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Dear Member of the Government Records Access and Management Task Force,

Thank you for your important work with the Government Records Access and Management Task Force. The American Civil Liberties Union (ACLU) of Utah supports strong open records laws, which we view as critical components of our democracy. However, we also recognize that at times, privacy may be compromised by the presence of personal information in public records.

Maintaining the delicate balance between public access to government information and personal privacy is no easy task. Indeed, it becomes more difficult with ongoing changes in technology. The enclosed opinion piece outlines the ACLU of Utah's positions on open records laws and personal privacy, and includes several recommendations on what government agencies can do to maintain government transparency while protecting personal privacy.

I hope you find the enclosed piece to be helpful as you consider different aspects of GRAMA and formulate your recommendations for the Utah State Legislature. Please contact me at (801) 521-9862 ext 102 if you wish to discuss this matter further.

Sincerely,
Dani Eyer
Executive Director

Public has right to know, but how much?

Op - Ed by Dani Eyer

Published in the Salt Lake Tribune, Sunday, July 23, 2005

Lately, there has been a lot of talk about Utah's Government Records Access and Management Act (GRAMA). The law, which allows citizen access to government records, is ranked as one of the better public records laws in the country; was audited by the Utah chapter of the Society of Professional Journalists, which found that it is only as good as the performance and attitude of the public officials who carry out requests for information; and is currently being examined by a legislative task force, which hopes to come up with a list of recommended changes to the law by the 2006 legislative session.

All of this attention on GRAMA is appropriate because state and federal open records laws are critical components of our participatory democracy. As citizens, we need to know what our government is doing and how it makes the policy decisions that affect our lives. Strong open records laws allow us to obtain the information we need to keep our government officials accountable, and they help ensure that ours is a representative government in which decisions are not made in secret.

Not only does the American Civil Liberties Union of Utah support strong open records laws, but we have also relied on public records requests to get the information we need to protect constitutional freedoms. For example, it was through a GRAMA request that we were able to learn more about Utah's participation in the Multistate Anti-Terrorism Information Exchange, or MATRIX. When combined with information that ACLU affiliates in other states obtained, we were able to compose a much more complete, and

daunting, picture of the MATRIX surveillance system and the immense privacy and due process problems it posed. This information played a key role in the eventual termination of the controversial program.

While the ACLU of Utah is a strong supporter and user of public records laws, we also advocate for another important right that may be compromised by the presence of personal information in public records, and that is personal privacy. The same technologies that make government records more accessible may also upset the traditional balance between access to government information and personal privacy, and now is the time for both the users of public records laws and the drafters of these laws to fully consider whether additional privacy protections are required.

The state of Utah holds an incredible amount of our personal information. While some of this is restricted, there are circumstances in which personal identifiers, such as complete addresses, driver's license numbers, and birth dates, are considered public under GRAMA. So far, personal privacy has more or less been protected by the fact that our information remains scattered across different government databases, or, in the case of paper records, in filing cabinets. The electronic publication of government records combined with an increase in technologies and companies that aggregate information from different data sources is threatening our privacy.

While a particular piece of data is normally innocuous, when compiled with other publicly available data, the result may be an extremely detailed and intrusive picture of our lives. The MATRIX program, for example, sought to provide law enforcement with detailed citizen profiles by combining government databases with information from private-sector data companies.

Searching and compiling technologies can change electronic public records into an unqualified cache of personal information on a vast range of individuals. When records are available electronically, these technologies break down the practical barriers to compiling dossiers on individuals, which then can be used for purposes completely unrelated to government oversight.

There is no easy answer to the question of how we can maintain an appropriate balance between government transparency and personal privacy. There are, however, a few principles that government agencies can consider adopting. Agencies can reduce the amount of personal information available by collecting only the minimal amount needed to carry out a particular government function. Agencies should pay particular attention to the collection and release of unique personal identifiers, which make the aggregation and secondary use of public data possible. Finally, agencies can consider whether use limitations on public information are appropriate, such as prohibiting records requesters from using the information they receive for commercial purposes.

It is worth referring back to the legislative intent of GRAMA, in which the legislature recognized two constitutional rights: "the public's right of access to information concerning the conduct of the public's business" and "the right of privacy in relation to personal data gathered by governmental entities." It is time for all of us to consider how new technologies may be weakening our privacy while doing nothing to increase government accountability.

Dani Eyer
Executive Director
ACLU of Utah