges and universities (8 percent, and the Department of Administrative Services (7 percent).

The following graphs show categories of state government responder consultations in percentages. The most active agencies persistently are, the Department of Corrections, followed by the Attorney General’s Office, Human Services, and colleges and universities.

**Figure 5. State Government Contacts**

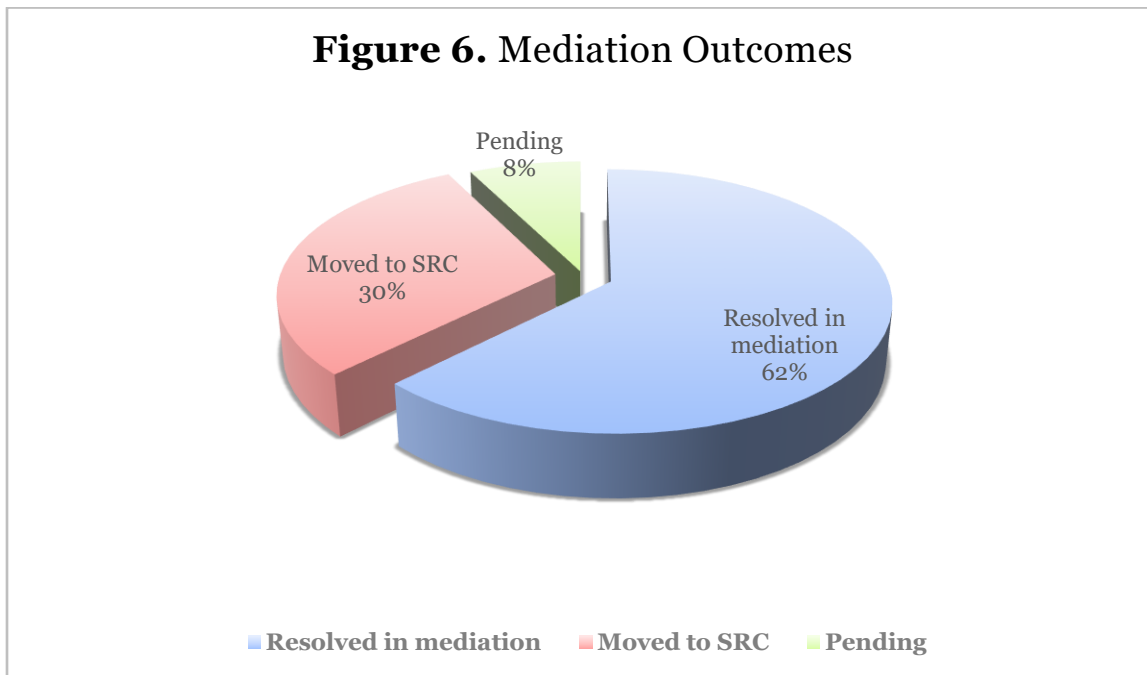


## Mediation

During fiscal year 2016-2017 the Ombudsman facilitated mediation between parties over records access disagreements. Of 40 mediations, 25 were resolved and 12 progressed to hearings before the State Records Committee (**Table 1** and **Figure 6**). The outcome of three remains pending. **Table 2** displays mediation by type of entity and type of record or issue in dispute.

**Table 1.** Mediation Outcomes

Total resolved in mediation	25
Total moved to SRC	12
Total pending	3





**Table 2. Mediation Types and Outcomes**

	<b>Entities</b>	<b>Topic</b>	<b>Outcome</b>
1	Public/municipal	Drafts	Resolved in mediation
2	Public/Human Services	Case report	Moved to SRC
3	Public/municipal	Police reports	Resolved in mediation
4	Media/municipality	Police report	Resolved in mediation
5	Public/ Public Safety	Crime reports	Resolved in mediation
6	Public/Attorney General	Extraordinary circumstances	Moved to SRC
7	Public/county	Tax assessment documentation	Resolved in mediation
8	Media/municipal	Police report	Moved to SRC
9	Public/county	Fees	Resolved in mediation
10	Corporation/school district	Bid proposals	Resolved in mediation
11	Media/special district	Contract	Resolved in mediation
12	Public/Corrections	Prisoner personal information	Moved to SRC
13	Media/county	Various police records	Resolved in mediation
14	Media/municipality	Police records	Resolved in mediation
15	Public/county	Police records	Resolved in mediation
16	Public/municipal	Police internal investigation records	Moved to SRC
17	Public/municipal	Law enforcement investigation	Resolved in mediation
18	Special interest/municipal	Law enforcement investigation	Moved to SRC
19	Public/municipal	Telephone records	Resolved in mediation
20	Special Interest/special district	Copyrighted material	Moved to SRC
21	Public/Attorney General	Personnel records	Moved to SRC
22	Public/school district	Personnel records	Resolved in mediation
23	Public/county	Law enforcement training records	Resolved in mediation
24	Public/Human Resources	Complaint letter	Resolved in mediation
25	Public/municipal	Attorney-client privilege	Resolved in mediation
26	Public/Purchasing	Contracts and policies	Resolved in mediation
27	Media/Labor Commission	Accidental death data	Resolved in mediation
28	Public/municipality	Law enforcement investigation	Pending
29	Media/municipality	Cold case file	Resolved in mediation
30	Public/county	Police reports	Moved to SRC
31	Media/county	Law enforcement investigation	Resolved in mediation
32	Public/Corrections	Email and policies	Resolved in mediation
33	Public/Office Recovery Services	Case file and financial records	Moved to SRC
34	Public/Public Safety	Crime lab report	Resolved in mediation
35	Public/municipality	Policies	Pending
36	Media/Special District	Criminal investigation	Resolved in mediation
37	Public/Attorney General	Financial records	Pending
38	Media/School District	Personnel records	Moved to SRC
39	Media/Special District	Financial disclosures	Resolved in mediation
40	Public/Corrections	Personal identifying information	Moved to SRC

## Ombudsman's Observations

The Ombudsman works with the application of the Government Records Access and Management Act (GRAMA) on a daily basis. Both in mediation and appeals as well as in daily consultation, the State's law enforcement agencies rise to the top when it comes to challenges in the application of this law. It is worth noting that at nearly half (25 of 40) of the Ombudsman mediation meetings the involved parties met to discuss law enforcement records.

There is high public interest in and demand for law enforcement records because they document situations of conflict. However, law enforcement agencies face challenges when they make classification decisions. These challenges include some of the following issues.

1. Appropriate classification of law enforcement records requires government employees to make case-by-case evaluations. In the context of each situation they must determine whether releasing records will interfere with an investigation, whether it could deprive someone of the right to a fair trial, whether it will reveal a source not known outside of government, and whether release would constitute a clearly unwarranted invasion of anyone's personal privacy. These decisions can only be made with contextual understanding.
2. Law enforcement agencies commonly share records both in the context of shared databases and in sharing records to support various investigations. Record sharing adds to the complexity of providing access because of additional considerations about which agency is responsible to provide access. Policies governing shared databases should address responsibility for access issues.
3. The need to segregate records as mandated in Utah Code Section 63G-2-308 can be problematic when it comes to body-worn camera footage. In this case segregation can take a lot of time or require technology solutions that stretch the means of small law enforcement agencies.
4. Transparency is always the goal of government, but the transparency of the actions of law enforcement officers must be balanced with providing them with enough protection that they can still function and serve the public.

It is important to keep the needs of law enforcement agencies in mind when considering legislation that affects GRAMA.