

#GRAMA

GOVERNMENT RECORDS ACCESS AND MANAGEMENT ACT (GRAMA) AND HB 477 Policy Comparisons


Existing Law	HB 477	Reference / Notes
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General Provisions

GRAMA contains a formal statement of legislative intent.	The legislative intent section is removed.	lines 1831-1832 Standard drafting policy strongly discourages enacting legislative intent in the code. When codified intent language exists, members of the executive branch and judges may ignore the plain language of the statute and rely instead on legislative intent. This dilutes the Legislature's power to perform its core function--making public policy. The intent language recognizes "constitutional rights" which are not directly expressed in the plain language of the U.S. or Utah Constitutions. A constitutional right can't be established by statute.
Records are presumed to be public unless made private or protected under a specific exception established in GRAMA.	No change	Section 63G-2-201(2), which is unchanged by HB 477, states that "[a] record is public unless otherwise expressly provided by statute."

Existing Law	HB 477	Reference / Notes
GRAMA does not address which party has the burden of proof on an appeal to show that the public interest in disclosing a record "outweighs" the interest in maintaining the record's private or protected status.	States that the party seeking disclosure carries the burden of proof when seeking to override the protected status and substitutes the legal standard "preponderance of the evidence" for the less precise "outweighs".	lines 1556-1562, 1658-1663, 1753-1758
Government meetings are open to the public.	No change	Title 52, Chapter 4, Open and Public Meetings Act

Documents that Are Not Regulated by GRAMA

A document is subject to GRAMA only if it is reproducible, regardless of its format. For example, a conversation and an unrecorded phone call are not subject to GRAMA.	Because the following communication formats are similar to a conversation, they are not regulated by GRAMA, even if they are reproducible: <ul style="list-style-type: none"> • voice mail messages • instant messages • video chat • text messages, unless the communication is an electronic meeting.	lines 534, 537-547
 Every note that a legislator, public employee, or public officer makes to themselves for their own use is public under GRAMA unless the note is made in the person's "private capacity"--entirely unrelated to the person's legislative or governmental service.	Personal notes made by a person for that person's own use would not be subject to GRAMA--whether relating to the person's legislative or government service or not.	lines 534-535, 548-552

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Fees

<p>When release of a record primarily benefits the public rather than a person, the governmental entity is "encouraged" to find, review, and provide the record without charge. GRAMA requests from the media routinely ask that all fees be waived based upon this provision.</p>	<p>Eliminates the "encouraged" requirement. Fees may be waived or reduced for the media if waiving or reducing the fee is an appropriate use of taxpayer funds and resources and that release of the record primarily benefits the public.</p>	<p>lines 699-709</p>
<p>Regardless of the size of the request or the amount of searching, review, or analysis required, charges for staff time in responding to requests beyond the standard fee are limited to situations where the requestor has asked that a record be changed to a different format.</p>	<p>If a request requires the review or search of a large number of records, extensive editing or redacting, or legal review or technical expertise, the actual cost of that assistance may be charged in addition to the standard fee. The governmental entity must document and provide evidence of the additional cost.</p>	<p>lines 635-665, 681-687</p>
<p>No charge can be made for the first quarter hour of time spent to fulfill a request, and actual hours billed must be billed at reasonable rates.</p>	<p>No substantial change</p>	<p>lines 666-680, 688-689 (moved to line 680)</p>
<p>A fee can be charged for the actual costs of providing a record.</p>	<p>No changes, except that a fee can include costs of overhead and administration when calculating the actual cost of providing the record.</p>	<p>lines 622-625</p>
<p>The fee must be established using the state fee process which requires public hearings and approval by the Legislature, local elected bodies, or other entities.</p>	<p>No change</p>	<p>lines 626-634 (moved from 690-698)</p>
<p>All fees are subject to appeal.</p>	<p>No change</p>	<p>lines 716-721</p>

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Private and Protected Records

<p>Records that are "private" or "protected" may be voluntarily released by the governmental entity and are subject to review by the courts to determine if they should be publicly released despite their private or protected status.</p>	<p>No change</p>	<p>63G-2-401, 63G-2-404</p>
<p>The "personal files" of a legislator, "including personal correspondence to or from a legislator" is a protected record, with some exceptions. The media has interpreted "personal files" and "personal correspondence" as files and correspondence whose content is completely unrelated to the legislator's government business (e.g. genealogical files).</p>	<p>Clarifies the confusion about the meaning of "personal files" and "personal correspondence" by stating the following: a "record related to the performance of a legislator's official government duties that is prepared, received, or retained by a legislator, including correspondence to or from a legislator" is a protected record, with the same exceptions.</p>	<p>lines 1320-1325</p>
<p>A legislator's communications with their staff and other legislators is public information unless it is "part of the deliberative process in connection with preparation of legislation," with some exceptions. This narrow restriction fails to protect legislator work requests to staff, legislative investigations, and legislator communications with staff about constituent concerns unless these tasks are directly tied to the preparation of legislation.</p>	<p>A legislator's communications with their staff and other legislators is presumed to be protected if it is "related to their official government duties," with the same exceptions.</p>	<p>lines 1326-1335, 1346-1348</p>

Existing Law	HB 477	Reference / Notes
Personal and financial data that is given to a senate confirmation committee by persons who are nominated to a state board or judicial position as part of their background check is public information.	That personal and financial data is classified as a private record.	lines 1075-1077
Personal email addresses for the following persons are public records: <ul style="list-style-type: none"> • current and former government employees • persons who have been required to submit that information to a government database; and • persons conducting higher education and animal research. 	Those personal email addresses are classified as protected records.	lines 1085-1088, 1477-1480, 1487-1489
Audit records of the State Tax Commission that would interfere with an audit if publicly released are classified as protected records.	The same protection is extended to the State Auditor and Legislative Auditor General.	lines 1306-1309
Legal research, strategies, and internal communications are public records if the litigation is not pending--usually meaning a case has been filed.	Those documents are also presumed protected if the litigation is "reasonably anticipated."	lines 1312-1316, 1350-1352
The governor's office can protect documents that would reveal the governor's contemplated policies or courses of action up until the time that the governor implements or rejects the policy or course of action.	Those documents, including internal communications and working papers, are protected regardless of whether the policy or course of action is implemented.	lines 1370-1374
Records relating to fiscal notes on legislation are protected until issuance of final recommendations.	Records relating to fiscal notes on legislation are protected until the legislation has passed.	lines 1375-1380