

**Government Records Access and Management Act,
Family Educational Rights and Privacy Act and
Health Insurance Portability and Accountability Act**

GRAMA Utah Code Ann. §63G-2-101

FERPA 20 U.S.C. §1232g and 34 CFR Part 99

HIPAA 42 U.S.C. §1302 and 45 CFR Part 164

Roadmap of Presentation

● Overview of GRAMA Statute

- Private Records
- Protected Records
- Controlled Records

● Overview of FERPA Statute and Regulations

- Interaction between GRAMA and FERPA

● Overview of HIPAA Statute and Regulations

- Interaction between GRAMA and HIPAA

**Legislative Purpose for GRAMA Statute
UCA § 63G-2-102**

- The **public's right of access to information** concerning the conduct of the public's business.
- The **right of privacy** in relation to personal data gathered by governmental entities.
- A recognition of a **public policy interest in allowing government to restrict access to certain records. . . for the public good.**

**GRAMA's General Rule
UCA §63G-2-201**

- A **record is public** unless otherwise expressly provided by statute.
- Every person has **the right to inspect a public record** free of charge, and **the right to take a copy of a public record** during normal working hours.

What is a “Record”?

A Broad Definition-UCA §63G-2-103(22)(a)

"Record" means a book, letter, document, paper, map, plan, photograph, film, card, tape, recording, electronic data, or other documentary material **regardless of physical form or characteristics:**

(i) that is **prepared, owned, received, or retained** by a governmental entity or political subdivision; **and**

(ii) where all of the information in the original is **reproducible** by photocopy or other mechanical or electronic means.

What is “Not a Record”?

UCA §63G-2-103 (22) (b)

- Personal notes and communications
- Draft of document for personal use
- Notes and internal memorandum for quasi judicial functions
- Computer programs
- Daily calendars
- 20 more items

“Records” That Don’t Have to be Disclosed **UCA §63G-2-201(3)**

- “Private” Records
- “Protected” Records
- “Controlled” Records
- Records whose access is restricted by statute, regulation, or court rule. (i.e. FERPA and HIPAA)

Private Records **UCA §63G-2-302**

20 types of Records are classified as Private Records

- Records describing **medical history**, diagnosis, treatment.
- **Employment records** of current or former employee.
- Any record with person’s **Social Security Number** or Employment ID number.
- Information obtained through **criminal background check**.
- Records whose disclosure would constitute an **unwarranted invasion of personal privacy**.

Protected Records

UCA §63G-2-305

65 types of Records classified as Protected Records

- **Drafts**, unless otherwise classified as public.
- Attorney work product and **communications with attorney**
- **Trade secrets** and certain **commercial information**
- Records created or maintained for civil, criminal or administrative **enforcement purpose or audit purposes.**
- Records impairing government procurement proceedings.

Controlled Records

UCA §63G-2-304

- the record contains **medical, psychiatric, or psychological** data about an individual;
- the governmental entity **reasonably believes** that:
 - releasing the information would be **detrimental to the subject's mental health** or to the safety of any individual;
 - releasing the information would constitute a **violation of normal professional practice and medical ethics.**

Request for Records UCA §63G-2-204

- Request must be in writing with identifying information and clearly articulates documents sought.
- Request must be submitted to governmental entity which is the custodian of the document.

Processing the Request UCA §63G-2-204

- Respond to written request within **10 business days**.
- “**Extraordinary circumstances**” allows agency to provide delayed response – **voluminous documents** or **workload issues** can constitute extraordinary circumstances.
- “**Expedited request**” must be responded to within **5 business days** – **public interest vs. personal interest**.

Responding to the Request

UCA §63G-2-204(3)(a)

After receiving a request for a record, a governmental entity shall provide written response which:

1. **approves the request** and provide a copy of the record;
2. **denies the request** . . . ;
3. notifies the requester that it **does not maintain** the record requested;
4. notifies the requester that because of one of the **extraordinary circumstances** . . . , include in notice
 - a. **description of the circumstances** that constitute the extraordinary circumstances; and
 - b. **the date** when the records will be available . . .

Denial of the Request

UCA §63G-2-205

- Notice of Denial shall be in **writing and sent to requester**.
- The **notice of denial** shall contain the following information:
 - (a) a **description of the record** or portions of the record to which access was denied;
 - (b) **citations** to the statute, court rule or other law that exempt the record or portions of the record from disclosure;
 - (c) a statement that the requester has the **right to appeal** the denial to the chief administrative officer of the governmental entity; and the **time limits** for filing an appeal.

Appeal Rights Under GRAMA UCA §63G-2-401 and 403

Appeal to Head of Governmental Entity (Chief Administrative Officer)

1. Notice of Appeal must be **filed within 30 days** of denial of records.
2. **Short statement** of facts, reasons, and authority in support of Appeal.
3. **5 business days to make written determination on appeal.**

Appeal to State Records Committee

1. Appeal must be made **within 30 days** of Chief Officer's determination.
2. **Short statement** of facts, reasons, and authority in support of Appeal.
3. Agency must submit **written statement in support** of its denial of records.
4. Records Committee holds **hearing** to discuss appeal. **5 days** for signed orders.
5. **Judicial Review** by District Court is available.

Family Educational Rights and Privacy Act (FERPA) 20 U.S.C 1232(g) and 34 CFR Part 99

Purpose of FERPA

1. Protect privacy interest of parents in children's education records
2. Provide parents the right to inspect and review records
3. Provides right to consent to release of personally identifiable information.
4. Rights transfer from parent to student at 18 years old.

What is Education Record under FERPA?

20 US §1232G(a)(4)(A) and 34 CFR §99.3

● **records, files, documents, and other materials** which –

- (i) contain information **directly related to a student**; and
- (ii) are **maintained by an educational agency** or institution or by a person acting for such agency or institution.

FERPA applies to “personally identifiable information” from records.

What is Personally Identifiable Information? 34 CFR §99.3

The term includes, but is not limited to—

- (a) The student's **name**;
- (b) The name of the student's **parent or other family members**;
- (c) The **address** of the student or student's family;
- (d) A **personal identifier**, such as the student's **social security number**, student number, or biometric record.
- (e) Other indirect identifiers, such as student's **date or place of birth and mother's maiden name**.
- (f) Other information, that alone or in combination, **is linkable to a specific student** that would allow a reasonable person in the school community, who does not have a personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.
- (g) Information requested by a person who the educational agency or institution **reasonably knows the identity** of the student to whom the education records relates.

Who Does FERPA Apply To? 34 CFR §99.1

Applies to educational agency or institution who **has programs funded by the Secretary of Education** if the

1. The educational institution **provides educational services or instruction**, or both, to students; or
2. The educational agency is **authorized to direct or control** public elementary or secondary or postsecondary educational institutions.
3. Public or private school. . . Early childhood education, elementary and secondary education, postsecondary education, special education, job training, career and technical education, and adult education, and any program administered by an educational agency or institution. **(All-inclusive)**

Parent or Student Consent is Usually Required to Disclose Information to Third Party-34 CFR §99.30

Signed and dated written consent required which:

- Specifies records that can be disclosed
- States purpose of disclosure
- Identifies to whom the disclosure is made

A copy of the records disclosed provided to parent or student.

When Parent or Student Consent is Not Required to Disclosed Information to Third Party-34 CFR §99.31.

- Disclosure to **other school officials, including teachers** within the agency or institution who have legitimate educational interests.
- Disclosure to a **contractor, consultant, volunteer, or other party** who the agency or institution has **outsourced** institutional services.
- Disclosure is to **organization conducting studies** on behalf of educational agency or institutions to:
 - Develop, validate or administer predictive tests
 - Improve instruction
- Disclosure to **specified Federal Agencies** and certain state and local educational authorities. (financial aid)
- **Student Directories**

Comparison Between GRAMA and FERPA Regarding Student Records

- If you **represent an educational agency** or institution, **GRAMA does not apply** to a record containing a student's personally identifiable information.
 - controlled by governmental entity
 - governed by **Family Educational Rights and Privacy Act** 34 CFR Part 99
- If you **do not represent an educational agency** or institution, **GRAMA will apply** to a request for information requesting a student's information.

What to do when GRAMA applies to Student Record?

Private record

1. Employment Records
2. Records where disclosure constitutes unwarranted invasion of personal privacy

If there is no basis to withhold document as private, protected or controlled record, basis, it is a public record.

Health Insurance Portability and Accountability Act of 1996 (HIPAA) -42 U.S.C §1302 and 45 CFR Part 164

The HIPAA Privacy Rule:

- A covered entity or business associate **may not use or disclose protected health information**, except as permitted or required by this subpart. Permitted uses and disclosures to:
 - Individual (patient)
 - For treatment, payment and health care operations
 - Valid authorization or agreement from the individual.
 - Court Order.

What is Protected Health Information? 45 CFR Part 160.03

- Transmitted or maintained in **electronic or any other form or medium.**
- Created by a **health provider, health plan, employer or healthcare clearinghouse**
- Relates to the **past, present or future physical or mental health condition** or the **past, present, or future payment on** of an individual, the **provision of health care** to an individual and
 - Identifies the individual or
 - Reasonable basis to be used to identify the individual.

What Entities Must Comply With HIPAA? 45 CFR §160.03

Covered entity means:

- **Health plan** (insurance company)
- **Health care Clearinghouse** (processes or facilitate the processing of health information billing, repricing, etc.)
- **Health care provider** who transmits any health information in electronic form in connection with a transaction covered by this subchapter. (physician or hospital)
- **Business Associate**-health information organization, subcontractor

Comparison Between GRAMA and HIPAA Regarding Protected Health Information

- **If you represent a covered entity, GRAMA does not apply to a record** containing protected health information if the record is:
 - controlled or maintained by governmental entity; and
 - governed by 45 CFR Part 160 and 164 (HIPAA)
- **If you do not represent a covered entity, GRAMA will apply** to the request for information requesting medical information

What to do when GRAMA applies to a Medical Record?

Private Records

1. records containing data on individuals describing medical history, diagnosis, condition, treatment, evaluation or similar medical data
2. employment records concerning insurance coverage.
3. can't use private record classification if bringing lawsuit against University of Utah hospital.

Controlled Records

1. Record containing medical, psychiatric, or psychological data about an individual.

In both cases, a release authorizing disclosure is required to be signed by the individual whose records are sought or a Court order.

Conclusion

- **Overview of GRAMA**

- All records are public unless they are private, protected or controlled records.

- **Overview of FERPA**

- Applies to educational records containing students' personally identifiable information which are held by a school or educational agency
 - FERPA, not GRAMA, controls with these types of records.

- **Overview of HIPAA**

- Applies to covered entities (hospitals, doctors, etc.) who have records containing protected health information.
 - HIPAA, not GRAMA, controls with these types of records.