

UTAH DEPARTMENT OF HEALTH AND HUMAN SERVICES POLICY AND PROCEDURES		
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RECORDS MANAGEMENT AND ACCESS		
<p>RATIONALE: The Department of Health and Human Services supports government transparency, to the extent required and allowable by law. The disclosure and sharing of government records must be clear, fair, and consistent throughout the department. The policies and procedures provided support consistency with regard to managing records and responding to records requests.</p> <p><i>Related Policies, Applicable Standards, Statutes: Utah Administrative Code Rule R17; Utah Code Ann § 63G-2, 63A-12, 46-4-301, 46-4- 501, 63A-16, 26B-1-212, 26B-8-411, 26B-8-125, 26B-8-406, 26B-8-407, 26B-8-409, 26B-8-217, 26B-7-217, 26B-7-220, 26B-1-229, 26B-8-507, 26B-8-508, 26B-6-210, 26B-6-212, 80-2-1001, 80-2-1005, 26B-1-506; 45 CFR Parts 160, 162 and 164; 34 CFR Part 99.</i></p>		
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I. DESCRIPTION

This policy guides the management of DHHS records and response to records requests. This policy provides general guidance to assist DHHS staff with the intent that the various operational units within DHHS shall manage government records in a clear, fair, consistent, and efficient manner that complies with applicable laws, rules, and regulations. This policy supersedes any previous department policy governing this subject matter. It does not supplant any existing federal, state or department laws/policies to which the department shall adhere.

II. DEFINITIONS

The following terms are defined for this policy as:

- A. **Chief administrative officer:** The DHHS executive director, or designee, responsible for ensuring agency compliance with Section 63A-12-103.

- B. **DHHS or department:** The Utah Department of Health and Human Services and any operational unit within.
- C. **DHHS privacy and security officer:** The DHHS employee designated to develop and implement policies designed to protect employee and customer data from unauthorized access.
- D. **GRAMA:** Government Records Access and Management Act (UCA 63G-2).
- E. **GRAMA coordinator:** Employee designated by the department to oversee and coordinate department GRAMA functions. This employee is the records officer for the Executive Director's Office.
- F. **Operational unit (OU):** Operational units within DHHS, including divisions, offices, or standalone operations whose director reports to the executive director, a deputy director, or an assistant deputy director. The Utah State Hospital and Utah State Developmental Center are considered OUs.
- G. **Record:** A department record as defined in GRAMA (Section 63G-2-103(25)). Records include email and text messages sent and received by a public employee in the employee's official capacity.
- H. **Records officer:** Employees designated by each OU to work with state archives in the care, maintenance, scheduling, designation, classification, disposal, and preservation of records (Section 63G-2-103(27)).
- I. **Vexatious requester:** An individual or entity found to be such by the State Records Committee through the process defined in Section 63G-2-209.

III. POLICY

- A. Introduction
 - 1. DHHS executive director is responsible for the following:
 - a) Record management within the department; and
 - b) Duty to protect the integrity of records controlled by DHHS.
 - 2. OU directors' responsibilities include the following:
 - a) Record management within their respective OUs;
 - b) Complying with the record management requirements set forth in GRAMA and other laws regarding the classification and retention of public records;
 - 1) Establishing and training OU records officers.
 - 2) Each OU shall identify one or more records officers and ensure the DHHS GRAMA coordinator is aware of those individuals.

- 3) Ensure that the OU records officer receives required and relevant training on the procedures and requirements of Section 63A-12-101 *et seq.* and training on working with state archives in the care, maintenance, scheduling, disposal, classification, designation, access, and preservation of records.
 - c) Providing a safe place for requesters to review public documents; and
 - d) Ensuring that employees are informed of their GRAMA responsibilities, including the responsibility to submit all records requests to the OU records officer, keep records and email organized in a reasonable business manner.
 - e) The OU director may delegate these responsibilities to an assistant director or other appropriate employee.
3. Paper and digital records
 - a) Paper and digital records previously classified as public may be published on the DHHS website, at the executive director's discretion.
 - b) Retention scheduled, in accordance with 63G-2-604.
 - 1) Paper records shall be stored onsite according to the OU retention schedule or general retention schedule; and
 - 2) Paper records may be transferred offsite for storage until the end of the approved retention period.
4. Department designations, roles, and responsibilities:
 - a) OU records officers
 - 1) Complete all required training as directed by the OU director or the DHHS GRAMA coordinator.
 - 2) Obtain and retain required certification under the Division of Archives and Records Service (DARS) program, in accordance with Section 63A-12-110.
 - 3) Records officers are considered the custodian of the records for all purposes within the OU for all records requests, including court-ordered subpoenas and disclosure for discovery which are not written requests under Section 63G-2-204. (See 63G-2-207.)
 - 4) May be required to certify the authenticity of the business record pursuant to a subpoena or discovery request, and may be required to testify in court under

Utah Rule of Evidence 803(6) (hearsay) and Rule 901 (authentication).

- 5) Records officers shall ensure that the public records related to that OU are managed in accordance with the approved retention schedule.
- 6) Shall comply with Utah Code 63G-2-601(1) and 63A-12-115.

b) Chief administrative officer (CAO)

- 1) CAO is responsible for reviewing appeals that are requested of a DHHS record denial or denial of a record fee waiver, in accordance with Section 63G-2- 401(1).
- 2) Duties of the CAO may be delegated. See Utah Code § 63G-2-401(9). Such delegation does not need to be in writing. It is adequate for a person to whom the CAO has delegated an appeal to represent that the delegation occurred.
- 3) Initial reviews or appeals under Utah Code Section 63G-2-401(1) are undertaken for purposes of rendering a final agency-level decision, not as an independent appeal. As a result, the CAO or designee handling a review may be involved in initial evaluation and decisions regarding a GRAMA request that may be appealed under Section 63G-2-401. The degree of such involvement falls to the CAO's discretion.

c) OU directors

- 1) OU directors, or designees, are primarily responsible for making initial decisions regarding GRAMA issues, including record denials and fee waivers, or other special considerations, in consultation with the records officer, DHHS GRAMA coordinator, and the Attorney General's Office (AGO).
- 2) Directors or designees shall be familiar with the training and certification resources (for records officers and CAOs) that are provided by DARS, as well as such additional training as may be required to fulfill these responsibilities.
- 3) Developing and managing an email management policy in which each agency employee is trained. The email Management Guideline published by DARS provides a

detailed framework to assist directors in developing guidelines, in connection with their normal retention schedules.

d) Attorney General's Office

- 1) The AGO does not make decisions about GRAMA issues. The AGO provides legal advice, counsels, and defends DHHS in the event of an appeal of a GRAMA response.
- 2) DHHS shall identify GRAMA requests that may involve existing or potential litigation and consult with the AGO about those requests.

e) DHHS GRAMA coordinator

- 1) Shall create, maintain, and manage access to a department-wide centralized GRAMA log;
- 2) Shall establish a DHHS records officer training and train all new OU records officers; and
- 3) Is the records officer for the Executive Director's Office;

f) All DHHS employees

- 1) Each state employee is required to be informed regarding public records management and GRAMA issues.
- 2) DHHS employees are expected to read and follow the general DHHS policies, as well as OU-specific policies and retention schedules.
- 3) Employees shall follow good, businesslike record organization for paper and electronic records.
- 4) Employees shall dispose of records that are not required to be kept in accordance with approved retention schedules.
- 5) Employees involved in a litigation hold shall protect and preserve said records, even if the normal retention schedule or policy would otherwise require the documents to be destroyed.
- 6) Employees shall cooperate with requests from the records officer, GRAMA coordinator, or administration, regarding requested records or accessing requested records.

B. Records management:

1. Retention and destruction of records

- a) The Division of Archives and Records Service sets standards for retaining and destroying public records. These requirements are set forth in the formal retention schedule that applies to a specific type, classification, or series of records.
 - b) The primary responsibility for following the approved retention schedules falls to the OU records officer.
 - c) Records may not be discarded, until all appeal periods have ended, if the records have been requested either through GRAMA or through a legal action or claim, or if retention schedules approved by the Division of Archives and Records Service require that they be retained.
- 2. A litigation hold supersedes all retention schedules, including electronic records that have an automatic deletion setting. Emails sent or received over the state email system are retained in the DHHS electronic records system, potentially for an extended period of time, regardless of whether the email is deleted from an employee's inbox or outbox. In addition, it is the substance of the email record that controls the retention schedule.
- 3. Record classification
 - a) Record classification shall only be completed by state-certified records officers, and the CAO. All staff shall manage records according to their classification.
- 4. Sharing records with governmental agencies
 - a) Other governmental agencies are not required to submit a formal GRAMA request to receive shared government records (see Utah Code, § 63G-2-206).
 - 1) Staff shall follow Section 63G-2-206 whenever records are to be shared with another governmental agency.
 - 2) It may be necessary to obtain an agreement from another governmental agency prior to sharing records.
 - 3) If an employee has any questions about sharing records with other governmental agencies, the employee shall contact the privacy officer and AGO.

IV. PROCEDURE

- A. Records officers responding to records requests:

Requests for records directed to DHHS shall be handled primarily by the designated records officer, with the assistance of other OU employees, and the DHHS privacy and security officer. Certain GRAMA issues involve matters such as requests for fee waivers, record denials, requests that involve current or foreseeable litigation, and large or complex requests. On such non-routine matters, the records officer shall consult with the relevant director or assistant director, DHHS GRAMA coordinator, and the Utah Attorney General's Office (AGO). The responsibility to make substantive decisions on such matters falls to the applicable director or assistant director. In the event that a GRAMA request involves more than one OU, the DHHS GRAMA coordinator shall be responsible for coordinating the response through the relevant OU records officers, directors and/or assistant directors, and the AGO.

B. DHHS record management

1. The executive director of the department shall designate a GRAMA coordinator to create, maintain, and manage access to a department-wide GRAMA log. Because portions of the log may contain information that is private, protected, controlled, or otherwise restricted by statute, the designated employee shall ensure that only authorized employees have access to those portions of the log.
2. Record requests shall be directed to the attention of the records officer of the particular OU that generated or retains the records. If the record is known to exist within the department, but is not maintained in the office where the request is filed, the request shall be promptly sent to the appropriate OU and GRAMA coordinator.
3. Requesters shall be encouraged to submit their request on the records portal. However, DHHS will accept any written request that complies with 63G-2-204(1) as a records request.
4. If any employee other than the records officer receives a GRAMA request, the employee shall promptly submit the request to their OU records officer.
5. Once the correct records officer has received a request, they shall handle the request as required by GRAMA and do the following:
 - a) Promptly enter the request into the department's GRAMA log.
 - b) Continue to update the log as the request moves through the response process, until its conclusion.
 - c) If the request is from a member of the media, promptly notify the Public Affairs and Education OU. The Public Affairs and Education OU shall be included in the response process.

- d) Consult with the privacy officer and AGO if a request is for personal health information maintained by a HIPAA-covered component within DHHS.
- 6. Confidentiality:
 - a) Persons submitting records to the government have the right to claim that the record qualifies for confidential treatment by the agency. DHHS employees who receive a business confidentiality request, or even an indication of confidentiality such as a document stamped "confidential," shall do the following even if the employee believes that the confidentiality request is invalid:
 - 1) Make no agreement in response to a request to keep information confidential;
 - 2) Notify the AGO of the business confidentiality request; and,
 - 3) Keep the requested information confidential until a final determination is made and the time limit for appeal has passed.
 - b) Confidentiality agreements; record ownership: If a DHHS employee receives a formal or informal request to keep a record confidential, they shall discuss this issue with their OU records officer, who shall consult with the AGO. A governmental entity cannot override GRAMA and prevent disclosure merely by entering into a contract or otherwise promising to keep the record confidential. Nor can an OU unilaterally disclaim ownership of a record that is in the possession of the OU, in an effort to keep the record confidential. Any questions about record confidentiality shall be referred to the AGO.
- 7. Records sent to archives: Records sent to archives are to be organized, labeled, and justified if they are classified as confidential, private, protected, or controlled, and the records officer shall ensure that DHHS has enough information about the records to allow archived records to be retrieved.
- 8. Fees:
 - a) DHHS may charge a reasonable fee to cover the actual costs for staff time in responding to the request as outlined in Utah Code Section 63G-2-203. If a records officer is unsure whether

a fee may be charged for responding to a records request, they shall discuss the issue with the GRAMA coordinator.

- b) The fees DHHS may charge can be found in the current DHHS Fee Schedule approved by the Legislature.
- c) If the fees total \$200 or less, DHHS shall waive fees when one of the following criteria apply:
 - 1) Releasing the record primarily benefits the public rather than a person;
 - 2) The requester is the subject of the record or the guardian or legal representative of the subject of the record; or
 - 3) The fee would be a financial burden for the requester and their rights are implicated by the information.
- d) If any of the foregoing three criteria apply, but the cost to fulfill the request exceeds \$200, the records officer shall consult with the OU director, or their designee, and the DHHS GRAMA coordinator to determine whether to waive fees.

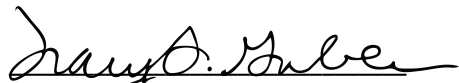
C. Vexatious requester:

- 1. DHHS may file a petition with the State Records Committee to request relief from a person that the department claims is a vexatious requester.
- 2. OUs that determine they may have a vexatious requester shall do the following:
 - a) Consult with the GRAMA coordinator and AGO; and
 - b) Complete the department Situation, Background, Assessment, and Recommendations (SBAR) form and submit to EDO.
- 3. EDO will determine if a petition shall be filed and who shall take the lead in filing the petition.

V. EXCEPTIONS

- A. Verbal requests for records: If a requester who has a disability needs a reasonable accommodation allowing them to submit a request verbally, DHHS shall accept such a request. DHHS shall transcribe the request and confirm the accuracy of the transcription with the requester. The DHHS employee shall then ensure the request is entered in the DHHS GRAMA Portal.

- B. The executive director may make exceptions to this policy, in accordance with procedures outlined in DHHS Policy 01-01.



Tracy S. Gruber

November 06, 2023

Date

Utah Department of Health and Human Services Executive Director