

DESCRIPTOR TERM: Fiscal Management	Millard District Policy File Code: 2090 Approved: 07-14-16
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PUBLIC RECORDS

Policy Purpose

This policy is adopted pursuant to the Government Records Access and Management Act [Utah Code § 63G-2-701](#) (“GRAMA”) and applies to District records relating to information practices, including classification, designation, access, denials, segregation, appeals, management, retention, and amendment of documents. [Note: Upon adoption, a school district GRAMA policy must be filed with the state archives within 30 days of the policy’s effective date.]

[Utah Code § 63G-2-701 \(2015\)](#)

Privileged Document

The District reserves the right to claim a privilege with respect to all documents which are subject to attorney work product, attorney-client, physician-patient, psychiatrist-patient or other statutory privilege.

Appropriate Requestor of Records

Every person has the right to inspect a public record free of charge and the right to copy a public record in compliance with the terms of this policy. (The procedure for requesting a record is set forth below.) A “public record” generally means any record that is not private, controlled, or protected. However, a “public record” does not include a record to which access is restricted pursuant to a court rule, a federal regulation, another statute, or records to which access is restricted or governed as a condition of participation in a state or federal program or for receiving state or federal funds.

For purposes of this policy, “records” do not include: temporary drafts or other materials prepared for the originator's personal use or for the personal use of another, personal notes, notes kept in personal journals, diaries or other day timers, notes of informal observations, notes of evaluations or materials owned by the originator in his or her private capacity, documents relating to the Board of Education’s actions in a quasi-judicial capacity, books or other items catalogued in District libraries, copyrighted material (unless copyrighted by a government entity), or computer programs or software. In addition, GRAMA does not apply to District documents and information relating to security plans; security codes, combinations, and passwords; passes and keys; security procedures; and building and public works designs to the extent that those relate to ongoing security measures.

[Utah Code § 63G-2-204\(1\) \(2011\)](#)

[Utah Code § 63G-2-201 \(2013\)](#)

[Utah Code § 63G-2-106 \(2008\)](#)

Public Records

Public records shall include

1. official minutes,
2. actions and decisions of the Board of Education and District Administration;
3. official District and school:
 - a. policies
 - b. contracts
 - c. accounts
 - d. employment records of former and current employees and officers to the extent they disclose only:
 - i. names
 - ii. gender
 - iii. job titles
 - iv. job descriptions
 - v. business address
 - vi. business telephone number
 - vii. gross salaries
 - viii. working hours and dates of employment
4. any other record properly identified as public in accordance with [Utah Code § 63G-2-301](#) unless the record involves information which is classified as private, controlled or protected.

Public records shall also include formal charges or disciplinary actions against a current or former employee if the disciplinary action has been completed, all time periods for administrative appeal have expired, and the charges on which the disciplinary action was based were sustained.

[Utah Code § 63G-2-301 \(2014\)](#)

In addition, each school shall maintain a list of “teachers” who currently hold a level 1, 2, or 3 license and “associate teachers” who do not currently hold a level 1, 2, or 3 license but are permitted to teach in the school under another authorization. This list shall be available for review by any person upon request.

[Utah Code § 53A-6-111 \(2004\)](#)

Availability of Public Records

Public records shall be open for public inspection during regular office hours, subject to compliance with the procedures set forth in this policy.

Private Documents

The District hereby designates all documents identified in Utah Code [§ 63G-2-302\(1\)\(a\) through \(c\), \(g\) through \(i\), \(k\), and 302\(2\)](#) as “private data,” including specifically but not limited to:

1. All private personnel records contained in a personnel file, applications, nominations, or recommendations for employment, advancement or appointment (with the exception of those portions of personnel records identified as public above);
2. Any formal employee evaluation signed by the employee;
3. Records showing an individual’s home address, home telephone number, social security number, insurance coverage, marital status, payroll deductions, race, religion or disabilities or military status;
4. Records touching upon an individual’s eligibility for unemployment benefits, social services, or welfare benefits;
5. Records touching upon an individual’s personal finances, except for the compensation information identified as public above, information provided to the Board for the purpose of complying with a financial assurance requirement, or records that must be disclosed pursuant to another statute;
6. Records touching upon any individual’s medical or psychological condition, past or present; or
7. Any record the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

[Utah Code § 63G-2-302 \(2015\)](#)

Student Records

All student records are designated as “education records” and the disclosure of such education records is not governed under GRAMA but under [20 U.S.C. § 1232g](#) and [34 CFR § 99 et seq.](#) and [34 CFR § 300 et seq.](#) The District may not release information related to educational records without parental consent, except as provided in the Family Educational Rights and Privacy Act (FERPA). See Policy FE: Student Records.

Availability of Private Records

Upon an appropriate written request from the subject of the records, or the parent or legal guardian of an unemancipated minor who is the subject of the record, the District shall disclose private records and other private data only to:

1. the subject of the record, or
2. the parent or legal guardian of an unemancipated minor who is the subject of the private record, or
3. the legal guardian of a legally incapacitated individual who is the subject of the private record, or

4. any individual who has a power of attorney from the subject of the record, or who submits a notarized release from the subject of the record, or
 - a. his legal representative which is dated not more than ninety (90) days before the date the request is made, or
 - b. pursuant to an order of a court of competent jurisdiction to disclose such record.

[Utah Code § 63G-2-202\(1\) \(2015\)](#)

Controlled Records

A record is controlled if:

1. the record contains medical, psychiatric, or psychological data about an individual;
2. the governmental entity reasonably believes that:
 - a. releasing the information in the record to the subject of the record would be detrimental to the subject's mental health or to the safety of any individual; or
 - b. releasing the information would constitute a violation of normal professional practice and medical ethics; and,
 - c. the governmental entity has properly classified the record.

Records showing medical or psychological tests of a student may be disclosed to persons within the school district who are members of that student's individual education program (IEP) team.

[Utah Code § 63G-2-304 \(2008\)](#)

Availability of Controlled Records

Upon proper request, the District shall disclose a controlled record to:

1. a physician, psychologist, certified social worker, insurance provider or producer, or a government public health agency upon submission of:
 - a. a release from the subject of the record that is dated no more than 90 days prior to the date the request is made; and
 - b. a signed acknowledgment of the terms of disclosure of controlled information as provided by GRAMA; or to
2. any person to whom the record must be disclosed pursuant to a court order or legislative subpoena.

[Utah Code §63G-2-202\(2\)\(a\) \(2015\)](#)

Protected Records

The District hereby designates as "protected data" all records identified in [Utah Code § 63G-2-305](#), including but not limited to:

1. Any document disclosing a trade secret as defined in [Utah Code § 13-24-2](#) if the person submitting that information to the District has provided the District with the information specified in [Utah Code § 63G-2-309](#);

2. commercial information or non-individual financial information from a person if:
 - a. disclosure of that information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the District to obtain necessary information in the future;
 - b. the person submitting the information has a greater interest in prohibiting access than the public in obtaining access; and
 - c. the person submitting the information has provided the District with the information specified in [Utah Code § 63G-2-309](#);
3. Test questions or answers;
4. Any document the disclosure of which may give an unfair advantage to a person or entity proposing to enter into a contract with the District, except that (subject to 1 and 2 above), once the contract has been awarded, a bid, proposal, or application submitted to the District in response to a request for bids, a request for proposals, a grant, or similar document is no longer considered a Protected document;
5. Records that would identify real property or the appraisal or estimated value of real or personal property, including intellectual property, under consideration for acquisition by the District before any rights to the property are acquired unless:
 - a. Public interest in obtaining access to the information outweighs the District's need to acquire the property on the best terms possible;
 - b. The information has already been disclosed to persons not employed by or under a duty of confidentiality to the District;
 - c. In the case of records identifying the property, potential sellers of the property have already learned of the District's plans to acquire the property;
 - d. In the case of records identifying the appraisal or estimated value of the property, the potential sellers have already learned of the District's estimated value of the property; or
 - e. The property the District is considering acquiring is a single-family residence and the District has initiated negotiations to acquire the property under [Utah Code § 78B-6-505](#);
6. Records prepared in contemplation of the sale, exchange, lease, rental or other compensated transaction of real or personal property (including intellectual property), which if disclosed prior to completion of the transaction would reveal the appraised or estimated value of the property unless:
 - a. The public interest in access outweighs the interests in restricting access, including the District's interest in maximizing the financial benefit of the transaction; or

- b. When prepared by or on behalf of the District, appraisals or estimates of the value of the subject property have already been disclosed to persons not employed by or under a duty of confidentiality to the District;
7. Any record that may jeopardize the life or safety of an individual if disclosed;
8. Any records which may jeopardize the security of District property or programs;
9. Records touching upon audits, audit techniques, procedures and policies if disclosure would interfere with audits or collections;
10. Records that are subject to the attorney client privilege;
11. Records touching upon issues of actual or potential litigation;
12. Records prepared for or by an attorney, consultant, surety, indemnitor, insurer, employee, or agent of District for, or in anticipation of, litigation or a judicial, quasi-judicial, or administrative proceeding;
13. Records touching upon collective bargaining strategy;
14. Records touching upon occurrences covered by the Division of Risk Management;
15. Records generated in a meeting closed in accordance with the Utah Open and Public Meetings Act;
16. Records, other than personnel evaluations, that contain a personal recommendation concerning an individual if disclosure would constitute a clearly unwarranted invasion of personal privacy, or disclosure is not in the public interest;
17. Materials to which access must be limited for purposes of securing or maintaining the District's proprietary protection of intellectual property rights including patents, copyrights, trademarks and trade secrets;

[Utah Code § 63G-2-305 \(2015\)](#)

Availability of Protected Records

Upon proper request, the District shall disclose a protected record to:

1. the person who submitted the record;
2. any other individual who:
 - a. has a power of attorney from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification; or
 - b. submits a notarized release from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification or from their legal representatives dated no more than ninety (90) days prior to the date the request is made;
3. any person to whom the record must be provided pursuant to a court order or legislative subpoena as provided by statute.

[Utah Code § 63G-2-202\(4\) \(2015\)](#)

Exempt records include student records, which are protected by the Family Educational Rights and Privacy Act.

Copyrighted or Patented Materials

Any document which is copyrighted, either by formal filing under federal copyright laws or by informal claim of copyright, or which is covered by a patent, trademark or other protected designation, shall not be copied or provided to any person without an order of a court of competent jurisdiction ordering such disclosure or written permission from the author of the record.

[Utah Code § 63G-2-103\(22\)\(b\)\(iv\) \(2015\)](#)

[Utah Code § 63G-2-305\(37\) \(2015\)](#)

Sharing Records

The District 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:

1. is entitled by law to inspect the record; or
2. is required to inspect the record as a condition of participating in a state or federal program or for receiving state or federal funds.

The District 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:

1. serves as a repository or archives for purposes of historical preservation, administrative maintenance, or destruction;
2. enforces, litigates, or investigates civil, criminal, or administrative law, and the record is necessary to a proceeding or investigation;
3. is authorized by state statute to conduct an audit and the record is needed for that purpose;
4. is one that collects information for presentence, probationary, or parole purposes; or
5. is the Utah Legislature, a legislative committee, a member of the Legislature, or a legislative staff member acting at the request of one of these entities and the record is requested in connection with the Legislatures duties including preparation or review of a legislative proposal or legislation, appropriations, or an investigation or review by the Legislature or a legislative committee.

The District may 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 provides written assurance:

1. that the record or record series is necessary to the performance of the governmental entity's duties and functions;

2. 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
3. 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.

[Utah Code § 63G-2-206 \(2012\)](#)

The District may disclose records that may evidence or relate to a violation of the law to a government prosecutor, peace officer, or auditor.

[Utah Code § 63G-2-206\(9\) \(2012\)](#)

A governmental entity, including the District, that receives a record pursuant to this policy, Record Sharing, or [Utah Code § 63-2-206](#), is subject to the same restrictions on disclosure of the record as the originating entity.

[Utah Code § 63G-2-206\(6\) \(2012\)](#)

Procedures

A person may request access to the District's records if that person meets the requirements set forth in this policy and submits a written request containing the requester's name, mailing address, daytime telephone number, a specific description of the records requested and showing the requester's status as one entitled to access to such records. Each requester shall submit a written request specifically identifying those documents requested. The request shall specifically state whether:

1. the requester seeks only to inspect the records;
2. the requester seeks to inspect and obtain copies of records; or
3. the requester seeks to have the District identify and provide copies of the requested records, without prior inspection by the requester.

In the event that copies of records are requested, the requester shall pay fees as set forth below.

Procedures for Electronic Records

In submitting the records request, the requester shall also state if the requester desires copies of the records in electronic format. Upon receipt of such a request, the District shall provide records in electronic format if otherwise appropriate under this policy and if all of the following requirements are met: (1) the District maintains the records in a format that is reproducible, (2) the record can be provided to the requester without reformatting or conversion, and (3) the electronic copy either does not disclose other records which are exempt from disclosure or the electronic records to be disclosed can be segregated from those not to be disclosed without undue expense to the District.

[Utah Code § 63G-2-201\(12\) \(2013\)](#)

Records Officer

The Superintendent shall appoint a “records officer” to work with Division of Archives and Records Service in the care, maintenance, scheduling, designation, classification, disposal, and preservation of records.

Each records officer shall, on an annual basis, successfully complete online training and obtain certification from Division of Archives and Records Service.

[Utah Code § 63G-2-103 \(2015\)](#)

[Utah Code § 63G-2-108 \(2012\)](#)

Access To District Records

A request to view District records should be addressed to the appropriate records officer during regular business hours. Individuals requesting to view records classified as “Private,” “Controlled,” or “Protected” must prove their right of access to the records through personal identification, written release from the subject of the record, power of attorney, court order or other appropriate means.

The records officer shall determine whether access to the requested records is to be granted or denied.

If the request is granted, the record shall be provided as soon as possible and not more than ten (10) business days from the date the request is received unless extraordinary circumstances as identified in [Utah Code § 63G-2-204\(5\)](#) require a longer period of time. If the requester seeks an expedited response, the time for response to the request shall be five (5) business days if the requester demonstrates that the request benefits the public rather than the requester. This public benefit is presumed if the request is made to obtain information for a story or report for publication or broadcast to the general public. The District shall promptly evaluate all requests for expedited responses and if the District determines that the requester has not demonstrated that the request is for public benefit and that the response to the request will therefore not be expedited, the District shall so inform the requester within five (5) business days of the request.

If the request is denied wholly or partly, the records officer must provide a written denial which:

1. Describes the records or parts of the records to which access is denied (provided that the description does not disclose private, controlled, or protected information);
2. Cites to the provisions of the Open and Public Meetings Act or other law or regulation exempting the record or parts of record from disclosure (provided that this does not disclose private, controlled, or protected information);
3. States that the requester has the right to appeal the denial to the superintendent;
4. States that the appeal must be made within 30 days after the denial is sent; and
5. States the superintendent’s name and business address.

The written denial is to be sent to the requester's address or personally delivered to the requester.

[Utah Code § 63G-2-205 \(2008\)](#)

If the records are not maintained by the District, the requester should be informed that the records cannot be provided for that reason.

If the District determines that extraordinary circumstances as identified in [Utah Code § 63G-2-204\(4\)](#) require a longer time for response, the District shall notify the requester of that determination within ten business days (five for public benefit requests) and shall describe in the notice the circumstances which constitute the extraordinary circumstances and shall inform the requester when the records or shall be available or response shall be made consistent with [Utah Code § 63G-2-204\(6\)](#).

[Utah Code § 63G-2-204 \(2011\)](#)

Fees for Search and/or Duplication of Records

A fee shall be charged for the District's actual cost of duplicating a requested record and also for the personnel time in compiling and obtaining the record as follows:

1. Five cents (5¢) per page for each single sided copy;
2. Ten cents (10¢) per page for each double sided copy; and
3. Twenty-one dollars and ninety-six cents (\$21.96) per hour for the time spent by any District personnel searching for and compiling documents for copying, but not including the first ¼ hour of such time. The District may not charge more than the hourly rate of the lowest paid employee that the custodian of records determines has the necessary skill and training to perform the request.

However, no fee may be charged for:

1. the time and work required to determine whether the record is subject to disclosure (beyond that needed to retrieve the record or compiling, formatting, manipulating, packaging, summarizing, or tailoring the record as needed to meet the request, which can be charged as set out above); or
2. the requester's inspecting the record.

An additional charge of one dollar (\$1.00) shall be charged per each page of a document which has been requested to be certified.

Before beginning to process a request, the District shall require the requester to pay any past unpaid fees of the requester and shall require the payment of the estimated future fees if those are expected to exceed \$50.00.

[Utah Code § 63G-2-203 \(2009\)](#)

Right to Require Requester to Make Copies

If an appropriate requester requests to have copies of more than fifty (50) pages of records, the District may in its sole discretion provide the requester with facilities to make copies and require the requester to make copies him or herself at his or her own expense.

[Utah Code § 63G-2-201\(9\) \(2013\)](#)

Appeals Process

An appeal of an access denial may be made by the requester or by any interested party. (An “interested party” is a person other than the requester who is aggrieved by an access denial. An “access denial” is the complete or partial refusal to disclose a record or the failure to respond or to timely respond to a records request.) The requester may also appeal a denial of a request to waive fees or the records officer’s determination that extraordinary circumstances exist justifying additional time for responding and the date determined for response.

[Utah Code § 63G-2-203\(6\) \(2009\)](#)

Utah Code § 63G-2-400.5 (2015)

[Utah Code § 63G-2-401 \(2015\)](#)

An appeal is made by filing a notice of appeal with the superintendent within 30 days after (1) the District sends or delivers the notice of denial or denies a request to waive fees, (2) the records request is considered denied because the District has not timely responded to the request, or (3) the District gives notice of the claim of extraordinary circumstances justifying a longer time for responding.

[Utah Code § 63G-2-401\(1\) \(2015\)](#)

The notice of appeal must include (1) the name, mailing address, and daytime telephone number of the requester or interested party and (2) the relief sought. The appealing party may also file a short statement of facts, reasons, and legal authority in support of the appeal.

[Utah Code § 63G-2-401\(2\), \(3\) \(2015\)](#)

If the appeal involves a record which is subject to a claim of business confidentiality, then the superintendent shall send notice of the appeal to the person claiming business confidentiality within three business days after receiving the notice of appeal (or, if the notice has to be given to more than 35 persons, as soon as reasonably possible). The superintendent shall also send notice to the appealing party of the business confidentiality claim and the schedule for deciding the appeal within three business days after receiving the notice of appeal. The business confidentiality claimant has seven business days after the superintendent sends notice to the claimant in which to submit further support of the claim of confidentiality.

[Utah Code § 63G-2-401\(4\) \(2015\)](#)

The superintendent shall rule on the appeal within five business days of receiving the notice of appeal unless the record is subject to a claim of business confidentiality. In that case, the superintendent shall rule on the appeal within twelve business days after the superintendent sends the notice of appeal to any individual asserting a claim of business confidentiality. If the superintendent does not rule on the appeal within these time periods, then the superintendent is deemed to have affirmed the access denial or the claim of extraordinary circumstances requiring additional time to respond or the extended date to respond.

[Utah Code § 63G-2-401\(5\) \(2015\)](#)

The District shall send written notice of the superintendent’s decision to all participants. If the superintendent in whole or in part affirms the access denial, this notice shall state (1) that the appealing party has the right to appeal the decision to the State Records

Committee or to a state district court, and (2) the name and business address of the executive secretary of the State Records Committee. The time for filing an appeal to the State Records Committee is thirty days after the superintendent's decision is issued. However, if the issue was a claim of extraordinary circumstances or an extended response date based on extraordinary circumstances and if the superintendent does not make a decision, then the appeal to the State Records Committee may be filed within forty-five days of the original records request. If the appeal is by filing a petition for judicial review in district court, the petition must be filed within thirty days of the superintendent's decision.

[Utah Code § 63G-2-401\(7\) \(2015\)](#)

[Utah Code § 63G-2-403\(1\) \(2015\)](#)

[Utah Code § 63G-2-404\(1\)\(a\) \(2015\)](#)

An individual who is aggrieved by the District's classification or designation of records for GRAMA purposes (but who is not requesting access to the records) may appeal the District's action to the superintendent following these procedures. However, if the non-requesting party is the only party appealing, the decision on the appeal is to be made within thirty days of the notice of appeal.

[Utah Code § 63G-2-401\(8\) \(2015\)](#)

Retention of District Records

The District shall adhere to the general schedule for records retention approved by the State Records Committee. Records which are not covered by the general schedule shall be submitted to the State Records Committee for scheduling.

Amendment of Records

An individual may contest the accuracy or completeness of any public, or private, or protected record concerning him/her by requesting the School District to amend the record. However, this provision does not affect the right of access to private or protected records. This provision does not apply to records relating to title of real property, medical records, judicial case files, or any other records that the School District determines must be maintained in their original form to protect the public interest or preserve the integrity of the record keeping system.

[Utah Code § 63G-2-603 \(2008\)](#)

Request to Amend

The request to amend shall contain the requester's name, mailing address, daytime telephone number and a brief description explaining why the specific record should be amended.

[Utah Code § 63G-2-603\(2\)\(b\) \(2008\)](#)

Response

The School District shall issue an order either approving or disapproving the request to amend no later than thirty (30) days after the request is made. The order shall state reasons for the decision. If the request is denied, the requester may submit a written statement contesting the information in the record. The School District shall place the statement with the record, if possible, and disclose the statement whenever the contested record is disclosed.

[Utah Code § 63G-2-603\(5\), \(6\) \(2008\)](#)

Notice to Provider of Information

The District shall post a notice and explain upon request to a person who is asked to furnish information that could be classified as a private or controlled record:

1. The reasons the person is asked to furnish information that could be classified as a private or controlled record;
2. The intended uses of the information;
3. The consequences for refusing to provide the information; and
4. The reasons and circumstances under which the information may be shared with or provided to other persons or governmental agencies.

[Utah Code § 63G-2-601\(2\), \(3\) \(2008\)](#)