

**MINUTES OF THE
GOVERNMENT RECORDS ACCESS AND MANAGEMENT TASK FORCE**

Tuesday, November 8, 2005 – 9:00 a.m. – Room W125 House Building

Members Present:

Sen. David L. Thomas, Senate Chair
Rep. Douglas C. Aagard, House Chair
Sen. Fred J. Fife
Sen. Parley Hellewell
Sen. Mark B. Madsen
Rep. Glenn A. Donnelson
Rep. Carl W. Duckworth
Rep. Craig A. Frank
Rep. Neil A. Hansen
Rep. Ann W. Hardy
Rep. Fred R. Hunsaker
Rep. Carol Spackman Moss

Members Absent:

Sen. Brent H. Goodfellow
Rep. David L. Hogue

Staff Present:

Mr. Benjamin N. Christensen, Policy Analyst
Mr. Eric N. Weeks, Associate General Counsel
Ms. Brooke Ollerton, Legislative Secretary

Note: A list of others present, copy of related materials, and an audio recording of the meeting can be found at www.le.utah.gov.

1. Task Force Business

Chair Thomas called the meeting to order at 9:01 a.m.

MOTION: Rep. Hansen moved to approve the minutes of the October 18, 2005 meeting. The motion passed unanimously with Sen. Madsen, Rep. Donnelson, and Rep. Moss absent for the vote.

2. Consideration of Proposed Changes to the Government Records Access and Management Act (GRAMA) (Draft legislation)

Chair Aagard referred the Task Force to an amendment sheet "Amendments to Government Records Access and Management Act" (Bill File 0102), which was distributed prior to the meeting. He explained the intent of the proposed amendments and the need for some additional amendments based on feedback received since the last meeting.

MOTION: Rep. Aagard moved to amend "Amendments to Government Records Access and Management Act", as follows, and to recommend it as a task force bill:

1. Page 1, Lines 12-13: Delete "include only those materials that are" and insert "exclude materials that are not"
2. Page 1, Line 14: After "process" delete "of" and insert "in connection with the preparation of legislation between"
3. Page 6, Line 171: Delete "in connection with conduct of the public's business"

4. Page 6, Line 174: After line 174 insert
"(i) material that is not prepared, owned, received, or retained in connection with the conduct of the public's business;"

And renumber remaining subsections accordingly
5. Page 11, Lines 321-322: After "including" delete "personal" and after "Legislature" insert "subject to the provisions of Subsection (51)"
6. Page 11, Line 325: After "process" delete "of" and insert "in connection with the preparation of legislation between"
7. Page 11, Lines 326-327: Delete lines 326 and 327 and insert
"(A) members of a legislative body;
(B) a member of a legislative body and a member of the legislative body's staff; or
(C) members of a legislative body's staff; and"

Chair Aagard clarified that Subsection (51) states that either party to the communication can make the record public.

Mr. Robert Van Velkinburgh, Citizen, Syracuse, Utah, stated that he opposed the bill because he felt it decreases government openness and accountability.

Rep. Hardy replied that the Task Force's intent was not to operate in secrecy, but to update GRAMA to cover technological changes.

Chair Thomas pointed out that a lot of the e-mails legislators receive contain personal information.

Rep. Aagard commented that if all records are made public, constituents may not be willing to voice their concerns. He stated that making more documents public would deter citizens from corresponding with legislators.

Rep. Moss stated that she saw a difference between private telephone and e-mail conversations. She stated that she was against giving discretion to the government to decide what is and what is not public and that she favored the openness of e-mails. She suggested that if people want to have private conversations, they might conduct them in another way.

Rep. Frank stated that text messaging and e-mails have evolved so that they are not just a document, but a dialogue, almost like a phone call, which is protected.

Rep. Hardy asked if legislators would be required to inform members of the public who communicate with them that their communication could be public knowledge.

Mr. Christensen stated that under current law the communication could be public. The legislation the Task Force was considering states that communication will be protected unless one of the parties makes it public.

Sen. Madsen asked what the responsibility of each legislator was to retain, manipulate, or provide his/her records under a GRAMA request.

Mr. Weeks explained that the basic retention schedule rule for personal correspondence was to retain it until there is no longer a need for the document. He further explained that the amendment dealt with disclosure, not with retention. This amendment gives records an initial status of "protected," rather than "public," unless the parties or the court determine it should be public. He further explained that the Office of Legislative Research and General Counsel would help the legislator respond to a GRAMA request.

Sen. Madsen pointed out that there is no provision precluding a citizen from releasing information.

DIVISION of the MOTION: Rep. Hansen asked for a division of Rep. Aagard's motion to amend and recommend the bill as a task force bill.

Chair Thomas called for a vote on the proposed amendments. The motion passed with Rep. Moss voting against it.

Chair Thomas called for a vote on the adoption of the bill as a task-force-recommended bill. The motion passed with Sen. Fife, Rep. Moss, and Rep. Duckworth, and voting in opposition.

Mr. Weeks reviewed the draft legislation titled "GRAMA Appeals Process and Document Request Amendments" and reminded the Task Force it was distributed in the last meeting,

MOTION: Rep. Aagard moved to amend "GRAMA Appeals Process and Document Request Amendments" as follows:

1. Page 1, Lines 12-14: Delete lines 12-14 and insert:
"► designates a request for a record that relates to a notice of claim under the Governmental Immunity Act of Utah as an extraordinary circumstance;"
2. Page 1, Line 18: After line 18 insert:
"► provides that a judicial appeal for a records committee order is to be reviewed de novo based only on the record established before the records committee;"
3. Page 4, Line 96: After "person;" insert "or"

4. Page 4, Line 98: Delete "or" and insert ".
5. Page 4, Lines 99-102: Delete lines 99-102
6. Page 19, Line 569: Bracket and delete ", but allow introduction of evidence presented to" and insert "on the record established before"

The Task Force discussed the amendments.

Mr. Todd Weiler, Attorney, Perry Anderson & Gardiner, stated his support for striking lines 99-102 of "GRAMA Appeals Process and Document Request Amendments" because he felt some city officials resent GRAMA requests and use their discretion in a punitive manner. He distributed correspondence entitled "Government Records Access and Management Act (GRAMA) Request" and described a situation in which he felt discretion exercised by local entities under current statute was excessive. He also expressed concern about lines 569 and 570. He suggested that the Task Force make a provision requiring the retention of correspondence in official meetings of local entities.

Mr. Joel Campbell, Utah Press Association, stated his concern about the de novo review process. He commented that the original purpose of the State Record Committee was to be a more accessible, non-legal resource for citizens.

Mr. Lincoln Schurtz, Utah League of Cities and Towns, indicated that the League supports the amendments to "GRAMA Appeals Process and Document Request."

Mr. Mark Burns, Attorney General's Office, said that the State Records Committee has not seen this amendment so he could not comment on its position on the bill. He said he has not seen the problem that others had described of a discrepancy between State Records Committee and courts rulings.

SUBSTITUTE MOTION: Rep. Hansen moved to alter the proposed amendment to "GRAMA Appeals Process and Document Request Amendments" on line 569, which read, "on the record established before," by deleting, "before" and inserting "in the prior proceeding." Rep. Hansen later withdrew the motion.

The motion to amend Bill File 0106 failed, with Sen. Hellewell, Sen. Moss, and Sen. Madsen voting in opposition.

MOTION: Rep. Aagard moved to amend "GRAMA Appeals Process and Document Request Amendments" (Bill File 0106) as follows:

1. Page 1, Lines 12-14: Delete lines 12-14 and insert:
 - "> designates a request for a record that relates to a notice of claim under the Governmental Immunity Act of Utah as an extraordinary circumstance;"

3. Page 4, Line 96: After "person;" insert "or"
4. Page 4, Line 98: Delete "or" and insert " "
5. Page 4, Lines 99-102: Delete lines 99-102

Mr. Schurtz explained that existing statute allows counties to stagger responses to an overly broad request, protecting against harassment. He expressed satisfaction with the amendment.

Rep. Hansen declared a conflict of interest because he has a relative that works in a recorder's office.

The motion passed unanimously.

MOTION: Rep. Aagard moved to approve "GRAMA Appeals Process and Document Request Amendments," as amended, as task-force-recommended bill.

The motion passed unanimously.

Mr. Christensen explained the essential provisions of the additions to the draft legislation titled "Access and Fee Amendments to Government Records Access and Management Act" (Bill File 0282).

Rep. Aagard and Mr. Christensen explained Amendment Two and responded to questions from the Task Force.

MOTION: Rep. Aagard moved to amend "Access and Fee Amendments to Government Records Access and Management Act" with amendment two as follows:

1. Page 1, Line 10: Delete "provision" and insert "provisions"
2. Page 1, Line 25: Delete "disclose the record and the record is not used" and insert "use or allow its use"
3. Page 2, Lines 33-36: Delete ": •" delete "; and" and delete lines 35 and 36
4. Page 2, Line 41: After "►" insert "requires additional fees to be reasonable and"
5. Page 3, Lines 78-80: Delete "(A)" reinstate "(ii)" delete "(B)" reinstate "." and delete "and"
6. Page 3, Line 81: Delete line 81
7. Page 3, Line 82: After "(c)" delete "A" and insert "In addition to the disclosure under Subsection (5)(b), a"

8. Page 3, Line 84: Delete "is"
9. Page 3, Lines 92-93: Delete ":", and delete line 93
10. Page 4, Line 94: Delete "(B) use" and insert "use or allow the use of"
11. Page 4, Lines 116-117: Delete ":(A)"
12. Page 4, Lines 119-120: Delete lines 119 and 120
13. Page 6, Line 176: Delete "a" and insert "an electronic "
14. Page 6, Line 177: Delete "a" and insert "an electronic "
15. Page 6, Line 179: After line 179 insert
"(A) shall be reasonable."
Renumber remaining subsections accordingly

Ms. Candace Daly, Consumer Data Industry Association, encouraged the Task Force not to pass this bill because she believed it would create confusion.

Mr. Weeks explained that lines 459-464 classify home addresses, home phone numbers, and mobile phone numbers as "protected" if the person who gave his/her information did it to comply with a law or rule and if the person had a reasonable expectation that his/her information was not public and would be kept confidential. He further explained that this section was specifically designed to exclude anything that has an expectation of being public.

Rep. Aagard commented that the intent language of GRAMA does not include facilitating marketing, but it was drafted to acknowledge the public's right to access information concerning the conduct of the public's business and the right to privacy concerning data collected by government entities.

Chair Thomas called for a vote on the motion to amend. The motion passed unanimously.

MOTION: Rep. Hardy moved to amend "Access and Fee Amendments to Government Records Access and Management Act," as follows:

1. Page 2, Line 38: After "for requests" insert "from non-governmental entities"
2. Page 6, Line 183: After line 183 insert:
"(iii) This Subsection (2)(d) does not apply if:
(A) the requestor of records is a governmental entity; and
(B) the records are used for the benefit of the public."

The Task Force discussed the amendment.

Mr. Gary Ott, Salt Lake County recorder, expressed concern that multiple government entities are offering public information for free or for less than the recorder's office.

Mr. Dennis Goreham, Utah Automated Geographic Reference Center, remarked that the state created the state geographic information database to share data. He said that legislation has identified the kinds of information that should be available to the public without extra fees.

Chair Thomas called for a vote on the motion to amend. The motion passed unanimously.

MOTION: Rep. Aagard moved to amend "Access and Fee Amendments to Government Records Access and Management Act," as follows:

1. Page 2, Line 42: Delete "and" and insert:
 - "▶ allows contractors and private providers to receive private, controlled, or protected records under certain circumstances;
 - ▶ provides that improper use of a record is a class B misdemeanor; and"
2. Page 2, Line 51: After line 51 insert:
"63-2-206, as last amended by Chapter 63, Laws of Utah 2002"
3. Page 2, Line 53: After line 53 insert:
"63-2-801, as last amended by Chapter 280, Laws of Utah 1992"
4. Page 8, Line 226: After line 226 insert:
"Section 3. Section **63-2-206** is amended to read:
63-2-206. Sharing records.
(1) A governmental entity may provide a record that is private, controlled, or protected to another governmental entity, a government-managed corporation, a political subdivision, the federal government, or another state if the requesting entity:
(a) serves as a repository or archives for purposes of historical preservation, administrative maintenance, or destruction;
(b) enforces, litigates, or investigates civil, criminal, or administrative law, and the record is necessary to a proceeding or investigation;
(c) is authorized by state statute to conduct an audit and the record is needed for that purpose; or
(d) is one that collects information for presentence, probationary, or parole purposes.
(2) (a) A governmental entity may provide a private ~~(or)~~ controlled, or protected record or record series to another governmental entity, a political subdivision, a government-managed corporation, the federal government, or another state if the requesting entity provides written assurance:

~~[(a)]~~ (i) that the record or record series is necessary to the performance of the governmental entity's duties and functions;
~~[(b)]~~ (ii) that the record or record series will be used for a purpose similar to the purpose for which the information in the record or record series was collected or obtained; and
~~[(c)]~~ (iii) that the use of the record or record series produces a public benefit that outweighs the individual privacy right that protects the record or record series.

(b) A governmental entity may provide a private, controlled, or protected record or record series to a contractor or a private provider according to the requirements of Subsection (6)(b).

~~[(3) A governmental entity may provide a record or record series that is protected under Subsection 63-2-304(1) or (2) to another governmental entity, a political subdivision, a government-managed corporation, the federal government, or another state if:]~~

~~[(a) the record is necessary to the performance of the requesting entity's duties and functions; or]~~

~~[(b) the record will be used for a purpose similar to the purpose for which the information in the record or record series was collected or obtained.]~~

~~[(4)]~~ (3) (a) A governmental entity shall provide a private, controlled, or protected record to another governmental entity, a political subdivision, a government-managed corporation, the federal government, or another state if the requesting entity:

(i) is entitled by law to inspect the record;

(ii) is required to inspect the record as a condition of participating in a state or federal program or for receiving state or federal funds; or
(iii) is an entity described in Subsection (1)(a), (b), (c), or (d).

(b) Subsection ~~[(4)]~~ (3)(a)(iii) applies only if the record is a record described in Subsection 63-2-304(4).

~~[(5)]~~ (4) Before disclosing a record or record series under this section to another governmental entity, another state, the United States, ~~or~~ a foreign government, or to a contractor or private provider, the originating governmental entity shall:

(a) inform the recipient of the record's classification and the accompanying restrictions on access; and

(b) if the recipient is not a governmental entity to which this chapter applies, obtain the recipient's written agreement which may be by mechanical or electronic transmission that it will abide by those restrictions on access unless a statute, federal regulation, or interstate agreement otherwise governs the sharing of the record or record series.

~~[(6)]~~ (5) A governmental entity may disclose a record to another state, the United States, or a foreign government for the reasons

listed in Subsections (1)[;] and (2)[, ~~and (3)] without complying with the procedures of Subsection (2) or [~~(5)] (4) if disclosure is authorized by executive agreement, treaty, federal statute, compact, federal regulation, or state statute.~~~~

[~~(7)~~] (6) (a) Subject to [~~Subsection (7)] Subsections (6)(b) and (c), [a governmental] an entity receiving a record under this section is subject to the same restrictions on disclosure of the record as the originating entity.~~

(b) A contractor or a private provider may receive information under this section only if:

(i) the contractor or private provider's use of the record or record series produces a public benefit that outweighs the individual privacy right that protects the record or record series;

(ii) the record or record series it requests:

(A) is necessary for the performance of a contract with a governmental entity;

(B) will only be used for the performance of the contract with the governmental entity;

(C) will not be disclosed to any other person; and

(D) will not be used for advertising or solicitation purposes; and

(iii) the contractor or private provider gives written assurance to the governmental entity that is providing the record or record series that it will adhere to the restrictions of this Subsection (6)(b).

[~~(b)~~] (c) The classification of a record already held by a governmental entity and the applicable restrictions on disclosure of that record are not affected by the governmental entity's receipt under this section of a record with a different classification that contains information that is also included in the previously held record.

(8) Notwithstanding any other provision of this section, if a more specific court rule or order, state statute, federal statute, or federal regulation prohibits or requires sharing information, that rule, order, statute, or federal regulation controls.

(9) The following records may not be shared under this section:

(a) records held by the Division of Oil, Gas and Mining that pertain to any person and that are gathered under authority of Title 40, Chapter 6, Board and Division of Oil, Gas and Mining; and

(b) records of publicly funded libraries as described in Subsection 63-2-302(1)(c).

(10) Records that may evidence or relate to a violation of law may be disclosed to a government prosecutor, peace officer, or auditor."

5. Page 15, Line 464: After line 464 insert:
"Section 4. Section 63-2-801 is amended to read:

63-2-801. Criminal penalties.

(1) (a) A public employee or other person who has lawful access to any private, controlled, or protected record under this chapter, and who intentionally discloses ~~[or]~~, provides a copy of , or improperly uses a private, controlled, or protected record ~~[to any person]~~ knowing that ~~[such]~~ the disclosure or use is prohibited under this chapter, is guilty of a class B misdemeanor.

(b) It is a defense to prosecution under Subsection (1)(a) that the actor used or released private, controlled, or protected information in the reasonable belief that the use or disclosure of the information was necessary to expose a violation of law involving government corruption, abuse of office, or misappropriation of public funds or property.

(c) It is a defense to prosecution under Subsection (1)(a) that the record could have lawfully been released to the recipient if it had been properly classified.

(2) (a) A person who by false pretenses, bribery, or theft, gains access to or obtains a copy of any private, controlled, or protected record to which he is not legally entitled is guilty of a class B misdemeanor.

(b) No person shall be guilty under Subsection (2)(a) who receives the record, information, or copy after the fact and without prior knowledge of or participation in the false pretenses, bribery, or theft.

(3) A public employee who intentionally refuses to release a record the disclosure of which the employee knows is required by law or by final unappealed order from a governmental entity, the records committee, or a court, is guilty of a class B misdemeanor."

Renumber remaining sections accordingly.

Mr. Burns explained the amendment. He said private contractors that handle private, protected, and controlled information are considered agents of the government by contractors. He stated that the amendment clarifies that government entities are not violating GRAMA by using contractors. GRAMA also makes it a crime for private contractors to use the information for marketing or solicitation.

The motion passed unanimously, with Rep. Hardy absent for the vote.

MOTION: Rep. Aagard moved to approve "Access and Fee Amendments to Government Records Access and Management Act," as amended, as a task-force-recommended bill.

Rep. Hansen stated that he was opposed to the bill, specifically to lines 108-109 and 173-183.

Sen. Hellewell expressed concern about the GRAMA provisions that restrict the sale of information for marketing purposes.

Rep. Moss said that there were too many questions for her to vote favorably on the bill and that with this issue, the Legislature should err on the side of accessibility.

Sen. Madsen suggested clarifying language so that printed copies of documents would be available if entities only had electronic copies of documents. He also expressed that he did not think that provisions in lines 173-183 hindered the general public from obtaining information.

Mr. Weeks explained that Sen. Madsen's concerns were addressed in 63-2-201 (11) and (12).

Rep. Aagard emphasized that the appeals process will create a standard and takes away uncertainty. He also said that if bill is not passed, price gouging will continue. He stated that GRAMA will bring structure and guidance to entities regarding accessibility and guidance.

Chair Thomas called for a vote on the motion to approve the bill. The motion passed, with Sen. Fife, Rep. Hansen, and Rep. Moss voting in opposition.

Rep. Madsen explained that he intends to pursue a bill to make certain that insuring entities have access to information about drivers' records.

3. Other Items / Adjourn

MOTION: Rep. Frank moved to adjourn the meeting. The motion passed unanimously.

Chair Thomas adjourned the meeting at 12:04 p.m.