

Conducting Your Business Lawfully

A Primer for Utah Elected and
Appointed Officials and Employees

Today you will Learn

A Reader's digest version of:

1. Rules and Procedures for your meetings
2. The Utah Open & Public Meetings Act
3. The Utah Government Records Access Management Act
4. The Utah Public Officials Ethics & Disclosure Laws

You are required to:

1. know these rules
2. how they affect how you do your job
3. and how to explain them to the public as needed

Meeting Rules and Procedures

Utah Statutes provide latitude for public bodies to write their own rules of conduct for meetings:

- U.C.A. 10-3-6 for municipalities
- U.C.A. 17-53-202 for counties

But what the Legislature giveth, the Legislature taketh away...

- Utah Open & Public Meetings Act
- Utah Government Records Access Management Act
- Utah Public Officials Ethics & Disclosure Laws

OPMA U.C.A. 52-4

The Utah Open & Public Meetings Act Prescribes

- What bodies are subject to the act;
- What meetings must be open to the public;
- When meetings of public officials can be closed;
- Meeting notice requirements;
- Agenda requirements;
- Minutes and recording requirements; and
- Penalties for violations

OPMA Big Picture

The premise of the Open Public Meetings Act is:

All meetings are open to the public, with limited and specific exceptions.

Governments exists to aid in the conduct of the peoples business, and they should take their actions openly and conduct their deliberations openly.

Public Meetings

To know what a “Public Meeting” is, you need to look at the definitions-

“Public Body” means: any administrative, advisory, executive, or legislative body which consists of two or more persons, is created by law or ordinance, which spends or is supported by taxes, and is vested with the authority to make decisions regarding the public’s business.

“Meeting” means: the convening of a public body, with a quorum, whether in person or electronically, for the purpose of discussing, receiving comments from the public about, or acting upon a matter over which the public body has jurisdiction or advisory power.

“Meeting” does not mean a chance or social meeting.

Exceptions for P&Z bodies:

- Purely administrative meetings: and
- Closed meetings.

Closed Meeting

You cannot simply hold a “Closed Meeting”, you must “close” an open meeting, and only for one of the specific reasons enumerated in statute. The pertinent reasons for P&Z bodies are:

1. Discuss the character, professional competence, or physical/mental health of an individual. (sometimes referred to as the personnel exception, but be careful with that!)
2. Discuss pending or reasonably imminent litigation. (Best to have your attorney in these closed sessions)
3. Discuss the purchase, exchange, lease or sale of real property if public discussion of the transaction would disclose the appraised or estimated value of the property under consideration, or prevent the public body from completing the transaction on the best possible terms...

A SITE VISIT IS NOT A REASON FOR A CLOSED MEETING!

Any action that results from discussion in a closed meeting in violation of the act can be nullified or voided.

Closing a Meeting

- DO NOT THINK IN TERMS OF A CLOSED MEETING, THINK ABOUT IT AS THE PORTION OF AN OPEN MEETING THAT IS CLOSED.
- Must begin as a valid open meeting
- Motion to close with 2/3 members present voting in favor
- All matters discussed in closed session must be within the specific exceptions that permits closure of the meeting
- Closed portions of meetings are for discussion only, any actions should be taken once the meeting is reopened. (A public body may not make motions or vote to take action in a closed portion of a meeting.)

Notice Requirements

ALL “Public Meetings” must be properly noticed, which means:

- Annual notice of schedule of meetings; and
- Notice at least 24 hours in advance of each meeting.

Provide notice at customary meeting location, to local media, and on state public notice website

24 hour meeting notice must include the date, time and place of the meeting along with an agenda.

Meeting Agenda

The agenda must list each item to be discussed at the meeting, with reasonable specificity.

An issue that is not on the **noticed agenda** cannot be acted upon (so it is best not to discuss any item not on the agenda, as doing so may violate the OPMA and is very likely a violation of others due process rights, which will lead to a lawsuit)

State Auditor's Cheat Sheet

Public Meetings vs. Public Hearings

Open & Public Meetings

- The majority of a governing body meets to discuss, or act upon, the business of the entity.
- Includes workshops or executive sessions.
- Does not include chance or social meetings.

Public Hearings

- Portion of an open meeting at which members of the public are provided with a *reasonable* opportunity to speak (speaking time may be limited)
- Required when an entity imposes or increases a tax or fee, or adopts a budget.



Office of the
State Auditor

Introduction

Types of
Meetings

Notice
Requirements

Record
Requirements

State Auditor's Cheat Sheet

Notice Requirements

Requirement	Regular Meeting	Public Hearing
Media	Must <u>notify</u> at least one newspaper or a local media correspondent. The newspaper can choose whether or not to publish the notice. The entity is not required to pay for the publication of regular meeting notices.	Must <u>publish</u> notice in at least one issue of a newspaper. If the newspaper requires payment to publish the notice, then the entity must pay the fee. If a newspaper of general circulation is not available, then written notice must be posted in three public places within the entity's boundaries.
Physical Posting	Post written notice at the principal office of the governing body, or if no such office exists, at the building where the meeting is to be held.	(Same as Regular Meeting)
Digital Posting	Must post on the Public Notice Website (pmn.utah.gov).	(Same as Regular Meeting)
Number of days	At least <u>24 hours</u> before meeting.	Generally, at least <u>seven days</u> prior to the hearing.



Emergency Meetings

- Must be a legitimate emergency, not just that you forgot the advance notice requirements.
- Must provide “best notice practicable” of the time, location and topics to be considered.
- An attempt to contact all governing body members must be made.
- A majority of the governing body members must approve the meeting.
- Should only discuss and conduct business related to the emergency.

Minutes

Minutes must be taken for ALL Open Public Meetings.*

- *Now a recording can serve as the minutes of a meeting.
- But minutes are supposed to include copies of all materials presented to the body..?

Must include date, time, place, members of the public body present, the agenda, the substance of all matters discussed, a summary of comments made, the names of the members of the public commenting and the substance of their comments, and any other information which is requested to be placed in the minutes.

Draft minutes must be made available within a reasonable time of the meeting, and approved minutes available within 3 days of approval by the body.

Minutes need to be specific and detailed, but do not need to be a transcription of the meeting.

Minutes of a Closed Meeting

- Written minutes are optional.
- If written minutes are taken, they must include date, time, place, members present and the names of others in attendance if doing so would not undermine the purpose for closing the meeting.
- Closed meeting minutes are considered protected documents under GRAMA.

Recordings

ALL Open Public Meetings must be recorded.

Most closed meetings must be recorded also. (those that are not required to be recorded must have a signed affidavit.)

Recordings may not be edited or altered.

Recordings must be labeled to be easily identifiable

Recording must be made available to the public within 3 days of the meeting.

Electronic Meetings

- Electronic meetings can be conducted using telephone, texting, email, or otherwise.
- Entity must adopt a rule or ordinance permitting electronic meetings.
- Must identify an “anchor location”, which is usually the body’s normal meeting place.
- Notice of meeting must include information on electronic arrangements.
- “Anchor location” must accommodate the public listening in or, where permitted, participating.
- Person presiding over the meeting must physically be at the “anchor location”.

OPMA Training

- The presiding member of a public body is required to ensure that all members of the public body are provided training annually.
- The State Attorney General is responsible to provide annual explanation of changes to the Open & Public Meeting Act to all public bodies.

(Make sure your body is registered so you receive notices.)

The Utah State Auditor's Office provides on-line Open Public Meeting Act training with a certificate to document training has been completed at

<http://training.auditor.utah.gov/courses/introductory-training-for-municipal-officials>

GRAMA Big Picture

Similar to the OPMA, GRAMA creates a presumption that all government records and documents are open and available to the public, with certain limited exceptions.

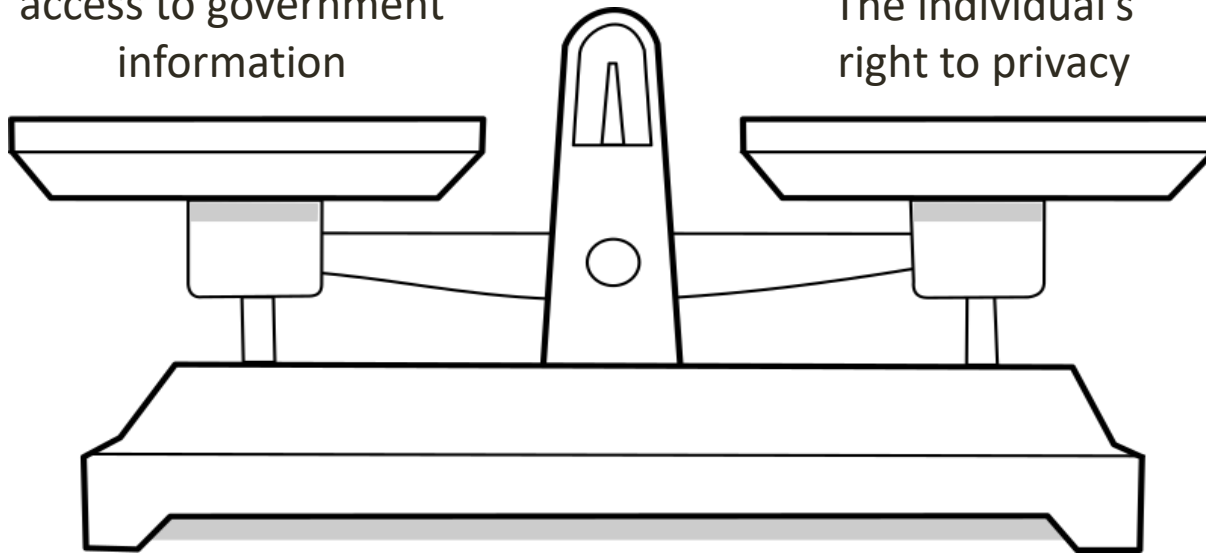


No... its the
Governmental
Records Access and
Management Act!

GRAMA's Balancing Act

The public's right of
access to government
information

The individual's
right to privacy



GRAMA's 4 Main Features

GRAMA requirements can be broken down into four general responsibilities:

1. Classification of records kept;
2. Maintain Records under a Retention Schedule;
3. Provide records access to public and media; and
4. Provide an appeal or review process for dissatisfied persons.

Classifying records, maintaining records under a formal retention schedule, and responding to GRAMA requests are all complicated matters – and should be handled by your agency's Records Officer.

Ethics

Municipal Officers and Employees' Ethics Act

County Officers and Employees' Disclosure Act

Public Officials and Employees' Ethics Act

Prohibits

- Use of Office for Personal Gain
- Disclosure or use of Protected Information
- "Accepting" "Gifts"

Requires Disclosure

- Assisting in transaction with agency
- Interest in regulated business
- Interest in business doing business with agency
- Investment creating conflict with duties

Penalties

- Removal from office/employment and misdemeanor to felony

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Thank You!

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