



GRAMA Update and Current Trends

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Salt Lake City
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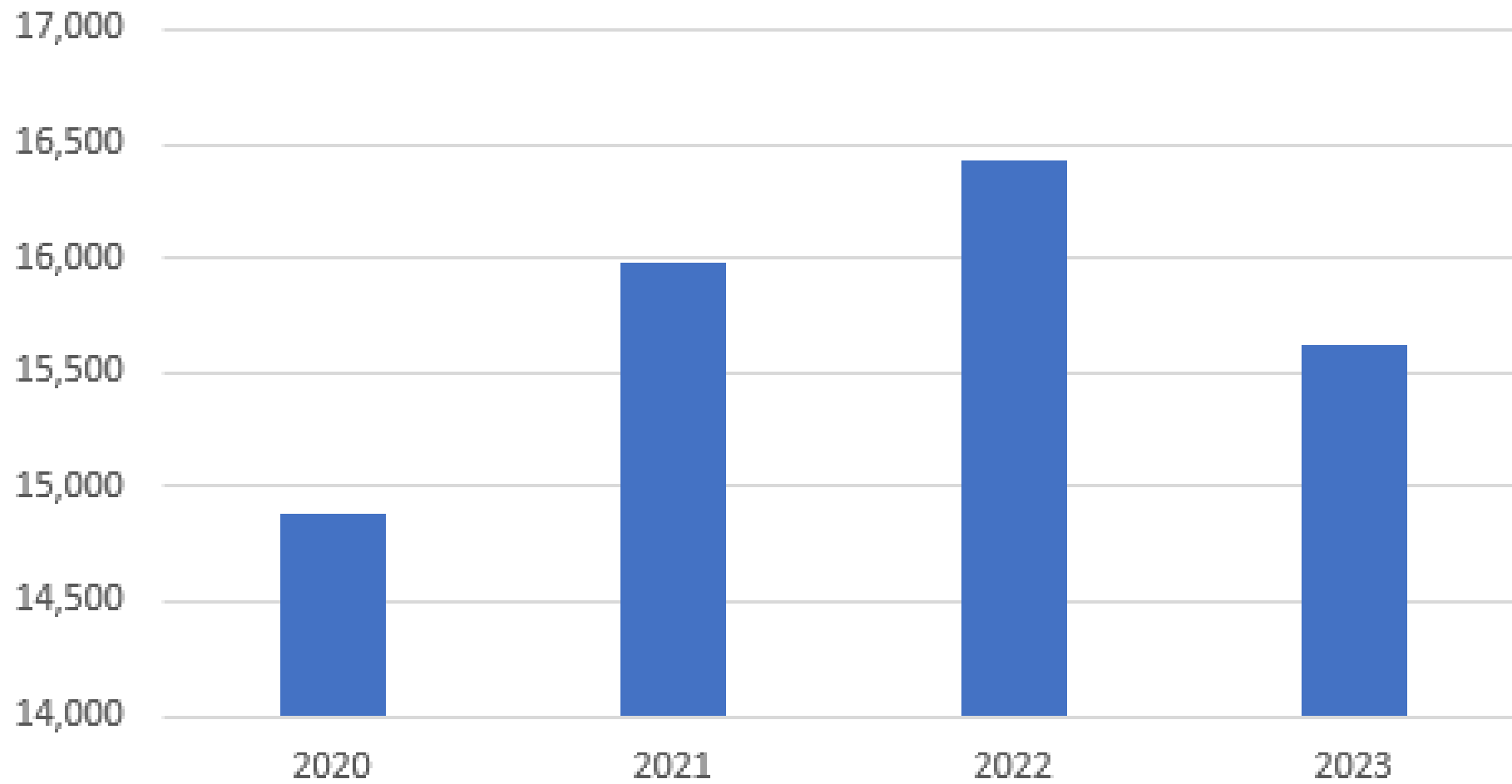
Todd Sheeran

Herriman
City Attorney

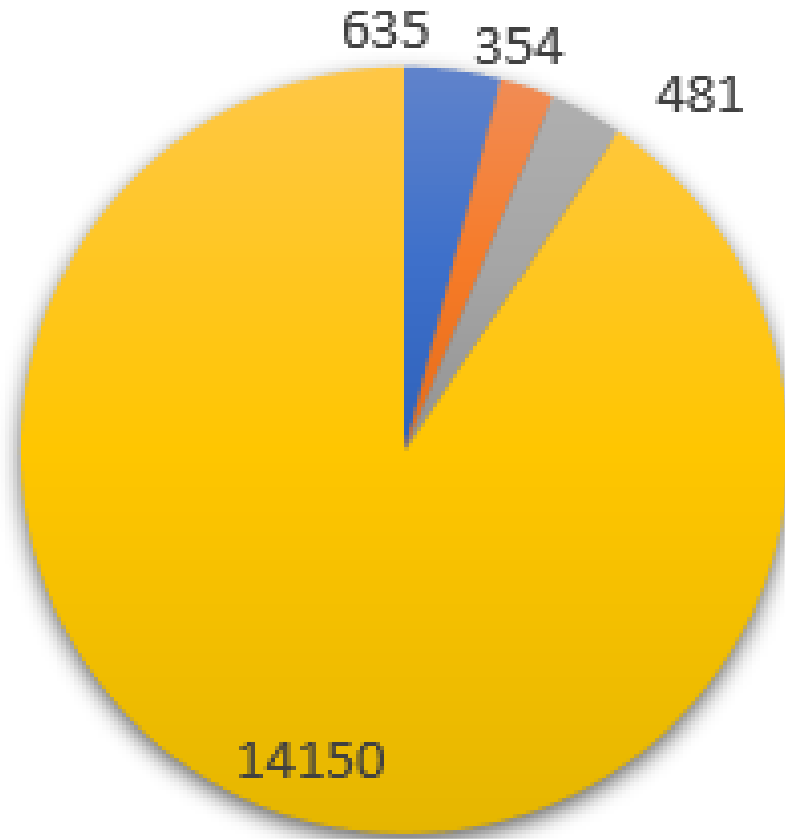
Agenda

- Basics of GRAMA.
- Application through “hypothetical” GRAMA Request.
 - Personnel
 - Police

Year End GRAMA Totals

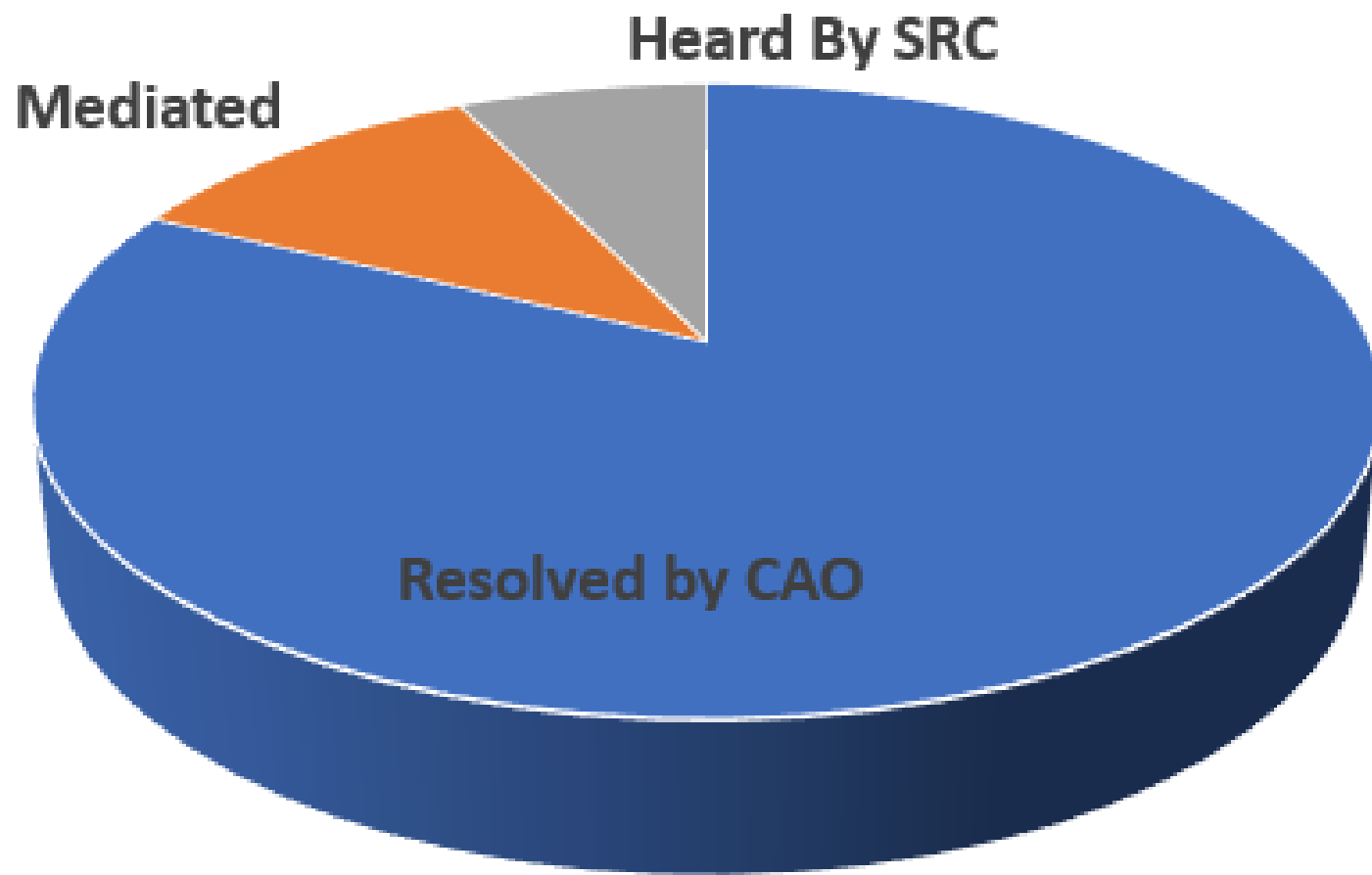


2023 Request Totals



■ City ■ Airport ■ Fire ■ Police

2023 Appeals



BASICS OF GRAMA

Records Classification and Analysis

- GRAMA is a “records” law, not an “information” law.
 - 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. **Utah Code § 63G-2-103(25)(a)**
 - Record does not mean: About 29 things the definition specifically calls out as not a record despite otherwise meeting the definition of a record. **Utah Code § 63G-2-103(25)(a)**.

Records Classification and Analysis

- What if we have a record that fits the request?
 - “A record is public unless otherwise expressly provided by statute. **Utah Code § 63G-2-201(2)**.
 - Records that a private (63G-2-302), controlled (63G-2-304), or protected (63G-2-305) can be withheld. **Utah Code § 63G-2-201(3)(a)**.
 - Records where access is restricted by court rule, another state statute, federal statute, or federal regulation (includes restriction on access found in grants) can be withheld **Utah Code § 63G-2-201(3)(b)**.

Records Classification and Analysis

- Private Records (63G-2-302): Identifies 37 types of records, not including subparts, that can be classified as “private.”
- Controlled records (63G-2-304): Deals only with medical, psychiatric, psychological information when releasing it would be detrimental to (1) the subject’s mental health, (2) the safety of another, or (3) releasing the information would violate professional or medical ethics.
- Protected Records (63G-2-305): Identifies 87 types of records, not including subparts, that can be classified as “protected.”

Time to Respond

- Standard response time is 10 *business* days. **Utah Code § 63G-2-204(4)(b)**.
- Requestor can ask for expedited response of 5 *business* days, but they have to demonstrate that the request benefits the public rather than the person. **Utah Code § 63G-2-204(4)(b)**. Don't have to grant request.
 - Request for publication or broadcast to general public (i.e. a media request) is presumed to be for public, not personal benefit.
- Failing to timely respond “is considered the equivalent of a determination denying access to the record.” **Utah Code § 63G-2-204(9)**
- Utilize “extraordinary circumstances.” **Utah Code § 63G-2-204(6)-(7)**

Fees

- May charge a “reasonable fee” to cover the actual cost of providing a record. **Utah Code § 63G-2-203(1)(a).**
- When a record is compiled “in a form other than that normally maintained by the governmental entity” actual costs include:
 - Costs for compiling, formatting, manipulating, packaging, summarizing, or tailoring the record either into an organization or media;
 - The cost of staff time for search, retrieval, and other direct administrative costs
 - Incremental cost of providing electronic database-type records.
- Extracting a record from a larger source can meet this standard and justify fees. **Graham v. Davis County Solid Waste 1999 UT App. 136; Bejarano v. State Treasurer, SRC 23-38; Ammann v. Utah Attorney General, SRC 23-41.**



“Hypotheticals”

Personnel Request

- On a very normal Monday, you fire up your computer and see the following email sitting in your inbox:

From: StopCorruptGoverment@gmail.com

To: tsheeran@herriman.org

Date: August 7, 2023

Re: Urgent GRAMA Request

Mr. Sheeran,

I heard you are barely competent, so I will use small words. I am a resident of the city, and I'm trying to find out more information about a former employee, Tared Jingey, who is running for governor. Accordingly, I would like any and all communications and documents related to the reason why Mr. Jingey left employment with the city. I'm hearing that Mr. Jingey was terminated, but I'm also hearing that he retired. I just want to get the full story.

Respectfully,

Shawn Guzman

SHAWN GUZMAN

Step 1 Compliance

- Is the request in writing?
- Does the request have the person's name, mailing address, email address (optional), and telephone number?
- Does the request identify the "record with reasonable specificity?"

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Reasonable Specificity

- Utah Code and Utah case law have not defined or analyzed the "reasonable specificity" requirement.
- Reasonable specificity may fall into three categories: ambiguous, overly broad, or too vague.
 - The State Records Committee found a request for "the relationship between the Intermountain Tissue Center and the University of Utah Medical Center" was overly broad.
- One court found, "A request is deemed to fail the 'reasonable specificity' requirement if 'it is vague and easily susceptible to multiple interpretations.'"

Result

- You deny the request for failing to comply with GRAMA.
- Remember, the denial needs to contain a citation to the reason why it was denied, appeal rights to CAO, and time limits.
- But...

Requestor's Name: Shawn Guzman

Address: 1234 Dixie Downs Road

Address: St. George, UT 84770

Email: StopCorruptGovernment@gmail.com

Phone: 435-123-1234

Request: I would like Tared Jingey's employment file, including, but not limited to, any complaints received by residents or staff about Mr. Jingey, any formal or informal discipline, agreements with the city and Mr. Jingey, any notes or information on the Mr. Jingey's separation with the city, Mr. Jingey's calendar, any communications by staff or residents that mention or refer to Mr. Jingey.

Fee: I would like a fee waiver because this matter is of public interest and benefit.

Date: August 10, 2023

Date: August 10, 2023

Requestor's Name: Shawn Guzman

Fee Waiver

- GRAMA says that fee waivers are encouraged, but you have the option whether to grant a fee waiver.
- If the request will take significant time to fulfill, you can (**should**):
 - Determine how much time/money it will take to fulfill the request, then
 - If the amount is over \$50, request a prepayment.

From: StopCorruptGovernment@gmail.com

To: tsheeran@herriman.org

Date: August 12, 2023

Re: Amended GRAMA Request

Mr. Sheeran,

Pursuant to my discussion with the City Recorder, I would like to narrow my request to the following: Mr. Jingey's employment file and any notes or records on Mr. Jingey's separation from the City.

Respectfully,

Shawn Guzman

SHAWN GUZMAN

Employment Files – Public and Private

- ▶ Public - name, gender, compensation, job title and description, business address & phone number, hours worked, dates of employment, education, previous employment, and job qualifications.
- ▶ Private - insurance info, medical info, benefits the employee may have, social security number, marital status, payroll deductions, home address, and home phone number.
- ▶ Both - Discipline

Employment Files - Discipline

- ▶ "Normally Public"
 - ▶ Records that would disclose information relate to formal charges or disciplinary actions against an employee if:
 - ▶ The disciplinary action has been completed, and
 - ▶ The disciplinary action was sustained.

The File

- ▶ Your city recorder gives you the following records/information:
 - ▶ Documents showing Jingey's intake information (name, ~~address, marital status, job position, etc~~), ~~insurance info, benefits info, and retirement contributions.~~
 - ▶ ~~Five complaints submitted by five different co-workers. One complaint was dated in 2017, and the other complaints were dated in 2021.~~ → Maybe
 - ▶ ~~The 2017 complaint was non-sustained.~~
 - ▶ ~~An undated document from Jingey's supervisor that appears to be investigation notes for the four complaints in 2021.~~
 - ▶ ~~A 2021 letter to Jingey from supervisor placing Jingey on indefinite paid administrative leave.~~
 - ▶ A separation agreement dated August 15, 2021, which includes a confidentiality clause → Yes

The Appeal

- ▶ Appeals must be submitted to CAO within 30 days of denial.
- ▶ Appeals must follow the appeal procedure in 63G-2-401.
- ▶ Even if a document is properly classified, CAO may redesignate the documents "upon consideration and weighing of the various interests and public policies pertinent to the classification of disclosure or nondisclosure."

The File

- ▶ Your city recorder gives you the following records/information:
 - ▶ Documents showing Jingey's intake information (name, ~~address, marital status, job position, etc~~), ~~insurance info, benefits info, and retirement contributions.~~
 - ▶ Five complaints submitted by five different co-workers. One complaint → Probably was dated in 2017, and the other complaints were dated in 2021.
 - ▶ The 2017 complaint was non sustained. → Probably
 - ▶ An undated document from Jingey's supervisor that appear → Probably to be investigation notes for the four complaints in 2021.
 - ▶ A 2021 letter to Jingey from supervisor placing Jingey on indefinite paid administrative leave. → Probably
 - ▶ A separation agreement dated August 15, 2021, which includes a → Yes confidentiality clause

Police Request

Three of your police officers are involved in a hot pursuit that ends with the suspect barricading himself inside his home. Ultimately, the officers enter the suspect's home and there is an officer involved shooting and the suspect is killed.

Three weeks later you get a GRAMA request for all body camera footage of the event?

Police Request

(g) audio and **video recordings created by a body-worn camera**, as defined in Section 77-7a-103, **that record sound or images inside a home or residence** **except for recordings that:**

(i) depict the commission of an alleged crime;

(ii) record any encounter between a law enforcement officer and a person that results in death or bodily injury, or includes an instance when an officer fires a weapon;

(iii) record any encounter that is the subject of a complaint or a legal proceeding against a law enforcement officer or law enforcement agency;

(iv) contain an officer involved critical incident as defined in Subsection 76-2-408(1)(f); or

(v) have been requested for reclassification as a public record by a subject or authorized agent of a subject featured in the recording.

Utah Code 63G-2-302(2)(g).

Police Request

“The provisions of Title 63G, Chapter 2, Government Records Access and Management Act, do not apply to this Subjection (3)” **Utah Code § 77-7a-107(3)(e)**.

Section 3 says a body camera footage can only be released after:

- (i) the prosecuting attorney declines to file a criminal action related to the incident; or
- (ii) the prosecuting agency files a criminal action, the judge is informed of the request for the body cam footage, and she determines that releasing the record would not have a substantial likelihood of prejudicing a jury.

The Salt Lake Tribune

Protesters clash with police after DA says officers who killed Bernardo Palacios-Carbajal were legally justified





Police Request

All audio recordings, video recordings, (including any handheld cameras or body-worn cameras), police reports, witness statements, and every other document and file created regarding the July 9, 2020 protest.

Requests a fee waiver because he is a media representative that works with policewatchut.org and other independent media organizations.

Police Request

You find that there are 600-700 hours of just body-cam footage without even looking for the other items. That doesn't include redaction time.



Fees

- May charge a “reasonable fee” to cover the “actual cost” of providing a record. **Utah Code § 63G-2-203(1)(a)**.
- When a record is compiled “in a form other than that normally maintained by the governmental entity” actual costs include:
 - Costs for compiling, formatting, manipulating, packaging, summarizing, or tailoring the record either into an organization or media;
 - The cost of staff time for search, retrieval, and other direct administrative costs
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- Extracting a record from a larger source can meet this standard and justify fees. **Graham v. Davis County Solid Waste 1999 UT App. 136; Bejarano v. State Treasurer, SRC 23-38; Ammann v. Utah Attorney General, SRC 23-41.**

Fees

- A governmental entity can require prepayment of past and future fees be paid in advance, if the fees are expected to exceed \$50. **Utah Code § 63G-2-203(8)**
- Charging advanced fees is (probably) your best check on overly broad requests.
- Calculated at lowest pay rate of individual qualified to do work even if they do not do the work. **Utah Code § 63G-2-203(2)(b)**
- Support estimated fee with a declaration or other evidence.

Fees

The question to be considered is simply whether the governmental **entity's decision to deny the waiver was reasonable under the circumstances**. The Supreme Court has directed that reviewing bodies should **assess “whether the entity properly considered those circumstances under which GRAMA encourages a fee waiver”** and “any other evidence it finds relevant to the reasonableness of the entity's denial.”

**Salt Lake City Corp. v. Jordan River Restoration Network, 2018
UT 62, ¶ 52**

Fees

(4) A governmental entity **may** fulfill a record request without charge and is **encouraged** to do so if it determines that:

- a) Releasing the record primarily benefits the public rather than a person;
- b) The individual requesting the record is the subject of the record, or [their legal representative of healthcare provider with a release]; or
- c) The requestor's legal rights are directly implicated by the information in the record and the requestor is impecunious.

Utah Code § 63G-2-203(4)

Fees

- He has minimal engagement with the public on his website and social media
- He can't identify any media organizations he works with.
- “Media representative” means:
 - (i) a person who requests a record to obtain information for a story or report for publication or broadcast to the general public; and
 - (ii) does not include a person who requests a record to obtain information for a blog, podcast, social media account, or other means of mass communication generally available to the public. **Utah Code § 63G-2-203(5)(a)**