To Share or Not To Share...
That Is The Question
Overview of Confidentiality

Federal and state laws promote public access to most government records.

They also protect the private and confidential nature of certain information.

Utah’s primary law on confidentiality is the Government Records Access and Management Act (GRAMA), Utah Code, Title 63G, Chapter 2.

GRAMA

- “A record is public unless otherwise expressly provided by statute.” [§63G-2-201(2)]

- What is not expressly restricted by GRAMA may be restricted by other statutes, rules or regulations. If they are more restrictive, they take precedence over GRAMA. [§63G-2-201(3) & (6)]
Confidential Information

Following are the most common categories of legal restrictions placed on property tax information designated as confidential.

- **GRAMA**
  Government Records Access and Management Act (§63G-2-__)

- **Commercial**
  Certain items of a commercial nature (§59-1-404)

- **MLS Contract**
  Proprietary sales and listing information that is property of the Wasatch Front Regional Multiple Listing Service

- **USPAP**
  Uniform Standards of Professional Appraisal Practice

- **Property Tax**
  Specific information identified in property tax statutes & rules

- **Public**
  All information that is not specifically designated as confidential
## Confidential Categories

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<td>The Taxpayer</td>
<td>Assessor</td>
<td>The Client</td>
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12/7/2016
GRAMA
GRAMA
Government Records Access Management Act
§63G-2-

Section 201  Rights to Access
Public unless otherwise provided by statute

Section 302  Private
Some personal identity, SS#, medical

Section 304  Controlled
Some medical, psychiatric, psychological

Section 305  Protected
Some financial, competitive, educational, employment, safety
### PROPERTY TAX DIVISION

Record Series, Classification, Retention, and Access Report

<table>
<thead>
<tr>
<th>Title</th>
<th>Series #</th>
<th>Classification</th>
<th>Retention</th>
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<tr>
<td>Assessed value statistical report</td>
<td>2357</td>
<td>Public</td>
<td>5</td>
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<td>Deeds and assessment files</td>
<td>82951</td>
<td>Protected</td>
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<td>9771</td>
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<td>Public utility records</td>
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<td>Tax rate certification files</td>
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<td>Uranium correspondence</td>
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<td>Agricultural rental questionnaires</td>
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<td>Annual rental studies</td>
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<td>Assessment certificates</td>
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<tr>
<td>Assessor course materials</td>
<td>16577</td>
<td>Public</td>
<td>When updated</td>
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</table>
Actual Example GRAMA Request

Reasons for denial

Copies of all communication directly or indirectly related to valuation?
  Specificity 63G-2-201(7)(b)

All phone/verbal communication between Tax & county in transcript form?
  Specificity 63G-2-201(7)(b)
  Format 63G-2-201(8)(a)

All sales in county (residential & commercial, actual vs. disclosed)?
  Specificity 63G-2-201(7)(b)
  Create, compile, manipulate, tailor 63G-2-201(8)(a)
  Commercial 59-1-404(2)
  Private 63G-2-302(2)(d)

All PP audits: year, date, parcel, findings?
  Protected 63G-2-305(15)
  Commercial 59-1-404(2)
  Private 63G-2-302(2)(d)
  Property tax order, competitive disadvantage R861-1A-12(A)
Commercial
Commercial Info – *Specific Items*

§59-1-404(3):
- Assessed value
- Tax rate
- Legal description
- Street address
- Parcel number
- Physical characteristics
- Size of land and improvements
- Name & mailing address of taxpayer
- Property tax (assessed, due, collected, abated, deferred)
- Interest, penalties
- Exempt status
- Bankruptcy filing
- Action or proceeding
- Tax sale
- Single-family residential info

Confidential

Commercial information*
- Real Property Transfer Surveys**
- Sales info in RatioLink**
- Sales info from MLS***

* §59-1-404(2)
** Subject to GRAMA
*** Subject to contract
Commercial Information

*Definition*

§59-1-404(1)

1. Of a commercial nature
2. Obtained from a taxpayer
3. Regarding the taxpayer’s property
4. Or derived from the above

Does not include information intended for public use

Sales price (commercial)
Financing terms (commercial)
Cap rates
Income & expense
Anything not specifically listed as public
Commercial Information

Recipients

§59-1-404

1. The taxpayer or authorized rep  §59-1-404(5)
2. A purchaser of the property  §59-1-404(5)
3. Tax Commission or county  §59-1-404(7)
4. Publication of statistics without identity  §59-1-404(5)
5. An appraiser*  §59-1-404(8)
6. Legal action or proceedings*  §59-1-404(4)

* Subject to restrictions
Commercial Information

*Shared with an Appraiser*

§59-1-404(8)

1. Sales price
2. Financing terms
3. Cap rates on locally assessed
4. Income & expense on locally assessed

*An appraiser may share:*
1. With Tax Commission, county, city, town \( (8)(b)(i)(A) \)
2. With an appraiser
3. In an appraisal if identity is removed
4. In a consultation service if identity is removed
Commercial Information

 Shared in a Legal Action or Proceeding

§59-1-404(4) “...shall disclose...”

1. In accordance with judicial order
2. On behalf of any party if info is directly involved
3. In preparation for an action or proceeding
4. From the following sources, if relevant, if they are not a party:
   - A real estate agent
   - An appraiser
   - A property manager
   - Another taxpayer

1. BOE takes action to ensure non-disclosure
2. Tax Commission enters a protective order or makes rules
3. Court enters a protective order
4. Exchanges prior to hearing should have confidentiality agreement

12/7/2016
Commercial Appeal Scenario

No appeal

Absent an appeal, only the taxpayer’s own confidential info may be shared with him/her.

Appeal filed

Taxpayer submits initial info

Hearing scheduled

Exchange of info typically begins, confidentiality agreement signed

10 days prior

Exchange of info ends per tax commission notice

Hearing

- Board establishes confidentiality agreement
- Tax commission enforces rule
- Only admissible info is covered by confidential agreement, the rest is covered by GRAMA

Post-hearing

Confidentiality agreement or protective order remains in effect beyond the final disposition.

12/7/2016
2. **WFR Grant of License.**
   - Exclusive to assessor’s internal business
   - Models, market reports
   - Up to 10 comps in appeals
   - Prohibits sales chasing

6. **Confidential Information.**
   - Confidential
   - Court order – allow MLS 5 days to oppose

7. **GRAMA.**
   - Business confidentiality under §63G-2-305 & 309
USPAP
USPAP – Your Appraisal

USPAP, Ethics Rule, Confidentiality

Recipients

Client
Client’s official representative
Regulatory or peer review

Hearings

Third parties
Public

Client’s confidential
Appraisal results
Confidential
Appraisal results
Client’s confidential
Commercial confidential
Appraisal results

Info

Independently verified source
Client source

Confidentiality agreement
Yes
No

Yes
No

Action
Share
Permission from client
Redact

Yes
No

12/7/2016
USPAP

Ethics Rule – Confidentiality

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1. Info provided by client:
   A. Identified by client as confidential AND
   B. Not available from any other source
2. Info classified as confidential by applicable law or regulation
3. Assignment results

1. Client
2. Person authorized by client
3. Regulatory agency (Div. Real Estate)
4. Third parties authorized by due process of law
5. Peer review committee (Appraisal Board)
3rd Party Appraisal Scenario

May share with:
- Client
- Person authorized by client
- Regulatory or peer review committee
- Due process

Appraiser is liable through USPAP, not assessor.
Must be authorized by client
OR
No client confidential & no results may be shared

Assessor is not liable through USPAP, but commercial info law 59-1-404(4)(b) “shall be disclosed” if obtained from an appraiser, real estate agent, property manager or other taxpayer who is not the subject taxpayer.
Consider relationship with appraiser source.
Property Tax Statutes and Rules
Specific
Property Tax-Related
Statutes and Rules

1. Personal property audit results (§59-2-705)
2. Motor vehicle title and registration records (§41-1A-116)
3. Tax commission hearings (R861-1A-12)
4. Tax commission notes and work papers (R861-1A-12)
5. Commercial information (R861-1A-37)