

2019 GOVERNING BOARD TRAINING

Utah Communications Authority
2019 Governing Board Training
November, 2019

ETHICS

Utah Code Ann. 67-16-101, et seq.

The Utah Public Officers' and Employees' Ethics Act “set(s) forth standards of conducts for officers and employees of the state of Utah and its political subdivisions in areas where there are actual or potential conflicts of interest between their public duties and their private interests.”

This presentation focuses on your relationship with UCA, but this applies to other agencies as well over which you may also have influence or control.

Section 4 – Secret Information

- Do not accept employment or engage in business that you might reasonably expect would require or induce you to improperly disclose confidential information that you received by virtue of your position with UCA.
- Do not use confidential information you received by virtue of your position with UCA for your own personal economic interest.
- Do not use your position with UCA to further your personal economic interest or secure special privileges/exemptions for yourself or others.
- Do not accept employment that you might expect would impair your independence of judgment in the performance of your public duties or interfere with the ethical performance of your duties at UCA.

Section 4 – Secret Information

EXAMPLES

- You are offered a part-time job to consult with a major radio manufacturer regarding RFP responses.
- You decide to purchase stock in a public telecommunications company after scoring an RFP published by UCA for ESInet services.
- You are pulled over and ask the police offer to let you off because, after all, his radio only works because you allow it to work.

Section 5 – Gifts/Bribes

- Gift may include an “economic benefit tantamount to a gift” such as a loan at an interest rate that is substantially below the prevailing rate or compensation for private services at a rate far above the fair market value of those services.
- Do not *knowingly* receive, accept, take, seek, or solicit, directly or indirectly, for yourself or somebody else a gift of substantial value or a substantial economic benefit tantamount to a gift:
 - That would tend to influence a reasonable person to depart from the faithful and impartial discharge of your duties at UCA;
 - That you, or a reasonable person in your position and circumstance, should know is primarily for the purpose of rewarding you for an official action taken; or
 - If you have been, are now, or will be in the near future, involved in any governmental action directly affecting the donor/lender. (There is an exception for when a disclosure is made, but the disclosure is formal and governed by statute. If you need to make a disclosure, please speak with UCA’s General Counsel.)

Section 5 – Gifts

- Exceptions
 - Occasional nonpecuniary gift having a value of not in excess of \$50;
 - An award publicly presented in recognition of public services;
 - Any bona fide loan made in the ordinary course of business; or
 - A political campaign contribution.

Section 5.3 – Trade for Approval

- Do not demand that a person donate personal property, money, or services to UCA as a condition of granting any application or request for a permit, approval, or other authorization unless:
 - Such is expressly required by statute, ordinance, or agency rule (like an application fee);
 - Such is mutually agreed to between the applicant and the entity issuing the permit, approval, or other authorization (like a contract – I like contracts);
 - Such is made voluntarily by the applicant; or
 - Such is a condition of a consent decree, settlement agreement, or other binding instrument meant to resolve actual or threatened agency action.

Section 5.3 – Trade for Approval

- If somebody donates property, funds, or services to UCA, UCA shall, as part of the permit or other authorization:
 - Identify that a donation has been made;
 - Describe the donation;
 - Certify, in writing, that the donation was voluntary, and
 - Place that information in its files.

Section 6 – Cash for Services

- Do not receive or agree to receive compensation for helping anybody in any transaction involving a state agency, especially UCA, unless you file a document as listed in the statute. Best to probably speak to UCA's General Counsel (and your own attorney) before agreeing to take cash, or actually taking cash, for something like this.

Section 7 – Regulated Business

- You cannot be an officer, director, agent, employee, or owner of a substantial interest in any business regulated by UCA unless you follow some exceptions.
- This does not generally apply to you since UCA is not a regulatory agency.

Section 8 – Conflict of Interest Transaction

- You cannot participate in or receive compensation as a result of a transaction between UCA and a business entity of which you are an officer, director, agent, employee, or owner of a substantial interest, unless you complete certain disclosures.
- Oddly enough, an exception exists if you are a certified professional golf association member entering into a concession contract.

Section 9 – Conflict of Interest Investment

- You cannot have a personal investment in any business entity which will create a substantial conflict between your private interests and public duties.

EXAMPLE

- You own stock in an entity that is currently bidding for a project with UCA.

Section 10 – Inducement

- You cannot seek to induce any other public officer or public employee to break any of these laws.

Sections 12 & 14 – Consequences



Sections 12 & 14 – Consequences

- Just kidding.
- It's worse.
- Knowing and intentional violation requires termination, in addition to criminal penalties. Utah Code Ann. § 67-16-12(1).

Procurement Code Ethics

- A procurement professional is:
 - An employee with procurement decision making authority; or
 - An employee involved in the administration, enforcement, compliance, or payment of a procurement contract.
- During the procurement process or term of the procurement contract, a procurement professional (or their family), may not with the intent to award a contract, make a procurement, or take a contract action, may not: ask for, receive, or accept a contribution on behalf of him/herself, family, or the represented agency (UCA) in exchange for a procurement award or decision or to take certain action(s) in the administration of a contract or grant. Can accept “hospitality gift” or less than \$10, so long as the annual aggregate of \$50 is not exceeded.
- Illegal for vendor to try to give you such with the intent to induce you to award a contract, make a procurement decision, or take a contract action.

HARASSMENT

Procurement Code Ethics

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WHY ARE WE DOING THIS TRAINING?

- To foster a safe and respectful work environment.
- To remind employees of UCA's policy preventing harassment.
- To avoid disruptions in the workplace, our business, and by extension, public safety.
- To ensure employees know what is expected with respect to appropriate conduct in the workplace.
- To minimize the risk of liability/repercussions to both the organization and employees.
- To encourage reflection and conversation.

- The explosion of #MeToo suggests:
 - That workplace harassment is more prevalent than many assumed; and
 - *Unreported* workplace harassment is even more prevalent.
- In 2015, the Huffington Post conducted a survey of more than 2,000 females and more than 33% reported that they had been victims of sexual harassment.
- A December 2017 New York Times survey revealed that 35% of males admitted to engaging in workplace conduct within the last year that would qualify as objectionable behavior or sexual harassment.



PROHIBITED DISCRIMINATION

Between Title VII of the Civil Rights Act, the Americans with Disabilities Act, The Age Discrimination in Employment Act, the Pregnancy Discrimination Act, The Uniformed Services Employment and Reemployment Rights Act, the Genetic Information Nondiscrimination Act, and Utah Code Ann. 34A-5-105 prohibits discrimination based on the following categories is prohibited:

- Race
- Color
- Sex
- Pregnancy, childbirth, or pregnancy-related conditions
- Age (if over 40)
- Religion
- National Origin
- Disability
- Sexual Orientation
- Gender Identity
- Genetic Information

Anybody have any questions about these categories?

MAIN TOPIC AREAS

- Discrimination - UCA (and its employees) cannot hire, promote, discharge, demote, or terminate, harass, or discriminate regarding compensation/terms/privileges/conditions based on any protected class, unless there is a “bona fide” occupational qualification that cannot be met as it relates to one of these categories.
- Retaliation - UCA (and its employees) are not allowed to harass or discriminate against an employee in retaliation for filing a discrimination charge, testifying, or participating in an investigation, proceeding, or lawsuit related to these employment protections or otherwise opposing employment practices that violate the referenced employment laws.
- Harassment - Harassment is unwelcome conduct that is based on a protected class. Harassment becomes unlawful where enduring the offensive conduct becomes a condition of employment or the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.

WHAT IS DISCRIMINATION?

ADVERSE ACTION:

Failing to hire, firing, demoting, refusing to promote, disciplining, refusing to accommodate. *Or more subtle:* negative performance evaluation, lesser bonus, lesser pay increase, refusal to include someone in meetings or on projects.

+ (based on)

PROTECTED CLASS

UCA'S POLICIES AND PROCEDURES MANUAL – DISCRIMINATION, SECTION 2.G.

- “It is the policy of the Authority to provide for equal employment opportunity by ensuring that all personnel actions including hire, tenure, terms, conditions, or privileges of employment will be based on the ability to perform the duties and responsibilities assigned to a particular position without regard to age, race, creed, religion, color, handicap, sex, national origin, ancestry, political affiliation, sexual orientation, pregnancy, childbirth, pregnancy-related conditions, disability, gender identity, or any other protected characteristic. Further, it is the policy of the Authority that no person shall be subjected to sexual or other harassment by the Authority. ”

UCA'S POLICIES AND PROCEDURES MANUAL – DISCRIMINATION, SECTION 2.G.

- “Any employee believing that they have been subject to discrimination may submit his/her allegations to the Director by way of a written grievance. If a decision is not issued within then (10) days, or if the employee is dissatisfied with the decision, he/she may file a complaint with the Utah Anti-Discrimination and Labor Division of the Utah Labor Commission.”

RETALIATION

ADVERSE ACTION:

(Firing, discipline, demotion, different treatment, etc.)

+

PROTECTED CONDUCT:

(Complaining about or reporting harassment, discrimination, and/or retaliation)

WHAT IS HARASSMENT?

- Harassment is...
- Conduct that is both offensive and unwelcome to the victim and to a “reasonable person” in the victim’s place related to a person’s membership in a protected class.
- Let’s break this down...
- What makes something offensive and unwelcome?
- Usually consists of a pattern of harassment, although one severe incident may be enough.
- Harassment can take many forms and be based on many different characteristics or protected classes.
- Where can it occur?
- Onsite, offsite, during work hours, or after hours, in person or via electronic communications (including social media).
- Is it illegal?
- Yes, harassment (which can include creation of a hostile work environment) is a form of illegal discrimination.

WHAT IS HARASSMENT?

- Anybody – male or female, young or old, black or white, etc. – can be a victim of harassment.
- Anybody can be a harasser – supervisor, employee, or a third party.
- Harassment can be expressed verbally, physically, or by any other means of communication.
- Harassment can be male/female, female/male, male/male, or female/female.

EXAMPLES OF HARASSMENT?

- Verbal:
 - Derogatory statements, slurs, teasing, jokes, epithets, and innuendo.
- Physical:
 - Sexual and personal touching, assault, physical interference with normal work or involvement.
- Visual:
 - Posters, cartoons, drawings, computer materials, sexual gestures.

WHAT IS SEXUAL HARASSMENT?

- Quid Pro Quo: “This for that”
 - Submission to or rejection of unwelcome advances or sexual conduct made either explicitly or implicitly a term or condition of an individual’s employment.
 - *Example:* An employee is told that if (s)he wants to keep her job, (s)he must date her supervisor.
 - *Example:* An employee who has rejected his/her supervisor’s sexual advances suddenly receives a poor performance evaluation.

WHAT IS SEXUAL HARASSMENT?

- Hostile Work Environment
 - Offensive or unwelcome verbal or physical behavior of a sexual nature that has the purpose or effect of interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.
 - *Example:* Employees routinely forward each other emails containing sexual jokes, which makes some employees uncomfortable.

UCA'S POLICIES AND PROCEDURES MANUAL

- Section 14 of UCA's P&P Manual:
 - Prohibits Quid Pro Quo and Hostile Work Environment Harassment including:
 - Sex Role Stereotyping
 - Gender Harassment/Discrimination
 - Targeted or individual harassment
 - Criminal Touching
 - Prohibits retaliation.

REMEMBER

- Harassment can be severe or pervasive.
- Applies to all protected classes.
- Can apply to people we work with/for:
 - Avoid situations where the individuals with whom you interact may feel as though you are abusing your power or position.
 - This includes making comments or propositions, or making exceptions to the rules, based on promises of favors or based on someone's gender or membership in some other protected class.

EXCUSES, EXCUSES

- The following are NOT acceptable excuses for improper behavior:
 - “I wasn’t talking about you.”
 - “I didn’t mean to harass anyone.”
 - “It was only a joke. I thought we were friends.”
 - “It happened while we were outside the workplace.”
 - “He/She never told me to stop.”
 - “He/She joked and laughed along with the rest of us.”
 - “It’s not like I actually touched him/her.”
 - “She always wear tight tops and high heels ... what does she expect?”

ADDITIONAL CONSIDERATIONS

- Harassment can be overt or covert and it includes conduct that occurs on the internet, e-mail, and/or social media.
- Remember the “witness principle” – what one employee finds funny, may be inappropriate or offensive to another who witnesses or overhears it.
- Consider this “litmus test”: If you would not put a joke, story, or comment in the newspaper with your name on it (or broadcast on the radio), it probably is not appropriate for the workplace.
- Managers and Directors – consider appropriate boundaries with coworkers and subordinates. Work is a professional environment.

EMAIL AND TEXT RECOMMENDATIONS

- Think before you hit send.
 - Ask yourself: What is the purpose of the email/text? Is this better handled on a call or in-person meeting?
 - If you are emailing out of anger or frustration ... STOP!
- Be professional. If you need to vent, pick up the phone and call a friend.
- Picture This ... How would your email/text look if blown up on a 3' x 6' board and displayed in the courtroom for the judge and jury to read ... often out of context?

UCA'S POLICIES AND PROCEDURES MANUAL

- “An employee accused of sexual harassment and facing disciplinary action shall be entitled to receive notice of charges, the evidence to be used against him/her, and an opportunity to respond before disciplinary action may be taken.”

WHAT IF YOU HAVE BEEN THE VICTIM OF HARASSMENT?

- Any employee who is being sexually harassed or who has personal knowledge of clearly offensive conduct should address the issue by:
 - Filing a formal complaint with who, what, what, when, where, how often, the damage suffered, and the proposed resolution. This should be filed with the Personnel Manager (Patsy) and/or Authority Executive Management (Dave and/or Quin).
 - The victim will be allowed a reasonable amount of time during work hours to prepare a formal complaint.

THEN WHAT?

- “The Personnel Manager, the Deputy Director, and/or the Director will conduct an investigation, which may be delegated to the Authority’s outside counsel, into the allegations and make a determination as to the complaint. Based on this investigation, the Director will make a determination as to the subject complaint which may be appealed pursuant to Section 13 above. In the event the Director is directly involved in the allegations of sexual harassment as either the alleged victim or the alleged harasser, the Deputy Director and/or outside counsel will make a determination as to the complaint and shall report the same to the Board. This decision may be appealed pursuant to Section 13 above.”

WILL THIS GET OUT?

- “Information related to any sexual harassment complaint, proceeding, or resolution shall be maintained in separate and confidential sexual harassment complaint files. This information shall not be placed or maintained in any employee’s personnel file.”

WILL THIS GET OUT?

- “Individual complaints, either verbal or written, will be kept confidential to the extent possible. Victims of alleged sexual harassment shall not be required to confront the accused outside of a formal proceeding. Retaliation or reprisals are prohibited against any employee who, in good faith, oppose(s/d) a practice forbidden under this policy, or who has filed a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing, in good faith. Any employee engaging in prohibited retaliatory activities shall be subject to disciplinary action up to and including dismissal. Retaliation is an additional and separate disciplinary offense. Retaliation may consist of, but is not limited to:
 - Open hostility;
 - Exclusion or ostracism;
 - Special or more closely monitored attention to work performance;
 - Assignment to demeaning duties not otherwise performed during the regular course of the employee’s duties.”

WHAT IF YOU HAVE BEEN A HARASSER?

- “Employees found guilty of sexual harassment may face disciplinary action up to and including termination based on all the circumstances of the case, as well as the offending employees work history. This decision will be made by the Director or, in the case that the Director is found to be guilty of sexual harassment, the decision as to the appropriate disciplinary action will be made by the Board.”

OTHER, NON-SEXUAL, HARASSMENT PER SECTION 14 OF THE P&P MANUAL

- “Workplace harassment also includes unwelcome conduct that is based upon, or directed toward someone because of, race, color, religion, citizenship, age, national origin, disability, pregnancy (including childbirth and pregnancy-related conditions), sexual orientation, gender identity, veteran status, genetic information, or any other basis protected by federal, state, or local law. Such unwelcome conduct constitutes unlawful harassment when:
 - The employee must submit to conduct as a condition of employment;
 - The employee’s submission to or rejection of the conduct is used as a basis for an employment decision affecting that employee; or
 - The conduct substantially interferes with the employee’s work performance or creates an intimidating, hostile or offensive work environment for the employee.”

OTHER, NON-SEXUAL, HARASSMENT PER SECTION 14 OF THE P&P MANUAL

- “Unlawful harassing conduct comes in many forms and includes, but is not limited to, the following behavior”:
 - Verbal or written conduct such as epithets, derogatory comments, or slurs, whether spoken or written or posted in documents, emails, text messages, social networking sites, or otherwise.
 - Visual conduct such as posters, photography, cartoons, drawings, or gestures, whether posted or circulated or contained in documents, emails, text messages, social networking sites, or otherwise.
 - Physical conduct such as assault, unwanted touching, blocking normal movement, or interfering with work.

OTHER, NON-SEXUAL, HARASSMENT PER SECTION 14 OF THE P&P MANUAL

- “The Authority understands and recognizes that both men and women can be harassed, sexually or otherwise. The Authority also understands and recognizes that the harasser does not have to be of a different race, color, religion, citizenship, age, national origin, disability, sex, pregnant status (including childbirth and pregnancy-related conditions), sexual orientation, gender identity, veteran status, genetic makeup, etc., for unlawful harassment to occur. Finally, the Authority understands and recognizes that that unlawful harassment might come from a subordinate, supervisor, fellow employee, or third party, such as a customer or vendor.”

A SHORT NOTE ABOUT REASONABLE ACCOMODATIONS

- Some laws require an employee to provide a reasonable accommodation. Examples include an accommodation for a qualifying condition under the ADA or an accommodation for religious reasons.
- However, the law does not require employers to simply divine the need for a reasonable accommodation. Employees have to ask.
- If you believe you require a reasonable accommodation for some reason, please raise that issue with either myself, Patsy, Dave, or your Director.
- Directors, please immediately provide these requests to me.

THE TEST – QUESTION 1

- An employee says to a co-worker who discloses his sexual orientation, “you don’t seem gay.”
- Not okay. This “may” be sufficient to form part of the basis of a pervasive harassment claim. expresses a discriminatory stereotype about sexual orientation and, though it is likely not severe enough to constitute harassment, it is sufficient to form part of the basis for a pervasive harassment claim.

THE TEST – QUESTION 2

- A group of employees jokingly refer to an employee of Middle Eastern descent as “Bin Laden.” He laughs whenever they do this.
- Not okay. Just because he is laughing, doesn’t mean he thinks it is funny. This would obviously constitute harassment. Furthermore, even assuming the employee did think it was funny, another co-worker in the vicinity may not agree.

THE TEST – QUESTION 3

- An employee asks another employee (the same one) for a date three Fridays in a row and each time the employee declines saying that they are busy.
- Once, probably not a big deal. Twice, - okay. Three times, it may be she's just not that into you and you're approaching harassment. Much of this will be contextual, but warning signs should start to appear for the inviting employee.



THE TEST – QUESTION 4

- An employee overhears an employee call his fellow employee a retard.
- Not okay, but may be a difficult harassment claim absent the right circumstances. However, the "R" word is extremely offensive and has no place in modern society.

THE TEST – QUESTION 5

- An employee has a confederate flag on his desk.
- Understanding that there are some who believe the confederate flag stands for something other than discrimination, it's general meaning in popular culture has a very racist connotation and could reasonably be understood to be part of a claim of a hostile work environment.

THE TEST – QUESTION 6

- A male employee tells a female co-worker she looks nice.
- Probably depends on a number of factors, including the tone of voice. In most situations, this is not, by itself, going to be actionable, though it could, under the right circumstances, be part of a hostile work environment claim. The safest route is to avoid comments about others' physical appearance.

THE TEST – QUESTION 7

- A male employee sends a Facebook Friend Request to a female coworker.
- This is okay, so long as it's the first time and there is no other inappropriate behavior between the two.

THE TEST – QUESTION 8

- A woman who just had a baby inquires about open managerial position that would require weekly travel and supervisor responds: “You really want that position? I don’t think you should apply for that position right now given the circumstances.”
- Not okay. This amounts to pregnancy/sex discrimination and should be avoided.

THE TEST – QUESTION 9

- One employee tells another she looks like a famous actress that is of the same race.
- And follows it up with, “because you all look the same.”
- Or says that he has a massive crush on that actress.
- Again, the best rule is to avoid commenting on a person’s appearance. Obviously, the references to races looking the same is very racist and discriminatory and the uncomfortable reference to having a crush on the employee’s doppelganger is an uncomfortable reference which could be part of a hostile work environment claim.

KEY TAKEAWAYS

- Don't intentionally discriminate, harass, or retaliate against anybody. Be cautious not to unintentionally do so.
- If you observe or otherwise become aware of potential discrimination, harassment, or retaliation, report it.
- If you are a victim of discrimination, harassment, or retaliation, report it.
- Cooperate in investigations and any remedial action.
- Let's continue to cultivate a respectful work environment.

OPEN PUBLIC MEETINGS ACT

Utah Code Ann. 52-4-101, *et seq.*

- “It is the intent of the Legislature that the state, its agencies, and its political subdivisions: (a) take their actions openly; and (b) conduct their deliberations openly.”

Key Definitions

- Meeting – the convening of a public body or a specified body, with a quorum present, including a workshop or an executive session for the purpose of taking public comment or acting upon a matter over which the body has jurisdiction or advisory power.
- Public Body – Any administrative, advisory, executive, or legislative body that: (a) is created by the Constitution, statute, rule, ordinance, or resolution; (b) consists of two or more persons; (c) expends, disburses, or is supported in whole or in part by tax revenue; and (d) is vested with the authority to make decisions regarding the public's business.

Public Notice

- To conduct a meeting, UCA must generally give at least 24 hours' public notice that includes the date, time, place, and agenda. This notice must be physically posted at the principal office of the public body and the Utah Public Notice Website.
- Annual meeting schedule should also be posted once per year on the Utah Public Notice Website.

Public Notice - Emergency

- In an emergency, the public notice requirements are waived so long as the public body gives the best notice practicable of the time, place, and topics of the meeting.

Stick to the Agenda

- The required agenda must provide reasonable specificity of the topics to be considered and, unless a topic is raised by the public, the public body should only discuss the topics on the agenda. If the public raises an issue, and if the chair agrees, that issue may then be discussed in the meeting, even if it was not on the agenda. However, no final action can be taken on any item not on the agenda.

Minutes of the Meeting

- Written minutes and a recording of an open meeting shall be kept which include the date, time, and place of the meeting. These minutes should also include the names of the members present/absent and the substance of all matters proposed, discussed, or decided by the public body.
- The minutes should also reflect the vote taken by the individual members of the public body and the name of every member of the public who is recognized by the presiding member to provide comments and a summary of those comments. These minutes should also include anything else that a member of the public body requests be in the minutes.

Minutes of the Meeting

- Within 30 days of a meeting, the public body shall make pending minutes, clearly marked as pending, available to the public.
- Within 3 business days of approving minutes, the public body must post to the OPMA website a copy of those minutes and any public materials distributed in the meeting.

Recordings of the Meeting

- A recording of an open meeting shall be a complete and unedited record of all open portions of the meeting from beginning to end. Recordings should be labeled with the date, time, and place of the meeting.
- This recording should be posted to the OPMA website within three business days.

Closed Meetings

A closed meeting may be held if:

- A quorum is present;
- The meeting is an open meeting for which proper notice has been given; and
- 2/3 of the members of the public body present at the open meeting vote to approve closing the meeting.

However, a closed meeting is not allowed unless each matter discussed in the closed meeting is permitted under Section 52-4-205.

An ordinance, resolution, rule, regulation, contract, or appointment may not be approved at a closed meeting.

During the open portion of the meeting, the following shall be publicly announced and entered into the minutes of the open meeting:

- The reason or reasons for holding the closed meeting;
- The location where the closed meeting will be held; and
- The vote by name, of each member of the public body, either for or against the motion to hold the closed meeting.

Closed Meetings – Utah Code 52-4-205

The reasons for closing a meeting include:

- Usually, a discussion of the character, professional competence, or physical or mental health of an individual;
- Strategy sessions to discuss collective bargaining;
- Strategy sessions to discuss pending or reasonably imminent litigation;
- Strategy sessions to discuss the purchase, exchange, lease, or sale of real property if that discussion would disclose the appraisal or estimated value of the property under consideration or would prevent the public body from completing the transaction on the best possible terms;
- Discussion regarding deployment of security personnel, devices, or system;
- Investigative proceedings regarding allegations of criminal misconduct;
- Deliberations, not including any information gathering activities, of a public body acting in the capacity of and evaluation committee, a protest officer, or a procurement appeals panel under the Utah Procurement Code;
- Considering information that is a trade secret or other confidential information in order to properly conduct a procurement under the Utah Procurement Code.

Record of Closed Meetings

Generally, a public body should record the closed portion of a meeting and keep detailed written minutes that disclose the content of the closed portion of the meeting. This recording and minutes shall include the date, time, and place of the meeting, the names of the members present/absent, and the names of all other present unless that disclosure would infringe on the confidentiality necessary to fulfill the original purpose of the closed meeting.

These records are protected under GRAMA.

If a public body closes a meeting exclusively for the purposes of discussing the character, professional competence, or physical/mental health of an individual, or the deployment of security personnel, devices, or systems, a recording and minutes need not be kept but the person presiding shall sign a sworn statement affirming that the sole purpose for closing the meeting was discuss these purposes.

Electronic Meetings

UCA's bylaws permit telephonic meetings so long as all persons participating in the meeting can hear each other at the same time. Participation by a board member in this fashion constitutes presence in person at such a meeting. However, if any portion of a meeting is closed to the public, members of the Board may only participate in such meetings in person, and not telephonically.

Electronic meetings require the same level of notice as a live, in person meeting and requires at least one anchor location for members of the public to participate at that location, including public comment, if being taken.

Chance or Social Meetings

OPMA does not apply to any chance meeting or social gathering, though these types of meetings cannot be used to circumvent the provisions of this chapter. In other words, if you have a party, don't talk business.

Emails and Text

Nothing in the OPMA restricts a member of a public body from transmitting an electronic message to other members of the public body at a time when the public body is not convened in an open meeting.

Enforcement

Violations of this act can lead to final actions by the public body being voidable by the court. The attorney general is charged with enforcement of this statute, but individuals denied a right under this chapter have a private right of action. Attorneys' fees and costs are available to a successful plaintiff. Improperly closed information can be made public by a court.

A member of a public body who knowingly or intentionally violates, abets, or advises a violation of any of the closed meeting provisions is guilty of a class B misdemeanor.