
ADMINISTRATOR'S GUIDE TO STATE RECORDS RESPONSIBILITIES

A Guideline of the Utah State Archives and Records Service

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PURPOSE:

Government officials create and maintain public records as part of their official duties. The Government Records Access and Management Act (GRAMA, Utah Code 63G-2-101, et seq.) and the Public Records Management Act (Utah Code 63A-12-101, et seq.) detail the duties and responsibilities of government officials in maintaining government records and providing public access. Officials may also maintain other documents, including reference materials and personal papers, which do not relate to agency business. These materials may be in paper, electronic, or other formats. This guide will assist officials in the following:

- Understanding responsibilities in creating, managing, and disposing your agency records appropriately
- Identifying records that must be incorporated into agency files and maintained as public records
- Identifying personal files that may be removed at your discretion and maintained separately from public records

By following these guidelines an official's time in office and accomplishments will be well documented and preserved for future generations.

PUBLIC RECORDS

By state law, GRAMA defines a “record.” The definition of a record is broad. It includes documentary materials—books, letters, documents, papers, and plans, as well as photographs, recordings and electronic data. GRAMA states that a record is information that is “*prepared, owned, received, or retained*” by government. It also must be reproducible. Format is not a factor; *content*, not format, is what is important in determining a record.

63G-2-103. Definitions.

....

(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

GRAMA further clarifies the extent of the law by defining what a record is not. It lists such examples as copyrighted material, propriety software, junk mail or commercial publications, collections in public libraries, and more. It reaffirms that information not related to government business or not “prepared or received” in an official capacity is not a record.

63G-2-103. Definitions.

....(22)

(b) "Record" does not mean:

(i) a personal note or personal communication prepared or received by an employee or officer of a governmental entity:

(A) in a capacity other than the employee's or officer's governmental capacity;

or

(B) that is unrelated to the conduct of the public's business;

(ii) a temporary draft or similar material prepared for the originator's personal use or prepared by the originator for the personal use of an individual for whom the originator is working;

(iii) material that is legally owned by an individual in the individual's private capacity

....

(ix) a daily calendar or other personal note prepared by the originator for the originator's personal use or for the personal use of an individual for whom the originator is working;

For a complete definition of what does not constitute a record, see Subsection 63G-2-103 (22)(b) (2010)

RECORDS RESPONSIBILITIES

(Utah Code 63A-12-103, 105)

Records Management

The chief administrative officer (CAO) is ultimately responsible for the creation and proper management of records in the department or division. In order to carry out this responsibility the CAO, with staff assistance, is mandated to do the following:

- Designate a records officer(s) to oversee records management in each office in the department or division. Records officers should receive training in records management, which is offered by the State Archives. Records officers are required to be certified through online training to prepare them to respond properly to records requests.
- Establish records retention schedules for the records created by the agency and ensure those retention schedules are legally approved and followed. Retention schedules are submitted to the State Archivist for approval by the State Records Committee, the legal authority for records retention.
- Ensure that important policies and functions of your agency are being documented for the future and to protect the legal and financial rights of citizens.
- Determine records designations and classifications and ensure that employees who are making classification decisions are certified through online training. Designations and classifications of agency records are reported to the State Archives.

These and other responsibilities are outlined in the Public Records Management Act (Utah Code 63A-12-101, et seq.). The CAO of an agency should be familiar with all records management mandates.

Records Appeals

The CAO is also responsible for receiving appeals of records access denials made by the agency in open records (GRAMA) requests and making a determination on those appeals. There are mandated time frames for responding to appeals and specific information which must be included in the response. Mandated actions are found in GRAMA, Section 63G-2-401. Duties of the CAO under this section may be delegated.

Records Disposition

All records created or maintained by a state governmental entity are the property of the state. They cannot be destroyed; mutilated, or otherwise damaged without proper and legal authority. Intentional violation of the law is a Class B misdemeanor. Therefore it is important to develop and maintain good recordkeeping procedures.

63A-12-105. Records are property of the state -- Disposition -- Penalties for intentional mutilation or destruction.

(1) All records created or maintained by a state governmental entity are the property of the state and shall not be mutilated, destroyed, or otherwise damaged or disposed of, in whole or part, except as provided in this chapter and Title 63G, Chapter 2, Government Records Access and Management Act.

....

(3) (a) It is unlawful for a person to intentionally mutilate, destroy, or to otherwise damage or dispose of the record copy of a record knowing that the mutilation, destruction, damage, or disposal is in contravention of:

(i) a governmental entity's properly adopted retention schedule; or

(ii) if no retention schedule has been properly adopted by the governmental entity, the model retention schedule, as provided in Section **63G-2-604**.

(b) Violation of this Subsection (3) is a class B misdemeanor.

(c) An employee of a governmental entity that violates this Subsection (3) may be subject to disciplinary action as provided under Section **63G-2-804**.

Developing good records management practices includes inventorying the records the office is creating and maintaining to understand what they are, where they are, and who is responsible for maintaining them. Once records officers are designated, the agency should provide them with the time, support, and training needed to fulfill the statutory mandates.

Because the majority of government records are in electronic formats, it is important to ensure that records are maintained in formats that will support their retention and access requirements. This requires developing a migration or reformatting plan to prevent the loss of important data. A migration plan will need to include formats, media, and systems. [Refer to migration plan form here]

Records need to be secure and the agency's continuity of operations plan needs to address the issues of records recovery.

PERSONAL PAPERS

Personal papers are documents that relate to individual personal affairs and not to the affairs of the governmental entity. Personal papers are not used in conducting the business of the government, and are not records. They may include the following types of materials:

- a personal note or personal communication prepared or received by an employee or officer of a governmental entity in a capacity other than the employee's or officer's governmental capacity; or that is unrelated to the conduct of the public's business (Subsection 63G-2-103 (22)(b)(i)).
- material that is legally owned by an individual in the individual's private capacity (Subsection 63G-2-103 (22)(b)(iii)).
- a daily calendar or other personal note prepared by the originator for the originator's personal use or for the personal use of an individual for whom the originator is working (Subsection 63G-2-103 (22)(b)(ix)).

Personal papers should be kept separate from public records in order to maintain proper control and authority over agency records management. If records include information on personal and government business, the sections relating to government business should be extracted and treated as government records. If the information cannot be extracted without altering the record, such as in email, then the document must be maintained as a record and subject to an approved retention schedule.

Personal papers are not considered government records and are not subject to GRAMA requests. However, the rules of discovery are different and personal files maintained in the office may be subject to discovery in instances of litigation. Additionally, personal papers may be subject to review by the agency or agency attorney to determine if they are subject to GRAMA.

LEAVING OFFICE

There are a number of records issues to consider when preparing to leave state government. This is an opportune time to review the records in the office and fulfill their disposition. Records can be sent to the State Records Center, to the State Archives, or destroyed as dictated by their approved retention schedules.

Government records belong to the State and cannot be taken with you even if they have already met retention. You may take copies of government records classified entirely as public, such as materials you helped draft or records of public events with which you were involved. The agency should authorize the creation and removal of extra copies of work-related records in which you have an interest. If you are uncertain whether materials are government records or personal papers, consult with your records officer or the State Archives. A designated official such as the records officer, legal counsel, or other official, should review the materials that you plan to remove.

Copies of government records classified as private, protected, or controlled should not be removed from government custody. Furthermore, you are under obligation to hold information you may have acquired from such documents in accordance with their designated classification, even when you are no longer employed by the State.

When you leave your position, your office will need to retain all email that has not met retention. Email should be managed according approved retention schedules so that it can appropriately be retained after transitory messages are deleted and any personal messages forwarded to a private account.

Review personal papers that you wish to remove to ensure no public records have been included.

WHERE TO GO FOR FURTHER ASSISTANCE

Contact the State Archives for any questions. The purpose of the State Archives is to assist Utah government agencies in the efficient management of their records, to preserve records of enduring value, and to provide quality access to public information.