

Legislative Updates to GRAMA, 2016

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In 2016 the Utah Legislature made three amendments to the Government Records Access and Management Act (GRAMA). These changes were:

- 1) a specification that student records that are subject to FERPA are not subject to GRAMA;
- 2) a change in the State Records Committee's authority to hear appeals of unreasonable denials of requests for fee waivers; and
- 3) additional private classification for certain footage from body-worn cameras.

Student Records

This following language was added to the law:

Utah Code [63G-2-107\(2\)](#)

(2). The disclosure of an education record as defined in the Family Educational Rights and Privacy Act, [34 C.F.R. Part 99](#), that is controlled or maintained by a governmental entity shall be governed by the Family Educational Rights and Privacy Act, [34 C.F.R. Part 99](#).

Parenthesis (1) of this section states directly that GRAMA does not apply to any record containing information that is subject to the Federal Standards for Privacy of Individually Identifiable Health Information (Utah Code [63G-2-107\(1\)](#)). Although not directly stated, placement in this section implies that, likewise, GRAMA does not apply to student records that are subject to the Family Education Rights and Privacy Act (FERPA), which is a federal law which governs access to student records in elementary and secondary schools. In contrast, Utah Code [63G-2-201\(6\)](#) states that when access to a record is governed by another state or federal statute or rule, then access is governed by that statute, and GRAMA applies to the extent that it is not inconsistent with that statute or rule. The difference is that in one case GRAMA applies to the extent that it is not inconsistent with the alternate law, or GRAMA does not apply.

Fees

The second change is additional wording in Utah Code Section [63G-203](#). Subsection 203(1) establishes government's right to charge fees for GRAMA requests in order to recoup associated costs. But, Subsection 203(4) encourages governmental entities to fulfill requests without charge when they determine that

- a) releasing the record benefits the public rather than a person;
- b) the individual requesting the record is the subject of the record; or
- c) the requester's legal rights are directly implicated by the information in the record and the requester is impecunious (indigent).

Utah Code [63G-2-203\(6\)](#)

(6) (a) A person who believes that there has been an unreasonable denial of a fee waiver under Subsection (4) may appeal the denial in the same manner as a person appeals when inspection of a public record is denied under section [63G-2-205](#).

(b) The adjudicative body hearing the appeal:

(i) shall review the fee waiver de novo, but shall review and consider the governmental entity's denial of the fee waiver and any determination under Subsection (4); and

(ii) has the same authority when a fee waiver or reduction is denied as it has when the inspection of a record is denied.

When a governmental entity denies a request for a fee waiver, the requester has the same right to appeal as of denial of access to records he believes the fee waiver request was reasonable. In past appeals, the State Records Committee has typically upheld the governmental entities, stating that extension of fee waivers is permissive and not mandatory. The additional language is intended to provide the State Records Committee (or local appeals board) de novo, or independent authority to decide whether a fee waiver should appropriately have been extended.

Body Worn Cameras

New legislation about body-worn cameras includes the additional private classification of certain footage.

Utah Code [63G-2-302\(2\)\(g\)](#)

(2) The following records are private if properly classified by a governmental entity:

(g) audio and video recordings created by a body-worn camera, as defined in Section [77-7a-103](#), that record sound or images inside a home or residence except for recordings that:

- (i) depict the commission of an alleged crime;
- (ii) record any encounter between a law enforcement officer and a person that results in death or bodily injury, or includes an instance when an officer fires a weapon;
- (iii) record any encounter that is the subject of a complaint or a legal proceeding against a law enforcement officer or law enforcement agency;
- (iv) contain an officer involved critical incident as defined in Section [76-2-408\(1\)\(d\)](#); or
- (v) have been requested for reclassification as a public record by a subject or authorized agent of a subject featured in the recording.

The important qualification is that the audio or video must be recorded inside someone's home or residence. Even when the audio or video originates from someone's home, privacy does not prevail when qualifying events are recorded. In general these qualifying events include the commission of an alleged crime, the use of a weapon, someone's death or injury, or an encounter that is the subject of a legal proceeding against an officer.