Government Records and Management Access Act, Process
For Releasing Department Records

Purpose
To establish a procedure that conforms with the Governmental Records Access and Management Act (GRAMA), U.C.A. 63-2-2, while insuring adequate notice to the Utah Department of Transportation (Department), the State Office of Risk Management, and Attorney General’s Office on all data or information released to the public, contractors, insurance companies, or private attorneys for which there are pending claims, litigation, or possible liability for the Department.

Policy
The Government Records Access and Management Act (GRAMA) is a comprehensive law dealing with management of government records. This Act is an attempt to balance the public’s constitutional rights to access government information, protect the privacy of individuals of which personal data has been collected, and monitor government access restrictions to records.

Definitions
Documents Classification Report
A State Archives inventory report that determines whether a record series, record, or information within a record is public, private, controlled, protected, or exempt from disclosure under Section 63-1-101(3)(b).
Responsibility: All employees

Actions

1. **Destruction or Improper Disclosure of Records:** All records created or maintained by an employee are declared property of the employee who has lawful access and who intentionally discloses or provides a copy to any person knowing such disclosure is prohibited is guilty of a class B misdemeanor (U.C.A. 63-2-905) and any employee who has lawful access and provides a copy to any person knowing such disclosure is prohibited is guilty of a class B misdemeanor (U.C.A. 63-2-801) and subject to disciplinary action (U.C.A. 63-2-804). A person is guilty of a Class B misdemeanor for knowingly making false entry or false alteration of anything belonging to the State (U.C.A. 76-8-11).

Responsibility: All Region, District, and Division employees with access to or who routinely receive copies.

2. **Department “Documents Classification Report”:** No documents, records, data, or reports will be released by any employee except as provided in the "Department’s Documents Classification Reports" or as provided by GRAMA and this procedure. The classification categories are as follows:

   a. **PUBLIC** – Records not classified as private, controlled protected, or exempt

   b. **PRIVATE** – Records open only to the individual to whom the record pertains and other authorized people or agencies

   c. **CONTROLLED** – Records open to authorized people or agencies but not open to the individual to whom the records pertain

   d. **EXEMPT** – Documents that are governed by a state or federal statute that may only be released in special circumstances. Refer to {U.C.A. 63-2-202 (8) (a)(I-v)}, “Research Purposes.”
e. **PROTECTED** – Records with non-personal data that are open to the authorized persons or agencies. Protected documents are defined in {U.C.A. 63-2-304} and include:

1) Records prepared by or on behalf of the Department in anticipation of litigation that are not available under the rules of discovery.

2) Records disclosing an attorney’s work product including the mental impressions or legal theories of an attorney or other representatives of the Department concerning litigation.

3) Records of communications between the Department and an attorney representing, retained, or employed by the Department if the communications would be privileged as provided by GRAMA.

4) Records of investigations of loss occurrences that may be covered by the Division of Risk Management, the Employers’ Reinsurance Fund, or similar divisions in other governmental agencies.

5) Investigative Officer’s Reports that may only be released by the Department of Public Safety.

6) Employees’ Personnel Files or personnel records except as may be allowed by the Office of Human Resources.

7) Documents subject to 23 U.S.C. Sec. 409 are not discoverable nor can they be admitted as evidence in Federal or State court or considered for other purposes of damages arising from any occurrence.

3. **Steps to Be Taken Upon Receipt of a Record Request:** When a request for access to information is submitted to an agency of the Department they should:

   a. **DOCUMENT FOR PUBLIC RELEASE** – Documents that are prepared for current public distribution may not require written request. This exception also applies to engineering data provided to a contractor or consultant that is integral to the performance of a Department project.

   b. **MUST BE WRITTEN REQUEST** – Determine if the request describes the record requested with reasonable specificity. Refer to Exhibit A “Document Release Form.”
c. **MUST BE SPECIFIC** – Determine if the request describes the record requested with reasonable specificity. Attempt to contact the requester for further clarification if what has been requested is not understood. Refer to GRAMA Handbook Part II, Sec. C.

d. **DATE RECEIPT OF THE REQUEST** – Log the request. The first day is counted as the day following receipt according to Utah Rules of Civil Procedure #6. The time for response begins to run when the request is received so it is important to note the date it is received by either entering it in a log or date stamping the request.

e. **DETERMINE ORIGIN OF RECORD** – Make the request known to the district or division Records Officer or the designated authority who will then refer to the “UDOT Documents Classification Report” to evaluate the following:

1) Origin of the record (creator/custodian of original).

   a) The request is to be immediately forwarded to the appropriate office if the record does not originate from the receiving office. The time limit for response should begin when the record is received by that office.

   b) The record should be handled as the UDOT Documents Classification Report indicates if it does originate from the receiving office as clarified on pages 2 and 3 of this procedure.

f. **OBTAIN PRIOR APPROVAL IF NEEDED** – Documents classified as private (2-B), protected (2-E), or classified as public (2-A) but relate to pending litigation against the Department or issues that the employee has reason to believe may result in litigation involving the Department will only be released through the Office of Loss Control as provided by law, “Rules of Discovery” or as directed by the Office of the Attorney General. Personnel related documents require the approval of the Office of Human Resources. Refer to Subpoena 2-D {Exempt} of this procedure. Requester must show proof of identification **before** the record is disclosed. Refer to Exhibit B.
g. **RESPOND** – The Department will respond to a record request no later than ten business days after receiving the request or five business days after receiving a written request if the requester demonstrates that the expedited response benefits the public except for the extraordinary circumstances outlined in 4:A-H of this procedure. The Department will respond to a record request as follows:

1) Approve or provide the record requested

   a) Deny the request, Refer to 6:A-B.

   b) Notify the requester that it does not maintain the record and provide, if known, the name and address of the governmental agency that does maintain the record.

4. **In Cases of Extraordinary Circumstances:** Notify the requester that because of the extraordinary circumstances listed it cannot immediately approve or deny the request and specify the earliest date the records will be available. Refer to Exhibit C, “Notice of Extended Time for Response to Records Requests”. The following circumstances constitute extraordinary circumstances that allow the Department to delay the Department to approval or denial:

   a. A governmental agency is using the record, in which case the Department will immediately request that the other agency return the record.

   b. A governmental agency is using a record as part of an audit and returning the record before the completion will impair the conduct of the audit.

   c. The request is for a voluminous quantity of records.

   d. The Department is currently processing a large number of record requests.

   e. The request requires the Department to review a large number of records to locate the records requested.

   f. The decision to release a record involves legal issues requiring analysis of requests, statutes, rules, ordinances, regulations or case law.
g. Separating public information from private, confidential, or protected information requires extensive editing.

h. Separating public information from private, controlled, protected, or exempt requires computer programming.

5. **When a Record Request Must Be Delayed:** Take the following action if the Department determines that the extraordinary circumstances listed on page {5:A-H} creates a situation where a record request must be delayed:

a. The governmental agency currently possessing the record will be requested to return the record to the Department within five business days of the request unless the record would impair the holder’s work for the circumstances cited under {4A} of this procedure.

b. The Department will notify the requester when the record is available for inspection and copying for the circumstance cited under {4B} of this procedure.

c. Use this procedure for the circumstances cited under {4C, D & E}:
   1) Disclose the public records that it has located.
   2) Provide the requester with an estimate of the amount of time it will take to finish the search.
   3) Complete the search and disclose the requested records as soon as reasonably possible.

d. Use this procedure for the circumstance cited under {4F}. Approve or deny the request within five days after the response time designated for the original request has expired.

e. Use this procedure for the circumstance cited under {4G}. The Department will fill the request within 15 business days from the date of the original request.

6. **Denying Records:**

a. It is considered the equivalent of a determination to deny access to a record if the Department does not provide a requested record or does not issue a denial within the specified time period. Refer to Exhibit D, “Notices of Denial Form”.
b. The Department will send a notice of denial to the requester’s address if it denies the request in whole or part. The notice of denial will contain the following information:

1) A description of the record or portions of the record to which access was denied providing the description does not disclose private controlled, protected, or exempt information.

2) Cite any provisions of GRAMA, {U.C.A. 63-2-2} or other state statutes or regulations that prevent the record from disclosure providing the citations do not disclose private, controlled or protected information.

3) State that the requester has the right to appeal the denial to the Executive Director and then to either the records committee or district court, Appeals Process: {U.C.A. 63-2-4}.
   a. Briefly summarize the appeals process, the time limits for filling an appeal, and the name and business address of the Executive Director. Refer to Exhibit E, “Notice of Appeal Form”.

7. **Subpoena or Court Order**: Requests made by service of subpoena or court order to produce documents will be coordinated with the Department Office of Loss Control before releasing any documents or appearing for deposition.

8. **Questions Regarding Requests**: Notify Loss Control of any questions regarding requested items listed in {2-E:1-7} of this procedure for approval to release information requested.

9. **Fees for Records**: Will be charged for actual costs and may include the following:
   a. Cost of staff time for summarizing, compiling, or tailoring the record either into an organization or media to meet the person’s request.
   b. Cost of staff time for search, retrieval, or other direct administrative costs for compiling.
   c. Fees for a record that is the result of computer output other than word processing the actual incremental cost of providing the electronic services and products together with a reasonable portion of the costs associated with formatting or interfacing the information.
d. Government agencies may not charge fees for:

1) Reviewing a record to determine whether it is subject to disclosure.

2) Inspecting a record.

e. Fees:
First 50 pages 50 cents per copy
Second 50 pages 35 cents per copy
All additional copies 20 cents per copy

f. Hourly labor rate for staff time for administration, search, retrieval and other direct administrative costs will only be charged for providing electronic services associated with formatting or interfacing the information for particular uses. In all other cases these costs are included in the copy fees described in {9B}.

g. An appeal of the charges assessed can be made in writing with the appropriate Records Officer and will be reviewed by the Executive Director.

**Responsibility:** Office of Department Risk Management

10. Coordinates with State Attorney General on any questionable requests or secures approval to release and forwards copies of all documents or information to the State Attorney when so requested on litigation-related cases.

a. Maintains a file for two years and coordinates data with open case files.

b. Invoices requester and insures proper credit to appropriate division.