

State Records Committee Decisions Addressing Personal Privacy-

In general, the majority of appeals in which a governmental agency has classified records as "private" under Utah Code Annotated § 63G-2-302(2)(d) have been upheld or supported by the Utah State Records Committee. Section 63G-2-302(2)(d) provides that "other records containing data on individuals the disclosure of which constitutes a clearly unwarranted invasion of personal privacy" should be classified as "private". Since 1993, there have been 11 cases that have directly addressed private records and personal privacy. Appeals based on denials because the agency denied a request on the grounds of releasing the record would be an invasion of personal privacy are limited. It is difficult to categorize these appeals but for the purposes of this summary the appeals seem to fall into three basic categories; 1) personal identifying information such as names, addresses and phone numbers but could include information such as age, race, religious affiliation and test scores or evaluations; 2) information generated by law enforcement such as police reports, videos and interviews; and 3) disciplinary records of employees, in particular, police officers.

The analysis used by the Committee focused on weighing the interests in the public having access to the records versus the privacy interests of the individuals involved. With regard to the first category the Committee typically found the information could be classified as private but also looked to see if the agency had previously shared the information with other private entities in determining whether the record was properly classified as private. The second category focused on the content of each record and the Committee consistently concluded that photographs and videos of crime scenes and related investigations that contained images that were gruesome or graphic in nature were properly classified as "private". The Committee also included interviews with juvenile witnesses or victims and again stated that these types of records are properly classified as "private". And the third category, as it pertains to police officers, hinged on whether the investigation was sustained and whether the appeal period had run for the individual. Sustained disciplinary records in which the appeal period had run were determined to be public, although it noted that witnesses could be redacted from the records.

Other criteria that were commonly considered by the Committee were whether or not the release of a record would have a chilling effect (revealing panelists tasked with evaluating applicants for a position could have a chilling effect on future panelists) and whether it would likely put an individual or organization in danger or would cause security concerns (releasing grievances made by prison inmates to other inmates could have a chilling effect, put an inmate in danger and compromise the security of the facility).

Below are brief summaries of the appeals.

1- RANDY T. NIELSEN vs. UTAH DNR, DIVISION OF WILDLIFE RESOURCES (1993-01)

Summary- Nielson sought an order requiring the Division to provide a list of names and addresses for all persons who purchased hunting and fishing licenses for specific zip codes from 1982 to the time of the request.

Order- Appeal granted. The Committee stated that records containing data on individuals the disclosure of which constitutes a clearly unwarranted invasion of personal privacy may be classified as "private". But in this case the Division had used the lists to do joint mailings with certain private entities but did not allow other private entities who may have differing points of view to use the lists. Therefore releasing the requested records would not constitute a clearly unwarranted invasion of personal privacy

and the record classification should be changed to "public". The Committee also noted that this decision should not be understood to mean that all lists of names and addresses held by governmental entities are public.

2- UTAH HEADLINERS CHAPTER, SOCIETY OF PROFESSIONAL JOURNALISTS vs. UTAH STATE BOARD OF REGENTS (1997-02)

Summary- Journalists sought an order requiring Respondent to supply records containing personally-identifiable information related to the University of Utah presidential search applicants or nominees.

Order- Appeal denied. Pursuant to Utah Code Ann. 63-2-403 (11)(b), the Committee considered and weighed the various interests and public policies pertinent to the classification and disclosure or nondisclosure and determined that the public interest favoring access does not outweigh the interest favoring restriction. The Committee reasoned that, "the interest favoring restriction of access in this case outweighs the interest favoring access. This is so because providing access to these records would render the applicant pool for the position of President of the University of Utah far poorer."

3- MR. POOPER SCOOPER INC. vs. MURRAY CITY AND SANDY CITY (2002-06)

Summary- Tom Broome, President of Pooper Scooper Inc., challenged Murray City and Sandy City's denial of his request for access to the home addresses of licensed dog owners in their respective Cities.

Order- Appeal denied. The Committee concluded that the Cities properly classified the records as "private" reasoning that disclosure would constitute a "clearly unwarranted invasion of personal privacy" in violation of Utah Code Ann. 63-2-302(2)(d).

*Broome argued that he received thousands of these types of records from other jurisdictions that classified these types of records as "public" and notwithstanding Broome's argument, the Committee still supported the "private" classification designated by the Cities.

4- ALBERT CRAMER vs. MURRAY CITY (2002-09)

Summary- Utah State Prison inmate Albert Cramer sought an order compelling Murray City to provide various child witness interview transcripts, police department policies and other documents he believes pertained to his criminal cases.

Order- Appeal denied. The Committee was persuaded that City was correct in classifying the transcripts of interviews with a minor, regarding sexual child abuse, as private under Utah Code Ann. Sec. 63-2-302(2)(d) and protected under Secs. 63-2-304(9) and (10). The Committee added that to the extent that the documents were relevant to his criminal cases, Cramer was entitled to use the discovery process and the Rules of Criminal Procedure to obtain these documents through the court for his defense. (See Utah Code Ann. Secs. 63-2-202(7), -201(3) and -201(5)(a).)

5- BRIAN K. STACK vs. UTAH DEPARTMENT OF CORRECTIONS (2004-02)

Summary- Utah State Prison inmate Brian Stack sought records of Offender Management Review Committee (OMR) results for prisoners referred to the OMR for communicating with female prisoners.

Order- Appeal denied. The Department correctly classified the results as "private" under Utah Code Ann. 63-2-302(2)(d) and "protected" under 63-2-304(10) and (12). The Committee reasoned that the OMR process relies on inmate candidness and that disclosure of the records would impair the candidness and the effectiveness of the process. The Committee also noted that these records, if disclosed, could lead to more violence and security concerns at the prison. The Committee gave an example that some inmates might retaliate against persons making OMR complaints and even with names and other identifying information redacted, there is a high likelihood that inmates would be able to identify the person making the complaint.

6- DANIEL WHITNEY vs. UTAH DEPARTMENT OF CORRECTIONS (2005-07)

Summary- Utah State Prison inmate Daniel Whitney sought access to grievances filed against him and the responses to the grievances.

Order- Appeal denied. The Department correctly classified the records as the grievances and responses are properly classified as "private" under Utah Code Ann. 63-2-302(2)(d) and "protected" under Utah Code Ann. 63-2-304(10) and (12). The Committee concluded that disclosure of these records would jeopardize "the life or safety of an individual" and "the security or safety of the correctional facility".

7- STEVEN ONYSKO vs. UTAH DEPARTMENT OF HUMAN RESOURCE MANAGEMENT (2007-11)

Summary- Onysko requested access to records of the Department for raw candidate interview scores for a State Engineer 4 position.

Order- Appeal granted in part. The Department correctly classified the records as "protected" under Utah Code Ann. 63-2-304(25). The Committee concluded that Onysko may have his own raw data score as the public interest favoring access outweighs the interest favoring restriction, but all other info should be redacted. The Committee noted that disclosure of the scores of others and the identity of the interview panel is an unwarranted invasion of privacy and that panelists may not participate if they know their information will be public.

8- STEVEN MAESE vs. MURRAY CITY (2008-10)

Summary- Maese requested access to the last five years of sustained disciplinary records of City police officers for which all time periods for administrative appeal have expired.

Order- Appeal granted in part. The City denied the request on three separate grounds. First, certain portions of the records sought were classified as "protected" under Utah Code Ann. 63-2-304. Second, the records are considered attorney work product under Utah Code Ann 63-2-304(17). And third, release of the records would be a clear unwarranted invasion of personal privacy per Utah Code Ann 63-2-304(25). The Committee determined that the letters of sustained disciplinary reports are public because they are not part of an investigatory report, nor was there a clear unwarranted invasion of privacy. Governmental employees do have some expectation of privacy in un-sustained cases of discipline, but such is not the case for sustained cases of discipline. The Committee added that witnesses who provide information in the investigations may have a reasonable expectation of privacy under Utah Code Ann. 63G-2-304(25) and the release of their identifying information would constitute a clear unwarranted invasion of privacy and that information should not be released.

9- NATE CARLISLE, SALT LAKE TRIBUNE vs. SALT LAKE CITY POLICE DEPARTMENT (2011-03)

Summary- Salt Lake Tribune Reporter Carlisle sought access to "all materials", including video of the confrontation and shooting, police reports, narrative reports, and photographs related to a 2010 shooting.

*The appeal regarding the video was withdrawn based upon an agreement between SLCPD and Carlisle. SLCPD denied Carlisle's request because his request was not reasonably specific, pursuant to Utah Code Ann. § 63G-2-201(7)(b). SLCPD argued that the request for "all records" was too broad and could not easily be determined. SLCPD also claimed that it was not in possession of records identified by the term "narrative report" and the records manager who was familiar with the records did not understand which specific records were being sought by Carlisle.

Order- Appeal granted. The Committee found that based upon a preponderance of the evidence, SLCPD failed to show that Petitioner's GRAMA request lacked reasonable specificity. Considering the limited number of documents regarding the officer involved shooting, the Committee finds that the request was specific enough that SLCPD's records manager should have been able to understand which records were being sought and determine what records apply to the request.

10- KURT DANYSH vs. UNIFIED POLICE DEPARTMENT (2012-09)

Summary- Danysh requested records related to the police investigation of a recent murder. Specifically Danysh requested all police reports, witness reports and crime scene photographs.

*UPD initially denied the request but subsequently provided redacted copies of the reports and witness statements. UPD segregated the crime scene photographs into four separate categories. Group (1) consisted of photographs of the exterior and interior of the victim's residence. Group (2) consisted of photographs of the victim. Group (3) consisted of photographs of the suspect in a state of dress and undress, photographs of the suspect's vehicle, and photographs of prescription medications taken by the suspect. Group (4) consisted of autopsy photographs of the victim taken by the medical examiner.

Order- Appeal granted in part. The Committee concluded that pursuant to Utah Code § 63G-2-302(2)(d), release of any photographs in Groups 1 and 2 that consisted of the victim or the interior of the victim's home would be a clearly unwarranted invasion of the victim's privacy and the privacy of the surviving members of her family. Photographs contained in Group 3 depicting the suspect unclothed were ruled to be "private" for the same reason. The Committee found that all the photographs associated with the investigation of the crime and certain photographs listed in Groups 1 and 3 were "public" and should be released to Danysh and specifically noted that the photographs contained within Group 1 depicting the exterior of the victim's home are "public", the photographs contained in Group 3 taken by the Reno-Nevada Police Department showing the suspect clothed are "public", and the photographs of suspect's vehicle were also "public". The Committee also found that the autopsy photographs contained in Group 4 are subject to restricted access pursuant to another state statute, specifically Utah Code § 26-4-17, and are not considered public records.

11- ERIN ALBERTY, REPORTER FOR THE SALT LAKE TRIBUNE vs. UTAH DEPARTMENT OF PUBLIC SAFETY (2012-20)

Summary- Alberty sought records regarding an officer involved shooting. The request included (1) the DPS Internal Affairs, Incident file/investigation; (2) the dashcam video; (3) the DPS Shooting Review Board Report; (4) copies of videos of IA interviews of Trooper Bentley; and (5) the Carbon County Sheriff's Office report.

Order- Appeal granted in part. The Committee found that because the IA was sustained and the period for appeals had passed, all information requested except for the dashcam video were "public". The Committee noted that the dashcam video was protected under Utah Code Annotated 63G-2-305(9)(d) because they it was created for civil, criminal, administrative or disciplinary purposes and if released could reasonably be expected to disclose the identity of a source not generally known outside of government.

SUMMARY OF UTAH CASE LAW
REGARDING PERSONAL PRIVACY

Summary: Except for fourth amendment cases, there is a dearth of Utah case law that addresses, in general terms, an individual's right to privacy. Much like fourth amendment jurisprudence, civil cases addressing the right to privacy are very fact specific. Perhaps, the most sweeping case that establishes the definition of "right to privacy" is **Redding v. Brady** discussed below.

Deseret News establishes the analytical framework when deciding whether releasing a record constitutes an unwarranted invasion of personal privacy. **Redding** becomes useful in addressing the first prong of the **Deseret News** analysis (what is the privacy interest?) because it provides a framework in analyzing which individual privacy rights society is willing to recognize. The trick under **Deseret News** is showing disclosure of a record is an unwarranted invasion of that privacy interest. The second prong requires an analysis of the constitutional and public policy interest that may outweigh the individual's right to privacy.

Most Utah cases addressing the right to privacy do so in the context of one of the four privacy torts as discussed in **Stien v. Marriott Ownership Resorts, Inc.**

1. What is the "clearly unwarranted invasion of personal privacy" analysis under 63G-2-302(2)(d)?

Deseret News Pub. Co. v. Salt Lake County, 2008 UT 26 – This case addresses the question under what circumstances does a record contain "data on individuals the disclosure of which constitutes a clearly unwarranted invasion of personal privacy." 63G-2-302(2)(d). Unfortunately, the court's analysis is sparse. After tempting the reader by stating "many factors may contribute to a determination of whether an invasion of personal privacy is warranted" the court sticks to the specific facts of the case and never expounds on what some of those factors may be. ¶ 31.

The court looks at the issue of releasing a record in two parts. The first part asks what privacy interests are implicated in release of the document, while the second part asks whether disclosure is unwarranted. This second portion of the analysis requires consideration of "the constitutional and public policy interests that GRAMA insists be placed on the scales that weigh whether or not a record ought to be made public." ¶33. The court concludes its analysis by holding "section 63-2-302(2)(d) necessarily demands an expansive and searching evaluation of the interests that might make an invasion of personal privacy warranted." ¶33.

2. What privacy interests does Utah case law recognize?

Accepted standards of social propriety: Redding v. Brady, 606 P.2d 1193, 1195-96 (Utah 1980)

"It seems sufficient for our purpose herein to say that what the right of privacy protects is to be determined by applying the commonly accepted standards of social propriety. This includes

those aspects of an individual's activities and manner of living that would generally be regarded as being of such personal and private nature as to belong to himself and to be of no proper concern to others. The right should extend to protect against intrusion into or exposure of not only things which might result in actual harm or damage, but also to things which might result in shame or humiliation, or merely violate one's pride in keeping his private affairs to himself."

Four privacy torts: Stien v. Marriott Ownership Resorts, Inc., 944 P.2d 374, 377-78 (Utah Ct. App. 1997)

"[T]he law of privacy is a relatively recent phenomenon." *Crump v. Beckley Newspapers, Inc.*, 173 W.Va. 699, 320 S.E.2d 70, 81 (1984). Even so, it has developed over the years into a widely accepted area of tort law, providing a remedy independent of other tort theories protecting reputation and peace of mind, including defamation and intentional infliction of emotional distress. *See generally* Samuel D. Warren & Louis D. Brandeis, *The Right to Privacy*, 4 Harv. L.Rev. 193 (1890) (discussing concept of privacy giving rise to independent tort remedy).

The current formulation of privacy law has been influenced to a large degree by Dean William L. Prosser, who illuminated the law of privacy in a 1960 law review article. *See* William L. Prosser, *Privacy*, 48 Cal. L.Rev. 383 (1960). Instead of just one tort, Dean Prosser wrote, the law of privacy comprises four distinct kinds of invasion of four different interests of the plaintiff, which are tied together by the common name, but otherwise have almost nothing in common except that each represents an interference with the right of the plaintiff, in the phrase coined by Judge Cooley, "to be let alone." *Id.* at 389 (footnote omitted).

According to Dean Prosser, the four privacy torts are: (1) intrusion upon the plaintiff's seclusion or solitude, or into plaintiff's private affairs, (2) appropriation, for the defendant's advantage, of the plaintiff's name or likeness, (3) public disclosure of embarrassing private facts about the plaintiff, and (4) publicity which places the plaintiff in a false light in the public eye. *See id.*" *See also* Cox v. Hatch, 761 P.2d 556 (Utah 1988).

In analyzing the plaintiff's claims under the four tort theories the court recognized a privacy interest in not having your private conversations intruded upon (i.e. wiretapping or other means of eavesdropping), a privacy interest in your likeness or exclusive use of your own identity, a privacy interest in private facts about yourself that the public has no legitimate interest in knowing, and a privacy interest in not being portrayed in a false light. It is interesting to note that the court affirmed the grant of summary judgment to the defendants.

Some Utah Privacy Statutes Outside of GRAMA

The Utah Government Records Access and Management Act (GRAMA) says that records are not public to which access is restricted pursuant to another Utah state statute. UCA §63G-2-201(3)(b). Several statutes exist outside of GRAMA, relating to the privacy rights of individuals which may form important additions to privacy restrictions included within GRAMA itself. Several may have application to city operations. This is particularly the case with law enforcement which gathers and records information of the most personal nature, some of which is known to be false, but which is essential to the thoroughness of its investigations.

Some of the State statutes intended to protect individual privacy outside of GRAMA include the following:

1. A person is guilty of criminal defamation if he knowingly communicates to any person orally or in writing any information which he knows to be false and knows will tend to expose any other living person to public hatred, contempt, or ridicule. UCA §76-9-404.
2. Any person who willfully states, conveys, delivers, or transmits, by any means whatsoever, to the manager, editor, publisher, reporter, or agent of any radio station, television station, newspaper, magazine, periodical, or serial for publication therein, any false or libelous statement concerning any person, and thereby secures actual publication of the same, is guilty of a class B misdemeanor. UCA §76-9-509.
3. A communication made to a person interested in the communication by one who is also interested, or who stands in a relation to the former as to afford a reasonable ground for supposing his motive innocent is a privileged communication. UCA §76-9-506
4. "The government has a privilege to refuse to disclose the identity of an informer." An "informer" means any person who has furnished information relating to or assisting in an investigation of a possible violation of law to a law enforcement officer." Utah Rule of Evidence 505. (See also GRAMA UCA §63G-2-305(9)(d) and (10).
5. It's generally unlawful to intentionally "intercept" any . . . oral communication." UCA §77-23a-4. An "oral communication" means any oral communication uttered by a person exhibiting an expectation that the communication is not subject to interception, under circumstances justifying that expectation, but does not include any electronic communication." UCA §77-23a-3(13). There is an exception for law enforcement officers but only to the extent they are acting in their "official duties." UCA §77-23a-9(1). Other statutes also contain exemptions from criminal and civil liability only to the extent a law enforcement officer is acting within the scope of a criminal investigation. [distributing materials depicting sexual exploitation of a vulnerable adult] UCA §76-5b-202

6. Auto accident reports are for the confidential use of law enforcement. Only a person in the motor vehicle accident or his representative may get a copy of the report. UCA §41-6a-404.
7. Juvenile Court records are restricted. 78A-6-115. Juvenile photos, fingerprints, HIV exams as well. UCA §78A-6-1104.
8. "There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate." Privileged communications, of course, include husband/wife, physician/patient, attorney/client, clergy /confessor. They also include "communications made in official confidence when the public interests would suffer by the disclosure." Can routine release of police witness and incident reports undermine this policy by disclosing communications, for instance, between a husband and wife made during marriage, without the consent of the other (e.g., cases of domestic violence)? UCA §78B-1-137(5)

As stated above, GRAMA itself contains privacy restrictions, some of which underscore these statutes. For instance, records containing information on a persons health or medical condition are restricted. UCA §63G-2-107 and 302. So also are home addresses and telephone number, e-mail addresses, driver license number, social security number, marital status, insurance coverage, employee payroll deductions, etc. UCA §63G-2-302. GRAMA also contains a catch-all restriction for records containing data on individuals the disclosure of which constitutes "a clearly unwarranted invasion of personal privacy." UCA §63G-2-302.

There, of course, may be other federal or state laws and regulations which apply to particular situations.

Privacy Generally

It has been stated that the right of privacy is relative to the customs of the time and place, and is to be determined by the norm of the ordinary man. See Am. Jur. 2d, Privacy § 13.

The right of privacy, as an independent and distinctive legal concept, and as one of the major fundamental constitutional rights, has two main aspects: (1) the general law of privacy, which affords a tort action for damages resulting from an unlawful invasion of privacy; and (2) the constitutional right of privacy which protects personal privacy against unlawful governmental invasion. The Federal Constitution promises that there is a realm of personal liberty which the government may not enter, and the result is a right of personal privacy, or a guarantee of certain areas or zones of privacy. The rights included within that zone are deemed fundamental and include activities related to marriage, procreation, contraception, family relationships, and child rearing and education. They involve the most intimate and personal choices a person can make in his or her lifetime, and include choices central to the liberty protected by the Fourteenth Amendment. 62A Am Jur 2d Privacy § 5

10th Circuit

FOIA

Exemption 7(C) to the Freedom of Information Act allows an agency to withhold records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information could reasonably be expected to constitute an unwarranted invasion of personal privacy. 5 U.S.C.S. § 552(b)(7)(C).

Even when there has been some public disclosure (as in a trial), individuals may still have a strong privacy interest in what was disclosed if public disclosure was limited. See *Prison Legal News v. Exec. Office for United States Attys.*, 628 F.3d 1243, 1250 (10th Cir. Colo. 2011) (family of deceased individual retained strong privacy interest in images of deceased used at trial)

Disclosure of booking photographs could reasonably be expected to constitute an "unwarranted" invasion of personal privacy *World Publ'g Co. v. United States DOJ*, 2011 U.S. Dist. LEXIS 32594 (N.D. Okla. Mar. 28, 2011) (upheld in *World Publ'g Co. v. United States DOJ*, 672 F.3d 825, 826 (10th Cir. Okla. 2012)

The protection in FOIA against disclosure of law enforcement information on the ground that it would constitute an unwarranted invasion of personal privacy does not extend to corporations. *FCC v. AT&T Inc.*, 131 S. Ct. 1177, 1185 (U.S. 2011)

TORT

The right protected by the action for invasion of privacy is a personal right, peculiar to the individual whose privacy is invaded. The cause of action is not assignable, and it cannot be maintained by other persons such as members of the individual's family, unless their own privacy is invaded along with his or hers. 62A Am Jur 2d Privacy § 13, see also Restatement (Second) of Torts § 652I cmt. a

Invasion of privacy is a generic term for a number of separate torts commonly identified as: (1) publicity that places one in a false light in the public eye; (2) appropriating one's name or likeness for another's benefit; (3) public disclosure of private facts, which concerns the communication or publication to third parties of information or activities which a person has held private; and, at issue here, (4) intrusion upon seclusion, which focuses on the manner in which information that a person has kept private has been obtained. *Doe v. High-Tech Inst., Inc.*, 972 P.2d 1060, 1064-1065 (Colo. Ct. App. 1998)

An individual may have a privacy interest in information which is not authored by or principally concerned with that individual, so long as the information touches on personal aspects of the individual's life and is subject to a reasonable expectation of privacy. *Sheets v. Salt Lake County*, 45 F.3d 1383, 1387 (10th Cir. Utah 1995)

When an employee was fired for refusing to fill out a medical information form (disclosing any prescribed medications, the reasons for the prescriptions, and the prescribing doctors) connected to the employer's drug testing policy, the intrusion into her privacy was too insignificant to warrant an exception to the state's at-will employment doctrine. *Mares v. Conagra Poultry Co.*, 971 F.2d 492 (10th Cir. Colo. 1992)

CRIMINAL LAW

Individuals have no objectively reasonable expectation of privacy in an airplane hangar they do not control. *United States v. Ruiz*, 664 F.3d 833, 838-839 (10th Cir. Kan. 2012).

Defendant had no expectation of privacy in a common storage area shared by multiple tenants. *United States v. Maestas*, 639 F.3d 1032 (10th Cir. N.M. 2011)

There is no reasonable expectation of privacy in mere presence at another's residence. (officers performing a protective sweep of a residence found defendant was present) *United States v. Jimenez*, 336 Fed. Appx. 798 (10th Cir. 2009)

Privacy rights in a storage unit are forfeited by entering into the rental agreement using a false name. *United States v. Johnson*, 584 F.3d 995, 996 (10th Cir. Utah 2009)

Those bringing personal material into public spaces in such circumstances, cannot reasonably expect their personal materials to remain private. (city official who brought a personal computer to work did not have a reasonable expectation of privacy because he failed to take affirmative steps to limit other employees' access). *United States v. Barrows*, 481 F.3d 1246 (10th Cir. 2007).

There is no expectation of privacy in abandoned property. *United States v. Denny*, 441 F.3d 1220 (10th Cir. N.M. 2006)

Warrantless search and seizure of abandoned property is not a violation of privacy. *United States v. Flynn*, 309 F.3d 736, 738 (10th Cir. 2002).

University professor did not have an objectively reasonable expectation of privacy regarding pornographic images downloaded into his university computer. *United States v. Angevine*, 281 F.3d 1130 (10th Cir. Okla. 2002)

10th Circuit is "reluctant to find a reasonable expectation of privacy where the circumstances reveal a careless effort to maintain a privacy interest." In this case the careless effort included leaving the item (gun) on the floor in a room with an open door in an area that was unlocked (a garage) and walking away from the item. *United States v. Easterling*, 41 Fed. Appx. 201, 204-205 (10th Cir. Okla. 2002)

The analysis to determine if an individual has a "legitimate expectation of privacy in the area searched" considers two factors: (1) "whether the person manifested a subjective expectation of privacy in the area searched" and (2) "whether society is prepared to recognize that expectation as objectively reasonable." *United States v. Allen*, 235 F.3d 482, 489 (10th Cir. 2000) (internal quotation marks omitted).

People generally have a reasonable expectation of privacy in a storage unit, because storage units are secure areas that command a high degree of privacy. *United States v. Salinas-Cano*, 959 F.2d 861, 864 (10th Cir. 1992)

By placing his garbage in sealed, opaque bags and depositing it directly in the dumpster provided for motel guests, defendant's actions demonstrated a reasonable expectation that those bags would remain free from warrantless law enforcement inspection (case is specific to New Mexico's heightened privacy protections in the N.M. Const. art. II, § 10. State v. Crane, 149 N.M. 674 (N.M. Ct. App. 2011))

Juvenile had no reasonable expectation of privacy regarding the drug paraphernalia seized by Probation Officer because the express terms of his probation permitted random searches. State ex rel. A.C.C., 2002 UT 22, P28 (Utah 2002)

Individuals do not have a reasonable expectation of privacy in the presence of contraband in lawfully obtained blood. State v. Price, 2012 UT 7, P4 (Utah 2012).

No expectation of privacy in garbage left adjacent to a public sidewalk for collection was unreasonable. People v. Hillman, 834 P.2d 1271, 1280 (Colo. 1992)

Defendant had no reasonable expectation of privacy in her van and purse contents, which included cocaine, when she left van wrecked and unlocked in a field without reporting accident to police or land owner. State v. Rynhart, 2005 UT 84, P4 (Utah 2005)