What is GRAMA?

- Government Records Access and Management Act
- Utah’s open records law
- Designed to promote governmental transparency and accountability
- State equivalent of federal Freedom of Information Act ("FOIA")
GRAMA and You

- GRAMA applies to all University records
- Includes records of University employees
- Includes internal emails, University memoranda, meeting minutes, voicemails, contracts, text messages
- Open records laws apply even when using a personal account*/device to conduct business

*University policy requires using Umail for business
Definition of a Record

A book, letter, document, paper, map, plan, photograph, film, card, tape, recording, electronic data, or other documentary material regardless of physical form or characteristics.

That is prepared, owned, received, or retained by a governmental entity or political subdivision.
Applicability and Obligations

GRAMA does not apply to information; it applies to records.

In response to a request, a governmental entity is not required to:

- Create a record;
- Compile, summarize, or tailor information;
- Provide a record in a particular format not maintained by the governmental entity; or
- Fill a request if the record is publicly available online.

A requester must include a description of the record requested that identifies the record with reasonable specificity.
Classification of Records, Generally

- **Public**
  - All records are presumed public unless they fall within a statutory exception

- **Private**
  - Home address and phone number, personal information, SSN, etc.

- **Protected**
  - Commercial information covered by a business confidentiality claim, trade secrets, attorney-client privileged communications, unpublished notes and data related to research, etc.

- **Controlled**

- **Otherwise Restricted**
  - Records to which access is governed by federal law (FERPA & HIPAA), other state law, or court rule
Classification of Drafts

Not a “Record”

- “Record” does not mean 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.

Protected

- Drafts, unless otherwise classified as public

Normally Public

- empirical data contained in drafts if: (i) the empirical data is not reasonably available to the requester elsewhere in similar form; and (ii) the governmental entity is given a reasonable opportunity to correct any errors or make nonsubstantive changes before release
- drafts that are circulated to anyone other than: (i) a governmental entity; (ii) a political subdivision; (iii) a federal agency if the governmental entity and the federal agency are jointly responsible for implementation of a program or project that has been legislatively approved; (iv) a government-managed corporation; or (v) a contractor or private provider
- drafts that have never been finalized but were relied upon by the governmental entity in carrying out action or policy

Otherwise Restricted

- Does another statute govern?
Business Confidentiality

GRAMA permits a third-party who submits a record to the University to assert that the record (or a portion) is confidential and protected under GRAMA

- Business Confidentiality Claims
- Trade Secrets
- Commercial information the disclosure of which would result in unfair competitive injury or would impair the ability of the governmental entity to obtain necessary information in the future

- The claim must be submitted with the record
Business Confidentiality

When a claim is made

◦ The University will not disclose the record (or portion)
◦ The entity claiming the confidentiality must defend its claim
◦ Won’t be disclosed until a court orders disclosure
Special Considerations for Email

The most embarrassing GRAMA disclosures are typically in an email

So:

- Imagine every email you write will be on the front page of the newspaper
- Be professional in your email communications
- For sensitive issues, best to pick up the phone and have a conversation
- If it gets created, it does not need to be retained (unless there is a litigation hold or pending GRAMA request)
How to Submit a GRAMA Request

- Online request
How Much Time to Respond

- The standard is 10 business days
  - 5 business days if the requester demonstrates that an expedited response will benefit the public rather than the requestor
    - Media requests presumed to be for the public
- May be extended for extraordinary circumstances
  - Voluminous requests
  - Processing large number of requests
  - Segregating information
Practical Tips

1. Remember that every record you create, own, or receive is presumed to be public.

2. Always be conscious of what you memorialize in a record (document, email, voicemail, text).

3. Except for important business records, you generally do not have to keep a record (unless a litigation hold or pending GRAMA request).

4. Marking a document as “private” or “confidential” will not prevent disclosure of the document.
If You Receive a GRAMA Request

- Direct the requestor to use the University’s online GRAMA system
- Call the Office of General Counsel for legal advice
- When in doubt . . .

. . . Don’t give it out!