

# Understanding the 2012 GRAMA Updates

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Each year, the Government Records Access and Management Act (GRAMA) is updated. In Spring, the Division of Archives and Records Service provides a consolidated copy of the [GRAMA law](#) on our website. In 2012, fourteen minor changes were made to GRAMA. These changes include amendments to the existing law and two newly enacted sections.

## Newly Enacted GRAMA Sections

### **[63G-2-108](#). *Certification of Records Officer***

Pursuant to [63A-12-110](#), the Division of Archives and Records Service will develop, in accordance with the Attorney General's Office, an online training course to certify records officers in GRAMA. Records officers for state and local governmental entities are required under [63G-2-108](#) to successfully complete and receive official certification from the Division of Archives and Records Service each year that they are the officially designated records officer. GRAMA defines a records officer as:

#### ***Utah Code [63G-2-103\(25\)](#)***

(25) ...the individual appointed by the chief administrative officer [CAO] of each governmental entity, or the political subdivision to work with state archives in the care, maintenance, scheduling, designation, classification, disposal, and preservation of records.

Records officers are required to begin the annual certification process in January 2013.

### **[63G-2-406](#). *Evidentiary standards for release of certain enforcement and litigation records.***

The following records, protected under GRAMA, are subject to disclosure by a governmental entity's CAO, the state records committee (SRC), or by court order if the conditions of GRAMA's weighing provision are satisfied and "if the person or party seeking disclosure of the record has established by a preponderance of evidence" to the governmental entity, that the public interest in providing access is, in fact, greater than or equal to the conditions favoring restriction of access.

Under this section of GRAMA, and only for the records listed below, the law now places the burden of providing sufficient evidence favoring disclosure of a record on the person or party requesting disclosure of the record.

Records covered by [63G-2-406](#):

- Records maintained for civil, criminal, or administrative enforcement purposes or audit purposes, for discipline, licensing, certification, or registration purposes. ([63G-2-305\(9\)](#))
- Records that would jeopardize the life or safety of an individual ([63G-2-305\(10\)](#))

- Records that are subject to the attorney client privilege ([63G-2-305\(16\)](#))
- Records prepared for or by an attorney, consultant, surety, indemnitor, insurer, employee, or agent of a governmental entity... in anticipation of, litigation, judicial, ...or administrative proceeding. ([63G-2-305\(17\)](#))
- Records revealing a governmental entity's strategy about: ([63G-2-305\(22\)](#))
  - collective bargaining
  - imminent or pending litigation
- Records of investigations of loss occurrences and analyses of loss occurrences ...covered by: ([63G-2-305\(23\)](#))
  - Risk Management Fund
  - Employers' Reinsurance Fund
  - Uninsured Employers' Fund
- Settlement negotiations but not including final settlements or empirical data. ([63G-2-305\(32\)](#))

## Amended Sections

### [63G-2-103](#) *Definitions*

The definition of what a record is *not* has been updated to include two new qualifying provisions for personal notes and communications created by employees or officers of a governmental entity. First, the personal note or communication must be created in a capacity other than the employee's or governmental officer's official capacity as a representative of state or local government. Second, the content of the personal note or communication must be unrelated to the duties and conduct of the public's business.

Unless otherwise specified below, the primary amendments to GRAMA for 2012 are language changes that clarify how to apply the weighing provision. Prior to 2012, the weighing provision stated "the interests favoring access outweighs the interest favoring restriction of access." For 2012, the weighing provision has been updated to read, "the interests favoring access are greater than or equal to the interest favoring restriction of access." Each section of GRAMA that refers to the weighing provision has been updated with the new language.

### [63G-2-305](#) *Protected records*

Subsections 16-18 have been updated for 2012. In previous years, these sections referred to records created in anticipation of litigation, attorney work product, and attorney-client privileged communication records. For 2012, these subsections have been reworded for clarity and have been reduced from three subsections (16-18) to two subsections (16-17). The remaining subsections have been renumbered accordingly.

Subsection (22)(b) has been reworded and now reads, "imminent or pending litigation" instead of "pending litigation".

### [63G-2-403](#) *Appeals to the records committee*

Several changes were made to [63G-2-403](#) in 2012. Subsection (1)(a) now reads "30 days after the day on which the chief administrative officer of the governmental entity grants or denies..." Subsection (1)(b) now reads "45 days after the day on which the original request for a record is made if..."

Subsection (3)(a) is new in 2012. Subsection (3)(a) requires the person or party requesting a record to notify the state or local governmental entity that has custody of the record with a notice of intent to appeal the entity's decision to deny a records request. This notice must be submitted to the entity on the same day that the person or party requests an official appeal from the SRC. Under subsection (3)(b) the notice *may* include a statement of facts, reasons, and legal authority to support the request for an appeal.

Subsection (11)(a) extends the time period for the SRC to issue the official order following a hearing for appeal. The time period has been extended from five business days to seven business days after the hearing.