STATE RECORDS COMMITTEE

NOTICE OF PUBLIC MEETING

Thursday, March 19, 2015 at 9 a.m. to 4 p.m.

Utah State Archives Building
346 S. Rio Grande St.
Salt Lake City, UT 84101

NOTE: The Chair may recess at 12 noon and may reconvene at 12:30 p.m. for lunch when there are two or more hearings scheduled.

AGENDA

HEARINGS:

Scott Gollaher vs. Utah Attorney General's Office, Criminal Division. Mr. Gollaher requested records from the Salt Lake Police Department in July and was referred to the Attorney General's Office for the records. He is appealing the AG response that they were unable to locate the requested records. Held telephonic.

Scott Gollaher vs. Morgan County Sheriff's office and Morgan County Attorney's office. Mr. Gollaher is appealing Morgan County Sheriff's office denial for photos, video, records created by Weber County Sheriff's Office in relationship to a search warrant execution. Additionally, Mr. Gollaher is appealing Morgan County Attorney's office denial for all photos, video, records created by SLCPD or SLCAO in relation to the search warrant execution in July 2012. These two appeals have been combined because they are from the same governmental entity. Held telephonic.

Scott Gollaher vs. Weber County Sheriff's Office. Mr. Gollaher requested records from Weber County Sheriff's Office. Weber County Sheriff's Office stated it does not maintain the records and referred the petitioner to Morgan County records officer. Petitioner submitted new evidence that governmental entity "at one time," created a records specific to his request pursuant Rule R35-2-2(2). Held telephonic.

Paul Amann vs. Dept. of Human Resource Management. Mr. Amann is appealing DHRM's denial of the investigative results and report that were produced and prepared by the Attorney General's office with the assistance from DHRM.

CANCELED HEARINGS:

Harshad P. Desai vs. Panguitch City, Utah. Mr. Desai is appealing the City's denial of records relating to the 2013 list of vendors for the Panquitch Balloon Festival, 2014 Balloon Festival meeting minutes, and city policy for citizen organizers.

Scott Gollaher vs. DCFS. Mr. Gollaher is appealing DCFS denial for case # 1887537 and names of employee who had contact with said parties on specific days identified in the appeal.

BUSINESS

Approval of February 12, 2015, SRC Minutes, action item

SRC appeals received

Cases in District Court

Other Business

Legislative Updates and Administrative Rules discussion
Next meeting scheduled for April 9, 2015 @ 9 a.m. to 4 p.m.

ADA: In compliance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during this meeting should notify Nova Dubovik at the Utah State Archives and Records Service, 346 S. Rio Grande, Salt Lake City, Utah 84101, or call (801)531-3834, at least three days prior to the meeting.

Electronic Participation: One or more members of the State Records Committee may participate electronically or telephonically pursuant to Utah Code 52-4-207(2) and Administrative Rule 35-1-2. Please direct any questions or comments to: State Records Committee, Utah State Archives, 346 S. Rio Grande, Salt Lake City, Utah 84101 (801) 531-3834.

STATE RECORDS COMMITTEE

Appeals Received

As of March 2015

Pending Documentation/Other:

1 **14-63 P. Robert Augason vs. University of Utah (Appealed 21 Oct).** Mr. Augason is appealing the denial of records relating to the property, income, and trademark rights associated with various block "U" trademarks. The Petitioner would like to reschedule the hearing canceled in February for April or May. Mr. Augason stated the respondent has not provided the requested records as promised.

Hearing Denial:

2 **14-60 Robert Baker vs. UDC (Appealed 8 Oct).** Mr. Baker appealed the denial of receiving copies of Policy and Procedures at Utah State Prison and that UDC's interpretation of U.C. 63G-2-201(8)(a)(v)(A) was never appealed or legally challenged before the State Records Committee. On or about December 30, 2014, UDC reset the 100 copy allotment and provided copies of the policy to Mr. Baker. Hearing denied January 5, 2015 by Chair and second committee member because the subject of the appeal has been found by the Committee in a previous hearing involving the same governmental entity. Decisions and Orders 14-12 & 12-23. Mr. Baker has requested reconsideration for a hearing on January 29th and most recently March 5th.

3 **15-09 John Montour vs. UDC/Clinical Services (Appealed 19 Feb).** Mr. Montour is appealing the denial of a Mental Health records held by Clinical Services from January 2014 to present time. Clinical Services denied the records request based on the classification of the requested records as "controlled" pursuant to 63G-2-304. The CAO upheld the denial. The hearing is declined due to appeal subject has been found by the committee in a previous hearing involving the same government entity to be appropriately classified as private, controlled, or protected. Section 63G-2-404(4)(b)(i). (Case No. 99-02).

Hearing Scheduled for March 2015:

4 **15-01 Scott Gollaher vs. Utah Attorney General's Office, Criminal Division (Appealed 5 Jan).** Mr. Gollaher requested records from the Salt Lake Police Department in July and was referred to the Attorney General's Office for the records. He is appealing the AG response that they were unable to locate the requested records. Hearing scheduled for March. Held telephonic.

5 **15-03 Scott Gollaher vs. Weber County Sheriff's Office (Appealed 20 Jan).** Mr. Gollaher requested records from Weber County Sheriff's Office. Weber County Sheriff's Office stated it does not maintain the records and referred the petitioner to Morgan

County records officer. Petitioner submitted new evidence that governmental entity "at one time," created a records specific to his request-pertinent to the State Records Committee Administrative Rule, Rule R35-2-2(2). Hearing scheduled for March. Held telephonic.

6 **15-04 Harshad P. Desai vs. Panguitch City, Utah (Appealed 2 Feb).** Mr. Desai is appealing the City's denial of records relating to the 2013 list of vendors for the Panquitch Balloon Festival, 2014 Balloon Festival meeting minutes, and city policy for citizen organizers. Hearing is rescheduled for April. Held telephonic.

7 **15-05 Scott Gollaher vs. DCFS (Appealed 5 Feb**). Mr. Gollaher is appealing DCFS denial for case # 1887537 and names of employee who had contact with said parties on specific days identified in the appeal. Hearing is rescheduled for April. Held telephonic.

8 **15-06 Scott Gollaher vs. Morgan County Sheriff's office and (15-07) Morgan County Attorney's office. (Appealed 5 Feb & 13 Feb).** Mr. Gollaher is appealing Morgan County Sheriff's office denial for photos, video, records created by Weber County Sheriff's Office in relationship to a search warrant execution. Additionally, Mr. Gollaher is appealing Morgan County Attorney's office denial for all photos, video, records created by SLCPD or SLCAO in relation to the search warrant execution in July 2012. These two appeals have been combined because they are from the same governmental entity. Hearing is scheduled for March. Held telephonic.

9 **15-08 Paul Amann vs. Dept. of Human Resource Management (Appealed 17 Feb).** Mr. Amann is appealing DHRM's denial of the investigative results and report that were produced and prepared by the Attorney General's office with the assistance from DHRM. Hearing scheduled for March.

Hearing Scheduled for April 2015:

10 **14-73 Isaac Lemus vs. Department of Human Services, DCFS (Appealed 26 Nov).** Durham Jones & Pinegar, on behalf of the Lemus Family, is appealing the partial denial of Isaac Lemus' appeal to DHS. DHS redacted requested surveillance footage that now renders the video footage unintelligible. Hearing is scheduled for April.

11 **15-10 Thomas Dudley Beck vs Bluff Water Works Special Service District (BWWSSD) (Appealed 9 Mar).** Mr. Beck is appealing the denial of water use data forms from 2007-2014 from Bluff Water Works Special Service District (BWWSSD). BWWSSD states they do not maintain the records and denied access to the requested information from disclosure pursuant to Subsection 63G-2-201(8)(a). Hearing is scheduled for April.

March 2015 State Records Committee Case Updates

District Court Cases

Utah Dept. of Human Resources v. Paul Amann, 3rd District, Salt Lake County, Case No. 150901160, filed February 19, 2015.

Current Disposition: Complaint filed with the Court and answer filed on behalf of the Committee on March 11, 2015. A motion was made to seal the record, which was granted by the Court on March 9, 2015.

Daniel Rivera Jr. v. Utah Department of Human Services, Division of Child and Family Services, 3rd District, Salt Lake County, Case No. 150900589, Judge Toomey, filed January 27, 2015.

Current Disposition: Complaint filed with Court but no service yet on the Committee. Answer prepared to file once service has been completed.

Jordanelle Special Service District v. Utah State Auditor, 3rd District, Salt Lake County, Case No. 150900423, Judge McKelvie, filed January 20, 2015.

Current Disposition: Parties have agreed to dismiss the case pending the release of the audit by the Utah State Auditor.

Utah Dept. of Correction v. Campbell, 3rd District, Salt Lake County, Case No. 140906834, Judge Parker, filed October 1, 2014.

Current Disposition: Default judgment dismissing the case to be filed by Department of Corrections for failure of Campbell (Buzzfeed) to file an answer (article which was the basis for the GRAMA request has already been published).

Salt Lake City v. Jordan River Restoration Network, 3rd Judicial District, Salt Lake County, Case No. 100910873, Judge Stone, filed June 18, 2010.

Current Disposition: Decision from the Court granted motions for SLC regarding Jordan River's claims, but Court denied motion for summary judgment regarding the ultimate issue of the case (should the fee be waived for the records).

Appellate Court Cases

Attorney General Office. v. Schroeder, Utah Supreme Court, Appeal No. 20121057.

Current Disposition: Case has been transferred and certified to the Utah Supreme Court as of January 31, 2014. Appellee (Attorney General Office) appellate brief filed on February 19, 2014, reply brief filed on April 22, 2014. Waiting for hearing date to be scheduled.

2015 General Session of the Utah Legislature

Bills Affecting Title 63G Chapter 2 (Government Records Access and Management Act)			
HB0155 Revisor's - Technical Corrections	*Dunnigan*	Modifies parts of the Utah Code to make technical corrections	Modifies Subsection 63-G-2-202(11)(a) making employment records accessible only with a court order, modifies Subsection 63G-2-703, correcting citation for State Archives Statute to 63A-12
HB0184 Victim Restitution Amendments	*Wilson*	Makes a victim's application for and receipt of reparations protected records under GRAMA	Adds Subsection 63-G-2-305 (65)
HB0251 Amendments to the Interlocal Act	*Anderson*	Authorizes a Utah public agency to exercise, with certain limitations, a power, privilege, or authority with any other Utah public agency	Adds Subsection 63G-2-103(11)(b)(ii), making interlocal agencies a governmental entity under GRAMA
HB338 Resolving Government Record Disputes	*Chavez-Houck*	Modifies provisions related to a process for resolving disputes concerning government records, authorizes the state auditor to submit to the State Records Committee a dispute about the public release of a record in conjunction with the release of an audit report	Add Subsection 63G-2-502(1)(d), to determine such disputes
HB340 Voter Preregistration Amendments	*Cox*	Allows an individual who is 16 or 17 years of age to preregister to vote in an election	Modifies Subsection 63G-2-302(1)(k) to make those records private
SB0018 Governor's Office of Economic Development Revisions	*Osmond*	Modifies provisions of GOED	Modifies cross-reference in Subsection 63G-2-305
SB0157S03 Government Records Access and Management Act Amendments	*Bramble*	Makes consumer complaint files public in certain circumstances. Modifies the process of appealing the denial of a record request; modifies appeals process for a local appeals board, modifies time frames	Modifies Sections 63G-2-401, 63G-2-402, 63G-2-403, 63G-2-404, 63G-2-501, 63G-2-701
SB0159 Background Checks for State Accountants	*Henderson*	Classifies the background check or credit history report as a private record	Adds Subsection 63G-2-302(1)(v)

LEGISLATIVE GENERAL COUNSEL
₺ Approved for Filing: R.H. Rees ₺
₺ 03-06-15 7:52 AM ₺

S.B. 157
3rd Sub. (Ivory)

Representative Brad M. Daw proposes the following substitute bill:

GOVERNMENT RECORDS AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: Brad M. Daw

LONG TITLE

General Description:

This bill modifies provisions relating to government records.

Highlighted Provisions:

This bill:

- modifies the process of appealing the denial of a record request;
- modifies provisions relating to a political subdivision's process for appealing a decision concerning records of the political subdivision;
- makes certain consumer complaints and responses filed with the Division of Consumer Protection public records; and
- modifies the timeline that applies in an appeal to the records committee and allows the records committee to defer consideration of an appeal under certain circumstances.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

3rd Sub. S.B. 157

13-15-3, as last amended by Laws of Utah 2010, Chapter 278

63G-2-401, as last amended by Laws of Utah 2012, Chapter 377

63G-2-402, as renumbered and amended by Laws of Utah 2008, Chapter 382

63G-2-403, as last amended by Laws of Utah 2013, Chapter 445

63G-2-404, as last amended by Laws of Utah 2012, Chapter 377

63G-2-501, as last amended by Laws of Utah 2013, Chapter 231

63G-2-701, as last amended by Laws of Utah 2009, Chapter 131

ENACTS:

13-26-12, Utah Code Annotated 1953

63G-2-400.5, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **13-15-3** is amended to read:

13-15-3. Administration and enforcement -- Powers -- Legal counsel -- Fees -- Consumer complaints.

(1) The division shall administer and enforce this chapter. In the exercise of its responsibilities, the division shall enjoy the powers, and be subject to the constraints, set forth in Title 13, Chapter 2, Division of Consumer Protection.

(2) The attorney general, upon request, shall give legal advice to, and act as counsel for, the division in the exercise of its responsibilities under this chapter.

(3) All fees collected under this chapter shall be deposited in the Commerce Service Account created by Section 13-1-2.

(4) (a) As used in this Subsection (4), "consumer complaint" means a complaint that:

(i) is filed with the division by a consumer or business;

(ii) alleges facts relating to conduct that the division regulates under this chapter; and

(iii) (A) alleges a loss to the consumer or business of $3,500 or more; or

(B) is one of at least 50 other complaints against the same person filed by other consumers or businesses during the four years immediately preceding the filing of the complaint.

(b) For purposes of determining the number of complaints against the same person under Subsection (4)(a)(iii)(B), the division may consider complaints filed against multiple

corporations, limited liability companies, partnerships, or other business entities under common ownership to be complaints against the same person.

(c) Notwithstanding Subsection 13-11-7(2) and subject to Subsections (4)(d) and (e), a consumer complaint:

(i) is a public record; and

(ii) may not be classified as a private, controlled, or protected record under Title 63G, Chapter 2, Government Records Access and Management Act.

(d) Subsection (4)(c) does not apply to a consumer complaint:

(i) (A) if the division determines through an administrative proceeding that the consumer complaint is nonmeritorious; and

(B) beginning when the nonmeritorious determination is made; or

(ii) that has been on file with the division for more than four years.

(e) Before making a consumer complaint that is subject to Subsection (4)(c) or a response described in Subsection (4)(f) available to the public, the division:

(i) shall redact from the consumer complaint or response any information that would disclose the address, Social Security number, bank account information, email address, or telephone number of the consumer or business; and

(ii) may redact the name of the consumer or business and any other information that could, in the division's judgment, disclose the identity of the consumer or business filing the consumer complaint.

(f) A person's initial, written response to a consumer complaint that is subject to Subsection (4)(c) is a public record.

Section 2. Section **13-26-12** is enacted to read:

13-26-12. Consumer complaints are public.

(1) As used in this section, "consumer complaint" means a complaint that:

(a) is filed with the division by a consumer or business;

(b) alleges facts relating to conduct that the division regulates under this chapter; and

(c) (i) alleges a loss to the consumer or business of $3,500 or more; or

(ii) is one of at least 50 other complaints against the same person filed by other consumers or businesses during the four years immediately preceding the filing of the complaint.

(2) For purposes of determining the number of complaints against the same person under Subsection (1)(c)(ii), the division may consider complaints filed against multiple corporations, limited liability companies, partnerships, or other business entities under common ownership to be complaints against the same person.

(3) Notwithstanding Subsection 13-11-7(2) and subject to Subsections (4) and (5), a consumer complaint:

(a) is a public record; and

(b) may not be classified as a private, controlled, or protected record under Title 63G, Chapter 2, Government Records Access and Management Act.

(4) Subsection (3) does not apply to a consumer complaint:

(a) (i) if the division determines through an administrative proceeding that the consumer complaint is nonmeritorious; and

(ii) beginning when the nonmeritorious determination is made; or

(b) that has been on file with the division for more than four years.

(5) Before making a consumer complaint that is subject to Subsection (3) or a response described in Subsection (6) available to the public, the division:

(a) shall redact from the consumer complaint or response any information that would disclose the address, Social Security number, bank account information, email address, or telephone number of the consumer or business; and

(b) may redact the name of the consumer or business and any other information that could, in the division's judgment, disclose the identity of the consumer or business filing the consumer complaint.

(6) A person's initial, written response to a consumer complaint that is subject to Subsection (2) is a public record.

Section 3. Section **63G-2-400.5** is enacted to read:

63G-2-400.5. Definitions.

As used in this part:

(1) "Access denial" means a governmental entity's denial, under Subsection 63G-2-204(8) or Section 63G-2-205, in whole or in part, of a record request.

(2) "Appellate affirmation" means a decision of a chief administrative officer, local appeals board, or records committee affirming an access denial.

(3) "Interested party" means a person, other than a requester, who is aggrieved by an access denial or an appellate affirmation, whether or not the person participated in proceedings leading to the access denial or appellate affirmation.

(4) "Local appeals board" means an appeals board established by a political subdivision under Subsection 63G-2-701(5)(c).

(5) "Record request" means a request for a record under Section 63G-2-204.

(6) "Records committee appellant" means:

(a) a political subdivision that seeks to appeal a decision of a local appeals board to the records committee; or

(b) a requester or interested party who seeks to appeal to the records committee a decision affirming an access denial.

(7) "Requester" means a person who submits a record request to a governmental entity.

Section 4. Section **63G-2-401** is amended to read:

63G-2-401. Appeal to chief administrative officer -- Notice of the decision of the appeal.

(1) (a) [~~Any person aggrieved by a governmental entity's access determination under this chapter, including a person not a party to the governmental entity's proceeding,~~] A requester or interested party may appeal [~~the determination within 30 days~~] an access denial to the chief administrative officer of the governmental entity by filing a notice of appeal[~~.~~] with the chief administrative officer within 30 days after:

(i) the governmental entity sends a notice of denial under Section 63G-2-205, if the governmental entity denies a record request under Subsection 63G-2-205(1); or

(ii) the record request is considered denied under Subsection 63G-2-204(8), if that subsection applies.

(b) (i) If a governmental entity claims extraordinary circumstances and specifies the date when the records will be available under Subsection 63G-2-204(3), and, if the requester believes the extraordinary circumstances do not exist or that the [~~time~~] date specified is unreasonable, the requester may appeal the governmental entity's claim of extraordinary circumstances or date for compliance to the chief administrative officer by filing a notice of appeal with the chief administrative officer within 30 days after notification of a claim of extraordinary circumstances by the governmental entity, despite the lack of a "determination"

or its equivalent under Subsection 63G-2-204[~~(7)~~](8).

(2) [~~The~~] A notice of appeal shall contain [~~the following information~~]:

(a) the [~~petitioner's~~] name, mailing address, and daytime telephone number of the requester or interested party; and

(b) the relief sought.

(3) The [~~petitioner~~] requester or interested party may file a short statement of facts, reasons, and legal authority in support of the appeal.

(4) (a) If the appeal involves a record that is the subject of a business confidentiality claim under Section 63G-2-309, the chief administrative officer shall:

(i) send notice of the [~~requester's~~] appeal to the business confidentiality claimant within three business days after receiving notice, except that if notice under this section must be given to more than 35 persons, it shall be given as soon as reasonably possible; and

(ii) send notice of the business confidentiality claim and the schedule for the chief administrative officer's determination to the requester or interested party within three business days after receiving notice of the [~~requester's~~] appeal.

(b) The business confidentiality claimant shall have seven business days after notice is sent by the administrative officer to submit further support for the claim of business confidentiality.

(5) (a) The chief administrative officer shall make a [~~determination~~] decision on the appeal within [~~the following period of time~~]:

(i) [~~within~~] five business days after the chief administrative officer's receipt of the notice of appeal; or

(ii) [~~within~~] 12 business days after the governmental entity sends the [~~requester's~~] notice of appeal to a person who submitted a claim of business confidentiality.

(b) (i) If the chief administrative officer fails to make a [~~determination~~] decision on an appeal of an access denial within the time specified in Subsection (5)(a), the failure [~~shall be considered~~] is the equivalent of [~~an order denying the appeal~~] a decision affirming the access denial.

(ii) If the chief administrative officer fails to make a decision on an appeal under Subsection (1)(b) within the time specified in Subsection (5)(a), the failure is the equivalent of a decision affirming the claim of extraordinary circumstances or the reasonableness of the date

specified when the records will be available.

(c) The provisions of this section notwithstanding, the parties participating in the proceeding may, by agreement, extend the time periods specified in this section.

(6) Except as provided in Section 63G-2-406, the chief administrative officer may, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or nondisclosure, order the disclosure of information properly classified as private under Subsection 63G-2-302(2) or protected under Section 63G-2-305 if the interests favoring access are greater than or equal to the interests favoring restriction of access.

(7) (a) The governmental entity shall send written notice of the [~~determination of the~~] chief administrative [~~officer~~] officer's decision to all participants.

(b) If the chief administrative [~~officer affirms the~~] officer's decision is to affirm the access denial in whole or in part, the [~~denial~~] notice under Subsection (7)(a) shall include:

(i) a statement that the requester or interested party has the right to appeal the [~~denial~~] decision, as provided in Section 63G-2-402, to [~~either~~]:

(A) the records committee or district court[~~;~~]; or

(B) the local appeals board, if the governmental entity is a political subdivision and the governmental entity has established a local appeals board;

(ii) the time limits for filing an appeal[~~;~~]; and

(iii) the name and business address of:

(A) the executive secretary of the records committee[~~.~~]; and

(B) the individual designated as the contact individual for the appeals board, if the governmental entity is a political subdivision that has established an appeals board under Subsection 63G-2-701(5)(c).

(8) A person aggrieved by a governmental entity's classification or designation determination under this chapter, but who is not requesting access to the records, may appeal that determination using the procedures provided in this section. If a nonrequester is the only appellant, the procedures provided in this section shall apply, except that the [~~determination~~] decision on the appeal shall be made within 30 days after receiving the notice of appeal.

(9) The duties of the chief administrative officer under this section may be delegated.

Section 5. Section **63G-2-402** is amended to read:

63G-2-402. Appealing a decision of a chief administrative officer.

(1) If the decision of the chief administrative officer of a governmental entity [~~denies a records~~] under Section 63G-2-401 is to affirm the denial of a record request [~~under Section 63G-2-401~~], the requester may:

(a) (i) appeal the [~~denial~~] decision to the records committee, as provided in Section 63G-2-403; or

[~~(b)~~] (ii) petition for judicial review of the decision in district court, as provided in Section 63G-2-404[~~.~~]; or

[~~(2) Any person aggrieved by a determination of the chief administrative officer of a governmental entity under this chapter, including persons who did not participate in the governmental entity's proceeding, may appeal the determination to the records committee as provided in Section 63G-2-403.~~]

(b) appeal the decision to the local appeals board if:

(i) the decision is of a chief administrative officer of a governmental entity that is a political subdivision; and

(ii) the political subdivision has established a local appeals board.

(2) A requester who appeals a chief administrative officer's decision to the records committee or a local appeals board does not lose or waive the right to seek judicial review of the decision of the records committee or local appeals board.

(3) As provided in Section 63G-2-403, an interested party may appeal to the records committee a chief administrative officer's decision under Section 63G-2-401 affirming an access denial.

Section 6. Section **63G-2-403** is amended to read:

63G-2-403. Appeals to the records committee.

(1) (a) A [~~petitioner, including an aggrieved person who did not participate in the appeal to the governmental entity's chief administrative officer, may appeal~~] records committee appellant appeals to the records committee by filing a notice of appeal with the executive secretary of the records committee no later than[~~: (a)~~] 30 days after the [~~day on which the chief administrative officer of the governmental entity grants or denies the record request in whole or in part, including a denial under Subsection 63G-2-204(8);~~] date of issuance of the decision being appealed.

(b) Notwithstanding Subsection (1)(a), a requester may file a notice of appeal with the executive secretary of the records committee no later than 45 days after the day on which the [~~original~~] record request [~~for a record~~] is made if:

(i) the circumstances described in Subsection 63G-2-401(1)(b) occur; and

(ii) the chief administrative officer [~~failed~~] fails to make a [~~determination~~] decision under Section 63G-2-401.

(2) The notice of appeal shall [~~contain the following information~~]:

(a) contain the [~~petitioner's~~] name, mailing address, and daytime telephone number of the records committee appellant;

[~~(b) a copy of any denial of the record request; and~~]

(b) be accompanied by a copy of the decision being appealed; and

(c) state the relief sought.

(3) The [~~petitioner~~] records committee appellant:

(a) shall, on the day on which the [~~petitioner files an appeal to~~] notice of appeal is filed with the records committee, serve a copy of the notice of appeal on:

(i) the [~~government entity, described in Subsection (1), to which the appeal relates; and~~] governmental entity whose access denial is the subject of the appeal, if the records committee appellant is a requester or interested party; or

(ii) the requester or interested party who is a party to the local appeals board proceeding that resulted in the decision that the political subdivision is appealing to the records committee, if the records committee appellant is a political subdivision; and

(b) may file a short statement of facts, reasons, and legal authority in support of the appeal.

(4) (a) Except as provided in [~~Subsection~~] Subsections (4)(b) and (c), no later than [~~five~~] seven business days after receiving a notice of appeal, the executive secretary of the records committee shall:

(i) schedule a hearing for the records committee to discuss the appeal at the next regularly scheduled committee meeting falling at least [~~14~~] 16 days after the date the notice of appeal is filed but no longer than [~~52~~] 64 calendar days after the date the notice of appeal was filed except that the records committee may schedule an expedited hearing upon application of the [~~petitioner~~] records committee appellant and good cause shown;

(ii) send a copy of the notice of hearing to the [~~petitioner~~] records committee appellant; and

(iii) send a copy of the notice of appeal, supporting statement, and a notice of hearing to:

(A) each member of the records committee;

(B) the records officer and the chief administrative officer of the governmental entity [~~from which the appeal originated~~] whose access denial is the subject of the appeal, if the records committee appellant is a requester or interested party;

(C) any person who made a business confidentiality claim under Section 63G-2-309 for a record that is the subject of the appeal; and

(D) all persons who participated in the proceedings before the governmental entity's chief administrative officer, if the appeal is of the chief administrative officer's decision affirming an access denial.

(b) (i) The executive secretary of the records committee may decline to schedule a hearing if the record series that is the subject of the appeal has been found by the committee in a previous hearing involving the same [~~government~~] governmental entity to be appropriately classified as private, controlled, or protected.

(ii) (A) If the executive secretary of the records committee declines to schedule a hearing, the executive secretary of the records committee shall send a notice to the [~~petitioner~~] records committee appellant indicating that the request for hearing has been denied and the reason for the denial.

(B) The committee shall make rules to implement this section as provided by Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(c) The executive secretary of the records committee may schedule a hearing on an appeal to the records committee at a regularly scheduled records committee meeting that is later than the period described in Subsection (4)(a)(i) if that records committee meeting is the first regularly scheduled records committee meeting at which there are fewer than 10 appeals scheduled to be heard.

(5) (a) [~~A~~] No later than five business days before the hearing, a governmental entity shall submit to the executive secretary of the records committee a written statement of facts, reasons, and legal authority in support of the governmental entity's position [~~must be submitted~~

~~to the executive secretary of the records committee not later than five business days before the hearing~~].

(b) The governmental entity shall send a copy of the written statement [~~to the petitioner~~] by first class mail, postage prepaid, to the requester or interested party involved in the appeal. The executive secretary shall forward a copy of the written statement to each member of the records committee.

(6) (a) No later than 10 business days after the notice of appeal is sent by the executive secretary, a person whose legal interests may be substantially affected by the proceeding may file a request for intervention before the records committee.

(b) Any written statement of facts, reasons, and legal authority in support of the intervener's position shall be filed with the request for intervention.

(c) The person seeking intervention shall provide copies of the statement described in Subsection (6)(b) to all parties to the proceedings before the records committee.

(7) The records committee shall hold a hearing within the period of time described in Subsection (4).

(8) At the hearing, the records committee shall allow the parties to testify, present evidence, and comment on the issues. The records committee may allow other interested persons to comment on the issues.

(9) (a) (i) The records committee:

(A) may review the disputed records[~~. However, if the committee is weighing the various interests under Subsection (11), the committee must review the disputed records. The review shall be in camera.~~]; and

(B) shall review the disputed records, if the committee is weighing the various interests under Subsection (11).

(ii) A review of the disputed records under Subsection (9)(a)(i) shall be in camera.

(b) Members of the records committee may not disclose any information or record reviewed by the committee in camera unless the disclosure is otherwise authorized by this chapter.

(10) (a) Discovery is prohibited, but the records committee may issue subpoenas or other orders to compel production of necessary evidence.

(b) When the subject of a records committee subpoena disobeys or fails to comply with

the subpoena, the records committee may file a motion for an order to compel obedience to the subpoena with the district court.

(c) (i) The records committee's review shall be de novo[~~.~~], if the appeal is an appeal from a decision of a chief administrative officer:

(A) issued under Section 63G-2-401; or

(B) issued by a chief administrative officer of a political subdivision that has not established a local appeals board.

(ii) For an appeal from a decision of a local appeals board, the records committee shall review and consider the decision of the local appeals board.

(11) (a) No later than seven business days after the hearing, the records committee shall issue a signed order [~~either~~]:

(i) granting the [~~petition~~] relief sought, in whole or in part; or

(ii) upholding the [~~determination of the~~] governmental [~~entity~~] entity's access denial, in whole or in part.

(b) Except as provided in Section 63G-2-406, the records committee may, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or nondisclosure, order the disclosure of information properly classified as private, controlled, or protected if the public interest favoring access is greater than or equal to the interest favoring restriction of access.

(c) In making a determination under Subsection (11)(b), the records committee shall consider and, where appropriate, limit the requester's or interested party's use and further disclosure of the record in order to protect:

(i) privacy interests in the case of a private or controlled record;

(ii) business confidentiality interests in the case of a record protected under Subsection 63G-2-305(1), (2), (40)(a)(ii), or (40)(a)(vi); and

(iii) privacy interests or the public interest in the case of other protected records.

(12) The order of the records committee shall include:

(a) a statement of reasons for the decision, including citations to this chapter, court rule or order, another state statute, federal statute, or federal regulation that governs disclosure of the record, [~~provided that~~] if the citations do not disclose private, controlled, or protected information;

(b) a description of the record or portions of the record to which access was ordered or denied, [~~provided that~~] if the description does not disclose private, controlled, or protected information or information exempt from disclosure under Subsection 63G-2-201(3)(b);

(c) a statement that any party to the proceeding before the records committee may appeal the records committee's decision to district court; and

(d) a brief summary of the appeals process, the time limits for filing an appeal, and a notice that in order to protect its rights on appeal, the party may wish to seek advice from an attorney.

(13) If the records committee fails to issue a decision within [~~57~~] 73 calendar days of the filing of the notice of appeal, that failure [~~shall be considered~~] is the equivalent of an order denying the appeal. [~~The petitioner~~] A records committee appellant shall notify the records committee in writing if the [~~petitioner~~] records committee appellant considers the appeal denied.

(14) A party to a proceeding before the records committee may seek judicial review in district court of a records committee order by filing a petition for review of the records committee order as provided in Section 63G-2-404.

[~~(14)~~] (15) (a) Unless a notice of intent to appeal is filed under Subsection [~~(14)~~] (15)(b), each party to the proceeding shall comply with the order of the records committee.

(b) If a party disagrees with the order of the records committee, that party may file a notice of intent to appeal the order of the records committee.

(c) If the records committee orders the governmental entity to produce a record and no appeal is filed, or if, as a result of the appeal, the governmental entity is required to produce a record, the governmental entity shall:

(i) produce the record; and

(ii) file a notice of compliance with the records committee.

(d) (i) If the governmental entity that is ordered to produce a record fails to file a notice of compliance or a notice of intent to appeal, the records committee may do either or both of the following:

(A) impose a civil penalty of up to $500 for each day of continuing noncompliance; or

(B) send written notice of the governmental entity's noncompliance to:

(I) the governor for executive branch entities;

(II) the Legislative Management Committee for legislative branch entities; and

(III) the Judicial Council for judicial branch agencies entities.

(ii) In imposing a civil penalty, the records committee shall consider the gravity and circumstances of the violation, including whether the failure to comply was due to neglect or was willful or intentional.

Section 7. Section **63G-2-404** is amended to read:

63G-2-404. Judicial review.

[~~(1) (a) Any party to a proceeding before the records committee may petition for judicial review by the district court of the records committee's order.~~]

[~~(b) The petition~~]

(1) (a) A petition for judicial review of an order or decision, as allowed under this part or in Subsection 63G-2-701(6)(a)(ii), shall be filed no later than 30 days after the date of the [~~records committee's~~] order or decision.

[~~(c)~~] (b) The records committee is a necessary party to [~~the~~] a petition for judicial review of a records committee order.

[~~(d)~~] (c) The executive secretary of the records committee shall be served with notice of [~~the~~] a petition for judicial review of a records committee order, in accordance with the Utah Rules of Civil Procedure.

[~~(2) (a) A requester may petition for judicial review by the district court of a governmental entity's determination as specified in Subsection 63G-2-402(1)(b).~~]

[~~(b) The requester shall file a petition no later than:~~]

[~~(i) 30 days after the governmental entity has responded to the records request by either providing the requested records or denying the request in whole or in part;~~]

[~~(ii) 35 days after the original request if the governmental entity failed to respond to the request; or~~]

[~~(iii) 45 days after the original request for records if:~~]

[~~(A) the circumstances described in Subsection 63G-2-401(1)(b) occur; and~~]

[~~(B) the chief administrative officer failed to make a determination under Section 63G-2-401.~~]

[~~(3) The~~] (2) A petition for judicial review [~~shall be~~] is a complaint governed by the Utah Rules of Civil Procedure and shall contain:

(a) the petitioner's name and mailing address;

(b) a copy of the records committee order from which the appeal is taken, if the petitioner [~~brought a prior appeal to the~~] is seeking judicial review of an order of the records committee;

(c) the name and mailing address of the governmental entity that issued the initial determination with a copy of that determination;

(d) a request for relief specifying the type and extent of relief requested; and

(e) a statement of the reasons why the petitioner is entitled to relief.

[~~(4)~~] (3) If the appeal is based on the denial of access to a protected record based on a claim of business confidentiality, the court shall allow the claimant of business confidentiality to provide to the court the reasons for the claim of business confidentiality.

[~~(5)~~] (4) All additional pleadings and proceedings in the district court are governed by the Utah Rules of Civil Procedure.

[~~(6)~~] (5) The district court may review the disputed records. The review shall be in camera.

[~~(7)~~] (6) The court shall:

(a) make its decision de novo, but, for a petition seeking judicial review of a records committee order, allow introduction of evidence presented to the records committee;

(b) determine all questions of fact and law without a jury; and

(c) decide the issue at the earliest practical opportunity.

[~~(8)~~] (7) (a) Except as provided in Section 63G-2-406, the court may, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or nondisclosure, order the disclosure of information properly classified as private, controlled, or protected if the interest favoring access is greater than or equal to the interest favoring restriction of access.

(b) The court shall consider and, where appropriate, limit the requester's use and further disclosure of the record in order to protect privacy interests in the case of private or controlled records, business confidentiality interests in the case of records protected under Subsections 63G-2-305(1) and (2), and privacy interests or the public interest in the case of other protected records.

Section 8. Section **63G-2-501** is amended to read:

63G-2-501. State Records Committee created -- Membership -- Terms -- Vacancies -- Expenses.

(1) There is created the State Records Committee within the Department of Administrative Services to consist of the following seven individuals:

(a) an individual in the private sector whose profession requires the individual to create or manage records that if created by a governmental entity would be private or controlled;

(b) the director of the Division of State History or the director's designee;

(c) the governor or the governor's designee;

(d) two citizen members;

(e) one [~~elected official~~] person representing political subdivisions, as recommended by the Utah League of Cities and Towns; and

(f) one individual representing the news media.

(2) The members specified in Subsections (1)(a), (d), (e), and (f) shall be appointed by the governor with the consent of the Senate.

(3) (a) Except as required by Subsection (3)(b), as terms of current committee members expire, the governor shall appoint each new member or reappointed member to a four-year term.

(b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the committee is appointed every two years.

(c) Each appointed member is eligible for reappointment for one additional term.

(4) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(5) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Section 9. Section **63G-2-701** is amended to read:

63G-2-701. Political subdivisions may adopt ordinances in compliance with chapter.

(1) As used in this section:

(a) "Access denial" means the same as that term is defined in Section 63G-2-400.5.

(b) "Interested party" means the same as that term is defined in Section 63G-2-400.5.

(c) "Requester" means the same as that term is defined in Section 63G-2-400.5.

[~~(1)~~] (2) (a) Each political subdivision may adopt an ordinance or a policy applicable throughout its jurisdiction relating to information practices including classification, designation, access, denials, segregation, appeals, management, retention, and amendment of records.

(b) The ordinance or policy shall comply with the criteria set forth in this section.

(c) If any political subdivision does not adopt and maintain an ordinance or policy, then that political subdivision is subject to this chapter.

(d) Notwithstanding the adoption of an ordinance or policy, each political subdivision is subject to [~~Parts 1 and 3~~] Part 1, General Provisions, Part 3, Classification, and Sections 63A-12-105, 63A-12-107, 63G-2-201, 63G-2-202, 63G-2-205, 63G-2-206, 63G-2-601, and 63G-2-602.

(e) Every ordinance, policy, or amendment to the ordinance or policy shall be filed with the state archives no later than 30 days after its effective date.

(f) The political subdivision shall also report to the state archives all retention schedules, and all designations and classifications applied to record series maintained by the political subdivision.

(g) The report required by Subsection [~~(1)~~] (2)(f) is notification to state archives of the political subdivision's retention schedules, designations, and classifications. The report is not subject to approval by state archives. If state archives determines that a different retention schedule is needed for state purposes, state archives shall notify the political subdivision of the state's retention schedule for the records and shall maintain the records if requested to do so under Subsection 63A-12-105(2).

[~~(2)~~] (3) Each ordinance or policy relating to information practices shall:

(a) provide standards for the classification and designation of the records of the political subdivision as public, private, controlled, or protected in accordance with Part 3 [~~of~~

~~this chapter~~], Classification;

(b) require the classification of the records of the political subdivision in accordance with those standards;

(c) provide guidelines for establishment of fees in accordance with Section 63G-2-203; and

(d) provide standards for the management and retention of the records of the political subdivision comparable to Section 63A-12-103.

[~~(3)~~] (4) (a) Each ordinance or policy shall establish access criteria, procedures, and response times for requests to inspect, obtain, or amend records of the political subdivision, and time limits for appeals consistent with this chapter.

(b) In establishing response times for access requests and time limits for appeals, the political subdivision may establish reasonable time frames different than those set out in Section 63G-2-204 and Part 4 [~~of this chapter~~], Appeals, if it determines that the resources of the political subdivision are insufficient to meet the requirements of those sections.

[~~(4)~~] (5) (a) [~~The~~] A political subdivision shall establish an appeals process for persons aggrieved by classification, designation, or access decisions.

[~~(b) The policy or ordinance shall provide for:~~]

[~~(i) (A) an appeals board composed of the governing body of the political subdivision; or~~]

[~~(B) a separate appeals board composed of members of the governing body and the public, appointed by the governing body; and~~]

[~~(ii) the designation of a person as the chief administrative officer for purposes of determining appeals under Section 63G-2-401 of the governmental entity's determination.~~]

[~~(5) If the requester concurs, the political subdivision may also provide for an additional level of administrative review to the records committee in accordance with Section 63G-2-403.~~]

[~~(6) Appeals of the decisions of the appeals boards established by political subdivisions shall be by petition for judicial review to the district court.~~]

(b) A political subdivision's appeals process shall include a process for a requester or interested party to appeal an access denial to a person designated by the political subdivision as the chief administrative officer for purposes of an appeal under Section 63G-2-401.

(c) (i) A political subdivision may establish an appeals board to decide an appeal of a decision of the chief administrative officer affirming an access denial.

(ii) An appeals board established by a political subdivision shall be composed of three members:

(A) one of whom shall be an employee of the political subdivision; and

(B) two of whom shall be members of the public, at least one of whom shall have professional experience with requesting or managing records.

(iii) If a political subdivision establishes an appeals board, any appeal of a decision of a chief administrative officer shall be made to the appeals board.

(iv) If a political subdivision does not establish an appeals board, the political subdivision's appeals process shall provide for an appeal of a chief administrative officer's decision to the records committee, as provided in Section 63G-2-403.

(6) (a) A political subdivision Ĥ→ [,] or ←Ĥ requester Ĥ→ [~~, or interested party~~] ←Ĥ may appeal an appeals board decision:

(i) to the records committee, as provided in Section 63G-2-403; or

(ii) by filing a petition for judicial review with the district court.

(b) The contents of [~~the~~] a petition for judicial review under Subsection (6)(a)(ii) and the conduct of the proceeding shall be in accordance with Sections 63G-2-402 and 63G-2-404.

(c) A person who appeals an appeals board decision to the records committee does not lose or waive the right to seek judicial review of the decision of the records committee.

(7) Any political subdivision that adopts an ordinance or policy under Subsection (1) shall forward to state archives a copy and summary description of the ordinance or policy.

Paul Amann vs DCFS
Head act

200 P.3d 643, 620 Utah Adv. Rep. 8, 2008 UT 88

(Cite as: 200 P.3d 643)

C

Editor's Note: Additions are indicated by Text and deletions by ~~Text~~.

Supreme Court of Utah.

SOUTHERN UTAH WILDERNESS ALLIANCE, a Utah nonprofit corporation; and the Wilderness Society, a District of Columbia nonprofit corporation, Plaintiffs and Appellants,
v.
The AUTOMATED GEOGRAPHIC REFERENCE CENTER, within the DIVISION OF INFORMATION TECHNOLOGY; and the Utah State Records Committee, Defendants and Appellees.
No. 20060813.

Dec. 23, 2008.

Background: Wilderness preservation group submitted request to Automated Geographic Reference Center (AGRC), pursuant to Government Records Access and Management Act (GRAMA), requesting records pertaining to rights-of-way that the State and county claimed over federal lands. AGRC denied the request, and wilderness preservation group appealed. After conducting a hearing, the State Records Committee denied the appeal, and wilderness preservation group filed petition for judicial review. Following a hearing, the Third District Court, Salt Lake, Tyrone E. Medley, J., granted AGRC's motion for summary judgment. Wilderness preservation group appealed.

Holdings: The Supreme Court, Durham, C. J., held that:

(1) statute creating the AGRC did not categorize records sought by wilderness preservation group as nonpublic records;
(2) statute requiring AGRC to create and maintain records on rights-of-way created under repealed federal statute that offered free rights-of-way across federal lands did not categorize records sought by wilderness preservation group as nonpublic records;
(3) records sought by wilderness preservation group were not protected from disclosure by the work product doctrine;
(4) records were not protected from disclosure by the attorney-client privilege;
(5) records were not temporary drafts protected from disclosure by GRAMA; and
(6) wilderness preservation group's request did not unreasonably duplicate a prior request made by the group.

Reversed.

West Headnotes

[1] Appeal and Error 30 ⇐863

30 Appeal and Error

30XVI Review
30XVI(A) Scope, Standards, and Extent, in General
30k862 Extent of Review Dependent on Nature of Decision Appealed from
30k863 k. In general. Most Cited Cases

Appeal and Error 30 ⇐934(1)

30 Appeal and Error

30XVI Review
30XVI(G) Presumptions
30k934 Judgment
30k934(1) k. In general. Most Cited Cases

In reviewing a district court's grant of summary judgment, the Supreme Court affords no deference to the lower court's legal conclusions and reviews them for correctness.

[2] Appeal and Error 30 ⇐934(1)

30 Appeal and Error

30XVI Review
30XVI(G) Presumptions

30k934 Judgment

30k934(1) k. In general. Most Cited Cases

In reviewing a district court's grant of summary judgment, the Supreme Court reviews the facts and all reasonable inferences in the light most favorable to the nonmoving party. Rules Civ.Proc., Rule 56(c).

[3] Appeal and Error 30 ⚖842(1)

30 Appeal and Error

30XVI Review

30XVI(A) Scope, Standards, and Extent, in General

30k838 Questions Considered

30k842 Review Dependent on Whether Questions Are of Law or of Fact

30k842(1) k. In general. Most Cited Cases

The interpretation of statutes is a question of law, and the Supreme Court reviews a district court's conclusions in interpreting a statute for correctness.

[4] Records 326 ⚖50

326 Records

326II Public Access

326II(B) General Statutory Disclosure Requirements

326k50 k. In general; freedom of information laws in general. Most Cited Cases

Provisions in Government Records Access and Management Act (GRAMA) governing the disclosure of government records will apply so long as they are not inconsistent with another statute's categorization of a record or limitations on the disclosure of the record. West's U.C.A. § 63G–2–201(2, 6).

[5] Statutes 361 ⚖1092

361 Statutes

361III Construction

361III(B) Plain Language; Plain, Ordinary, or Common Meaning

361k1092 k. Natural, obvious, or accepted meaning. Most Cited Cases

(Formerly 361k188)

In construing statutes, courts looks to the statute's plain language to discern the legislative intent, by giving the words of the statute their plain, natural, ordinary, and commonly understood meaning.

[6] Statutes 361 ⚖1101

361 Statutes

361III Construction

361III(C) Clarity and Ambiguity; Multiple Meanings

361k1101 k. In general. Most Cited Cases

(Formerly 361k190)

Only where a reading of the plain language renders a statute ambiguous will a court look beyond its plain language.

[7] Records 326 ⚖55

326 Records

326II Public Access

326II(B) General Statutory Disclosure Requirements

326k53 Matters Subject to Disclosure; Exemptions

326k55 k. Exemptions or prohibitions under other laws. Most Cited Cases

Statute creating the Automated Geographic Reference Center (AGRC) did not categorize records, pertaining to rights-of-way that the State and county claimed over federal lands, as nonpublic or place limitations on the records' disclosure that directly conflicted with Government Records Access and Management Act (GRAMA), for purposes of request by wilderness preservation group that AGRC disclose such records; statute did not purport to restrict any information maintained by AGRC but rather mandated that the AGRC provide its information to both government agencies and private persons. West's U.C.A. §§ 63F–1–506(2), 63G–2–201(2, 6).

[8] Records 326 ⚖55

326 Records

326II Public Access

326II(B) General Statutory Disclosure Requirements

326k53 Matters Subject to Disclosure; Exemptions

326k55 k. Exemptions or prohibitions under other laws. Most Cited Cases

Statute that required Automated Geographic Reference Center (AGRC) to create and maintain a record of rights-of-way that State and county claimed they obtained under repealed federal statute that offered free rights-of-way across federal lands did not categorize such records as nonpublic or place limitations on the records' disclosure that directly conflicted with Government Records Access and Management Act (GRAMA), for purposes of request by wilderness preservation group that AGRC disclose such records. West's U.C.A. §§ 63G–2–201(2, 6), 72–5–304.

[9] Records 326 ⚿57

326 Records

326II Public Access

326II(B) General Statutory Disclosure Requirements

326k53 Matters Subject to Disclosure; Exemptions

326k57 k. Internal memoranda or letters; executive privilege. Most Cited Cases

Records maintained by Automated Geographic Reference Center (AGRC), regarding rights-of-way that State and county claimed they obtained under repealed federal statute that offered free rights-of-way across federal lands, were not work product created and maintained solely in anticipation of litigation and did not reflect mental impressions and legal theories, and thus were not exempt from disclosure under work product exemption of Government Records Access and Management Act (GRAMA), for purposes of request by wilderness preservation group that AGRC disclose such records, though the State and counties were involved in litigation with federal government regarding such rights-of-way, as a state statute required the AGRC to create and maintain records on such rights-of-way, and AGRC's duty existed independently of the litigation. West's U.C.A. §§ 63G–2–305(16, 17), 72–5–304(3).

[10] Pretrial Procedure 307A ⚿35

307A Pretrial Procedure

307AII Depositions and Discovery

307AII(A) Discovery in General

307Ak35 k. Work-product privilege. Most Cited Cases

(Formerly 307Ak358)

Pretrial Procedure 307A ⚿359

307A Pretrial Procedure

307AII Depositions and Discovery

307AII(E) Production of Documents and Things and Entry on Land

307AII(E)2 Subject Matter in General

307Ak359 k. Work product privilege; trial preparation materials. Most Cited Cases

Protection for work product extends only to material that would not have been generated but for the pendency or imminence of litigation. Rules Civ.Proc., Rule 26(b)(3).

[11] Pretrial Procedure 307A ⚿359

307A Pretrial Procedure

307AII Depositions and Discovery

307AII(E) Production of Documents and Things and Entry on Land

307AII(E)2 Subject Matter in General

307Ak359 k. Work product privilege; trial preparation materials. Most Cited Cases

(Formerly 307Ak358)

A document is prepared in the ordinary course of business, and thus not protected from disclosure under the work product doctrine, when it is created pursuant to routine procedures or public requirements unrelated to litigation. Rules Civ.Proc., Rule 26(b)(3).

[12] Pretrial Procedure 307A ⚿36.1

307A Pretrial Procedure

307AII Depositions and Discovery
307AII(A) Discovery in General
307Ak36 Particular Subjects of Disclosure
307Ak36.1 k. In general. Most Cited Cases

Acts performed by a public employee in the performance of his official duties are not prepared in anticipation of litigation or for trial merely by virtue of the fact that they are likely to be the subject of later litigation; instead they are performed in the ordinary course of business and are not protected from disclosure under the work product doctrine. Rules Civ.Proc., Rule 26(b)(3).

[13] Pretrial Procedure 307A ⚿35

307A Pretrial Procedure

307AII Depositions and Discovery
307AII(A) Discovery in General
307Ak35 k. Work-product privilege. Most Cited Cases

Opinion work product, which includes mental impressions, conclusions, opinions or legal theories of an attorney or party, is afforded higher protection than fact work product; however, to utilize the opinion work product privilege, the party asserting it has the burden to establish that it is applicable. Rules Civ.Proc., Rule 26(b)(3).

[14] Pretrial Procedure 307A ⚿35

307A Pretrial Procedure

307AII Depositions and Discovery
307AII(A) Discovery in General
307Ak35 k. Work-product privilege. Most Cited Cases

A blanket assertion that the opinion work-product doctrine applies is insufficient to meet the burden of the party making the assertion to establish that it is applicable. Rules Civ.Proc., Rule 26(b)(3).

[15] Pretrial Procedure 307A ⚿359

307A Pretrial Procedure

307AII Depositions and Discovery
307AII(E) Production of Documents and Things and Entry on Land
307AII(E)2 Subject Matter in General
307Ak359 k. Work product privilege; trial preparation materials. Most Cited Cases
(Formerly 307Ak358)

For the opinion work-product doctrine to apply, the asserting party must show that the documents or materials were prepared in anticipation of litigation by or for a party or that party's representative. Rules Civ.Proc., Rule 26(b)(3).

[16] Privileged Communications and Confidentiality 311H ⚿102

311H Privileged Communications and Confidentiality

311HIII Attorney-Client Privilege
311Hk102 k. Elements in general; definition. Most Cited Cases
(Formerly 410k198(1))

Privileged Communications and Confidentiality 311H ⚿156

311H Privileged Communications and Confidentiality

311HIII Attorney-Client Privilege
311Hk156 k. Confidential character of communications or advice. Most Cited Cases
(Formerly 410k205)

The attorney-client privilege protects information given by a client to an attorney that is necessary to obtain informed legal advice, which might not have been made absent the privilege, and the communication must be confidential. Rules of Evid., Rule 504.

[17] Privileged Communications and Confidentiality 311H ⚿156

311H Privileged Communications and Confidentiality

311HIII Attorney-Client Privilege
311Hk156 k. Confidential character of communications or advice. Most Cited Cases
(Formerly 410k205)

The mere existence of an attorney-client relationship does not ipso facto make all communications between them confidential. Rules of Evid., Rule 504.

[18] Privileged Communications and Confidentiality 311H ⚿102

311H Privileged Communications and Confidentiality

311HIII Attorney-Client Privilege

311Hk102 k. Elements in general; definition. Most Cited Cases

(Formerly 410k198(1))

To rely on the attorney-client privilege, a party must establish: (1) an attorney-client relationship; (2) the transfer of confidential information; and (3) the purpose of the transfer was to obtain legal advice. Rules of Evid., Rule 504.

[19] Records 326 ⚿57

326 Records

326II Public Access

326II(B) General Statutory Disclosure Requirements

326k53 Matters Subject to Disclosure; Exemptions

326k57 k. Internal memoranda or letters; executive privilege. Most Cited Cases

Records maintained by Automated Geographic Reference Center (AGRC), regarding rights-of-way that State and county claimed they obtained under repealed federal statute that offered free rights-of-way across federal lands, were not protected by the attorney-client privilege when wilderness preservation group requested such records under the Government Records Access and Management Act (GRAMA), though the State and the county were involved in litigation with federal government regarding such rights-of-way, as the AGRC was not a party to the litigation agreement between the Attorney General's office, the State and the county that created the attorney-client relationship, a state statute required the AGRC to create and maintain records on such rights-of-way for the benefit of State and federal agencies as well as private persons, and the records were not created for the purpose of providing or obtaining legal advice. West's U.C.A. §§ 63G–2–305(18), 72–5–304(3).

[20] Records 326 ⚿54

326 Records

326II Public Access

326II(B) General Statutory Disclosure Requirements

326k53 Matters Subject to Disclosure; Exemptions

326k54 k. In general. Most Cited Cases

Records maintained by Automated Geographic Reference Center (AGRC), regarding rights-of-way that State and county claimed they obtained under repealed federal statute that offered free rights-of-way across federal lands, were not temporary drafts exempt from disclosure under temporary draft exception to Government Records Access and Management Act (GRAMA), when wilderness preservation group requested such records under GRAMA, as a state statute required the AGRC to create and maintain the records, such statute labeled what the AGRC was required to maintain as records, and the records were not prepared by AGRC for AGRC's personal use as required in order to qualify as temporary drafts under GRAMA. West's U.C.A. §§ 63G–2–103(22)(b)(ii), 72–5–304(3).

[21] Records 326 ⚿62

326 Records

326II Public Access

326II(B) General Statutory Disclosure Requirements

326k61 Proceedings for Disclosure

326k62 k. In general; request and compliance. Most Cited Cases

Request by wilderness preservation group under Government Records Access and Management Act (GRAMA), for records maintained by Automated Geographic Reference Center (AGRC) regarding rights-of-way that State and county claimed they obtained under repealed federal statute that offered free rights-of-way across federal lands, did not unreasonably duplicate group's prior request for the records, as the group's prior request was made to the Governor and Attorney General's office, AGRC was not an agent of the Governor or Attorney General, and AGRC was a separate statutory entity charged with the duty to create and

maintain records for state and federal agencies and private parties. West's U.C.A. § 63G–2–201(8)(a)(iv).

*645 Joro Walker, David H. Becker, Salt Lake City, for plaintiffs.

Mark L. Shurtleff, Att'y Gen., Roger R. Fairbanks, Bradley C. Johnson, David W. Geary, Asst. Att'ys Gen., Salt Lake City, for defendants.

DURHAM, Chief Justice:

INTRODUCTION

¶ 1 The Southern Utah Wilderness Alliance (SUWA) appeals the district court's order*646 affirming the State Records Committee's denial of records sought by SUWA from The Automated Geographic Reference Center (AGRC) pursuant to the Government Records Access and Management Act (GRAMA). The district court denied summary judgment to SUWA and granted summary judgment to the AGRC. We reverse.

BACKGROUND

¶ 2 The legislature created the AGRC, part of the Division of Integrated Technology (the Division),[FN1] to provide geographic information system services (GIS)[FN2] to state agencies, the federal government, local political subdivisions, and private persons under the rules and policies established by the Division. Utah Code Ann. § 63F–1–506 (2008).[FN3] Section 63F–1–506(2)(c) also requires the AGRC to manage the State Geographic Information Database (the SGID). *Id.*

FN1. The AGRC was previously housed in the Division of Information Technology Services, as indicated in the caption of this case. *See* Utah Code Ann. §§ 63A–6–201 to –202 (2004). In 2005, the Utah Technology Government Act reorganized the executive branch's technology services and reassigned the AGRC to the new Division of Integrated Technology. *See* 2005 Utah Laws 1136.

FN2. " 'Geographic information system' or 'GIS' means a computer driven data integration and map production system that interrelates disparate layers of data to specific geographic locations." Utah Code Ann. § 63F–1–502 (2008).

FN3. In 2005, the legislature renumbered this provision from 63A–6–202 to 63F–1–506, but made no substantive changes to sections relevant to this opinion; therefore, we refer to the renumbered citation throughout this opinion. *See* 2005 Utah Laws 1167.

¶ 3 SUWA seeks records from the AGRC relating to rights-of-way, the ownership of which the State and Emery County (the County) claim pursuant to the now repealed federal Revised Statute 2477 (R.S. 2477). R.S. 2477 granted rights-of-way for "construction of highways over public lands, not reserved for public uses." Mining Act of 1866, ch. 262, § 8, 14 Stat. 251, 253 (1866), *repealed* by Federal Lands Policy Management Act of 1976, Pub.L. No. 94–579, § 706(a), 90 Stat. 2743 (codified as amended at 43 U.S.C. §§ 1761–71). As this court explained in *Lindsay Land & Live Stock Co. v. Churnos*, 75 Utah 384, 285 P. 646 (1929), with R.S. 2477

> the [federal] government consented that any of its lands not reserved for a public purpose might be taken and used for public roads. The statute was a standing offer for a free right of way over the public domain, and as soon as it was accepted in an appropriate manner by the agents of the public, or the public itself, a highway was established.

Id. at 648 (quoting *Streeter v. Stalnaker*, 61 Neb. 205, 85 N.W. 47, 48 (1901)). Then, in 1976, the federal government shifted its land use policy to favor federal retention of public lands rather than development and private ownership of such lands. *S. Utah Wilderness Alliance v. Bureau of Land Mgmt.*, 425 F.3d 735, 740–41 (10th Cir.2005). That year Congress repealed R.S. 2477 with the Federal Lands Policy Management Act, but preserved rights-of-way established before October 21, 1976. *See* Federal Lands Policy Management Act of 1976, Pub.L. No. 94–579, § 706(a), 90 Stat. 2743 (codified as amended at 43 U.S.C. §§ 1761–71). Today, the identification of routes that are valid R.S. 2477 rights-of-way, established prior to October 1976, is an ongoing controversy.

¶ 4 The State of Utah and many of its local municipalities [FN4] have been at the heart of this controversy because a high percentage of public land in Utah is owned by the federal government. Accordingly, the State and counties have alleged numerous rights-of-way that run through undeveloped federal lands that might otherwise qualify for wilderness designation, across now privately held lands, or within federal parks or forests created after the rights-of-way were allegedly established.

FN4. The State and counties jointly own all R.S. 2477 rights-of-way within the state. Utah Code Ann. § 72–5–103(2)(b) (2001).

¶ 5 To protect alleged R.S. 2477 rights-of-way, the Utah Legislature enacted several pieces of legislation. First, in 1978 the legislature passed legislation that requires each county to prepare and file maps with the ***647** Utah Department of Transportation identifying "roads within its boundaries which were in existence as of October 21, 1976." 1978 Utah Laws 27 (codified at Utah Code Ann. § 72–3–105(5) (2001)). Then in 1993, the Utah Legislature passed the Rights–of–Way Across Federal Lands Act. H.B. 6, 50th Leg.2d Special Sess., 1994 Utah Laws 34, (codified as amended at Utah Code Ann. §§ 72–5–301 to –307 (2001 & Supp.2008)) [FN5]. The Act codified existing law regarding R.S. 2477 rights-of-way and also included provisions addressing mapping and record gathering. *Id.* Particularly, the Act required the AGRC to "create and maintain a record of R.S. 2477 rights-of-way on the Geographic Information Database." Utah Code Ann. § 72–5–304(3)(a). Finally, in 2003, the Rights–of–Way Across Federal Lands Act was amended to indicate that acceptance of an R.S. 2477 right-of-way vests title in the State and municipal body, and further amended the Act's definitions. 2003 Utah Laws 1368 (codified at Utah Code Ann. § 72–5–308 to –310 (Supp.2008)).

FN5. Since the initiation of this case, the legislature has amended the Rights–of–Way Across Federal Lands Act. 2005 Utah Laws 676, 1171. However, no substantive changes were made to the provisions relevant to this case; therefore, we cite the most recent codification of the Act.

¶ 6 In addition to the legislative efforts to preserve R.S. 2477 rights-of-way, the State and several counties have been involved in litigation regarding alleged rights-of-way. The State and Garfield County have been involved in suits with both the federal government and environmental groups regarding the scope of an R.S. 2477 right-of-way on the Burr Trail. *See* Sierra Club v. Lujan, 949 F.2d 362 (10th Cir.1991); Sierra Club v. Hodel, 848 F.2d 1068 (10th Cir.1988), *overruled on other grounds by* Vill. of Los Ranchos de Albuquerque v. Marsh, 956 F.2d 970, 973 (10th Cir.1992) (en banc). On June 14, 2000, the State of Utah, on behalf of itself and its counties, notified the U.S. Department of the Interior, via a Notice of Intention to File Suit (Notice of Intent), that it would be filing a quiet title action regarding the ownership and scope of routes located throughout Utah, which it claimed the State and counties acquired pursuant to R.S. 2477. On August 31, 2004, the State and Emery County filed another Notice of Intent indicating that they intended to sue to claim ownership of ten rights-of-way in Emery County. The State and County filed an amended Notice of Intent on November 3, 2004.

SUWA's GRAMA Record Request

¶ 7 In October of 2004, SUWA sent a letter to the Governor and the attorney general's office, pursuant to GRAMA, requesting "all records" concerning certain routes over public lands in Emery County that the State and County claim as R.S. 2477 rights-of-way. In particular, the request sought photographs, GIS Arc/Info coverages or shapefiles, email and telephone communications, affidavits, declarations, maintenance and funding records, and notes relating to the routes referenced in the State of Utah's Notice of Intent filed with the U.S. Department of the Interior in 2000. The attorney general's office released some documents, such as maintenance agreements, but withheld most of the requested records, arguing that under GRAMA the records were protected from disclosure.

¶ 8 Subsequently, on December 2, 2004, SUWA submitted a record request to the AGRC. This request was more specific than the request to the Governor and Attorney General and many of the records related to

information contained in the SGID. Specifically, SUWA requested the following documents:

1. Any and all maps and GIS data (or other electronic data) depicting Class D roads [FN6] in Emery County which were in existence as of October 21, 1976....

> FN6. Class D roads include any route that has been "established by use or constructed and has been maintained" for public use by four-wheel vehicles, but are not state highways, county roads, or city streets. Utah Code Ann. § 72–3–105.

2. Any and all maps and GIS data (or other electronic data) depicting Class D roads in Emery County which were established or constructed after October 21, 1976....

3. Any and all maps, GIS data (or other electronic data) and/or information contained*648 in or by the [SGID] depicting, in any way, "R.S. 2477 rights-of-way" in Emery County....

4. Any and all records or information, dated prior to June 14, 2000, including "cartographic, topographic, photographic, historical, and other data" available to the [AGRC] and/or contained in or maintained by the [SGID] and/or the [AGRC] relating to, in any way, "R.S. 2477 rights-of-way" in Emery County....

5. Any and all records or information, dated on or after June 14, 2000 but before August 31, 2004, including "cartographic, topographic, photographic, historical, and other data" available to the [AGRC] and/or contained in or maintained by the [SGID] and/or the [AGRC] relating to, in any way, "R.S. 2477 rights-of-way" in Emery County....

6. Any and all records or information, dated prior to June 14, 2000 provided to the [AGRC] by any agencies and/or political subdivisions of the state relating in any way to "R.S. 2477 rights-of-way" in Emery County.

7. Any and all records or information, dated on or after June 14, 2000, provided to the [AGRC] by any agencies and/or political subdivisions of the state relating in any way to "R.S. 2477 rights-of-way" in Emery County.

8. Any photographs, including aerial or on-the-ground photographs, or any digital or electronic photographs or similar media, taken prior to, or depicting conditions prior to June 14, 2000, of or depicting the ... routes in Emery County identified by the State of Utah in its notice of intent to sue of August 31, 2004....

9. The current plats and specific descriptions of the county roads in Emery County and any electronic or GIS data relating in any way to these plats and descriptions....

10. Any oral histories or similar historical accounts, prepared prior to June 14, 2000, relating in any way to the [alleged] routes in Emery County....

11. Any and all correspondences, including emails, and any records relating to correspondences, including emails and telephone calls with and from the United States Department of Interior and any of its subdivisions, ... related in any way to roads, including Class A–D roads, and R.S. 2477 rights-of-way in Emery County.... (footnote added).

The AGRC's Denial of SUWA's Request

¶ 9 On December 31, 2004, the AGRC responded to SUWA with a denial of all requests. First, the AGRC indicated that it did not have records responsive to SUWA's request for records of Class D roads existing in Emery County prior to 1976. The AGRC also indicated that it did not have records responsive to SUWA's request for plat descriptions of county roads in Emery County, or oral histories or correspondence and communication with the federal government relating to the routes named in the 2004 Notice of Intent. The AGRC also explained that it could not copy the maps requested of Class D roads existing after 1976, but that such records could be obtained from the Department of Transportation. In response to SUWA's request for GIS information, AGRC records, and SGID data, the AGRC provided the following responses.

(1) SUWA's request to the AGRC unreasonably

duplicated SUWA's request to the Governor and Attorney General.

(2) The SGID does not isolate rights-of-way in Emery County, except for the ten roads identified in the 2004 amended Notice of Intent; and, these records are protected as "not public" and as "drafts."

(3) The requested records were prepared in anticipation of litigation and therefore are protected as work product and privileged communications.

(4) Release of requested records could interfere with the state and counties' investigation and enforcement of its R.S. 2477 rights.

¶ 10 In addition, the AGRC indicated that it had been involved in negotiations with the federal government regarding the quiet title action described in its Notice of Intent. It also notified SUWA that a state court in a case where similar records were requested had found that the records were "private, *649 controlled, or protected, information." Finally, the AGRC noted in its response that it maintains a "public" SGID, which does not designate rights-of-way as R.S. 2477 rights-of-way, but is available to the public through the AGRC's website.

PROCEDURAL HISTORY

¶ 11 Following the denial by the AGRC, SUWA appealed to Dennis Goreham, the AGRC manager. Mr. Goreham did not respond; therefore, SUWA appealed the AGRC's denial to the State Records Committee. The State Records Committee conducted a hearing and denied SUWA's appeal holding that the AGRC properly categorized the documents as private and protected because they were work product prepared in anticipation of litigation. SUWA then filed a petition seeking judicial review pursuant to Utah Code section 63G–2–404 (2008). Following a hearing on cross-motions for summary judgment, the district court denied SUWA's motion and granted the AGRC's motion for summary judgment. Specifically, the district court found that the statutes creating the AGRC and the GIS database are "silent as to the access to the RS2477 database." Thus, looking to the legislative history, the court found that "the database for the RS2477 roads was in fact established solely for litigation support, or litigation purposes." As a result, the district court held that the requested records were protected as work product and as attorney-client privileged communications under Utah Code sections 63G–2–305(16) to (18). Therefore, the district court denied SUWA's motion and granted the AGRC's motion for summary judgment. SUWA brought this appeal. We have jurisdiction pursuant to Utah Code section 78A–3–102(3)(b).[FN7]

FN7. This case was originally accepted by the Utah Supreme Court. However, pursuant to Utah Code section 78A–4–103(2)(a), the Utah Court of Appeals had proper jurisdiction. To correct this error, the supreme court transferred the case to the court of appeals, which then certified it to the Utah Supreme Court, pursuant to 78A–4–103(3).

STANDARD OF REVIEW

[1][2] ¶ 12 In reviewing a district court's grant of summary judgment, we afford no deference to the lower court's legal conclusions and review them for correctness. *Schaerrer v. Stewart's Plaza Pharmacy, Inc.*, 2003 UT 43, ¶ 14, 79 P.3d 922; *Blackner v. State*, 2002 UT 44, ¶ 8, 48 P.3d 949. Granting summary judgment is appropriate only in the absence of any genuine issue of material fact and where the moving party is entitled to judgment as a matter of law. Utah R. Civ. P. 56(c); *Crestwood Cove Apartments Bus. Trust v. Turner*, 2007 UT 48, ¶ 10, 164 P.3d 1247. Thus, in reviewing a district court's grant of summary judgment, we review the facts and all reasonable inferences in the light most favorable to the nonmoving party. *Sur. Underwriters v. E & C Trucking, Inc.*, 2000 UT 71, ¶ 15, 10 P.3d 338.

[3] ¶ 13 Although the AGRC argues in its brief that the district court exercised discretionary powers in making its decision, requiring us to use an abuse of discretion standard, we conclude that the district court's ruling was in fact premised on its interpretations of the meaning and applicability of the provisions of GRAMA. Because the interpretation of statutes is a question of law, we review the district court's conclusions for correctness. *Rushton v. Salt Lake County*, 1999 UT 36, ¶ 17, 977 P.2d 1201.

ANALYSIS

¶ 14 The arguments presented to this court greatly reflect those raised below. SUWA argues that the district court erred when it held that the requested records were exempt from disclosure because they were prepared solely in anticipation of litigation. Instead, SUWA argues, the items requested are public records and should be disclosed because they do not fall under any of the exemptions provided for in GRAMA. Further, SUWA argues that the public's interest in the records' disclosure outweighs any interest favoring nondisclosure. In contrast, the AGRC argues that the district court correctly held that the AGRC need not disclose the requested records. First, the AGRC argues that the Rights–of–Way Across Federal Lands Act's requirement to collect R.S. 2477 ***650** data does not create a public record under the definitions of GRAMA. Second, the AGRC argues that such records, if public, were created in anticipation of litigation and thus are protected as work product and privileged attorney-client communications. Third, according to the AGRC, SUWA's request to the AGRC unreasonably duplicated its request to the Governor and attorney general's office. Finally, the AGRC argues that the requested records need not be disclosed under GRAMA because they are drafts.[FN8]

> FN8. In its original response to SUWA's request, the AGRC indicated that disclosure of the requested records could interfere with the State's investigations relating to proceedings in which it seeks to enforce its R.S. 2477 rights. The AGRC also mentioned that it had engaged in settlement negotiations with the federal government. However, these arguments were not addressed by the State Records Committee or district court's orders and were not raised by the AGRC in this appeal. Therefore, these arguments are not addressed by this court.

¶ 15 As discussed below, we hold that the district court erred by not requiring disclosure of the requested records. First, the statutes requiring the records' creation do not categorize them as nonpublic; therefore, the records are public and governed by GRAMA. Second, the records do not satisfy any of the criteria for exemption under GRAMA, including the exemptions for records prepared in anticipation of litigation such as work-product and privileged communications, draft documents, or unreasonable duplication. We address each point separately below. Because we hold that the AGRC must disclose the requested records, we decline to engage in an inquiry as to whether the public's interest in disclosure surpasses the AGRC's interest in nondisclosure.

I. THE REQUESTED RECORDS ARE PUBLIC

¶ 16 The AGRC begins its argument by stating that the records it maintains are not public under GRAMA because a plain reading of Utah Code section 72–5–304(3) does not so characterize them. However, the question is not whether the records maintained by the AGRC are public, because they presumptively are, but whether they remain public in the face of a conflicting state statute.

[4] ¶ 17 Under GRAMA "[a] record is public unless otherwise expressly provided by statute." Utah Code Ann. § 63G–2–201(2) (2008). Further, GRAMA provides that it governs disclosure of government records, unless another statute's categorization of a record or limitations on disclosure of the record directly conflict with GRAMA. Utah Code Ann. § 63G–2–201(6). So "[w]hile the other statute's 'specific provisions' will control in the event of an irreconcilable conflict, GRAMA's provisions will still apply so long as they are 'not inconsistent with the [other] statute.' " *Utah Dep't of Pub. Safety v. Robot Aided Mfg. Ctr., Inc.*, 2005 UT App 199, ¶ 11, 113 P.3d 1014 (alteration in original) (quoting Utah Code Ann. § 63–2–201(6)(b)). In this case, we examine two statutes for any express categorization of the requested records as nonpublic or other requirements for or limitations on disclosure that directly conflict with GRAMA. We first address section 63F–1–506, which created the AGRC; then we address section 72–5–304(3), which specifically mandates the creation and maintenance of records related to R.S. 2477 rights-of-way on the SGID.

[5][6] ¶ 18 In construing statutes, this court looks to the statute's plain language to "discern the legislative intent," *Gohler v. Wood*, 919 P.2d 561, 562–63 (Utah 1996), by giving the words of the statute their "plain, natural, ordinary, and commonly understood meaning." *State v. Navaro*, 83 Utah 6, 26 P.2d 955, 956 (1933). Only where such a reading renders the statute ambiguous will we look beyond its plain language. *See Gohler*, 919 P.2d at 563; *see also World Peace Movement of Am. v.*

Newspaper Agency Corp., 879 P.2d 253, 259 (Utah 1994).

[7] ¶ 19 First, section 63F–1–506(2) requires the AGRC to "provide geographic information system services to state agencies ..., [the] federal government, local political subdivisions, and private persons" pursuant to the rules and policies established by the Division of Integrated Technology; manage the SGID; and establish a standard format, *651 lineage, and other requirements for the database. Utah Code Ann. § 63F–1–506(2). This language does not purport to restrict any information maintained by the AGRC, but rather mandates that the AGRC provide its information to both government agencies and private persons. This provision does not expressly classify the records as nonpublic and does not conflict with GRAMA provisions and, therefore, does not bar GRAMA's application.

[8] ¶ 20 Next, we turn to Utah Code section 72–5–304. This section requires the AGRC to "create and maintain a record of R.S. 2477 rights-of-ways on the Geographic Information Database," that "shall be based on information maintained by the Department of Transportation and ... other data available to or maintained by [the AGRC]," as well as information regarding R.S. 2477 rights-of-way, provided by agencies and political subdivisions of the state when such information is available. Utah Code Ann. § 72–5–304(3) (Supp.2008). Again, the plain language of this provision does not purport to restrict access to any information maintained by the AGRC related to R.S. 2477 rights-of-way, nor does it conflict with the provisions of GRAMA.

¶ 21 Hence, we conclude that neither of these statutes contain any language designating records maintained by the AGRC as nonpublic or restricting access to them. Therefore, GRAMA's presumption that the government records are public remains intact, and GRAMA's provisions govern their disclosure. Based on this determination, we move to an analysis of the exemptions claimed by the AGRC under GRAMA to determine whether the AGRC may restrict disclosure of the public records.

II. THE REQUESTED RECORDS DO NOT MEET GRAMA'S CRITERIA FOR EXEMPTION FROM DISCLOSURE

¶ 22 The AGRC has argued that the records sought by SUWA are protected under numerous exemptions from the disclosure requirements contained in GRAMA. Specifically, the AGRC claims that the records are exempt because (A) they are work product created and maintained "solely in anticipation of litigation" and reflect mental impressions and legal theories and therefore are protected under section 63G–2–305(16) and (17); (B) they were created to support the Attorney General's legal representation of the State and the County, and therefore are protected as privileged, attorney-client communications; (C) they are drafts within the meaning of section 63G–2–305(22); and (D) SUWA's request for them was an unreasonable duplication of its earlier request to the attorney general's office. We treat each of these arguments in turn.

A. The Records Maintained by the AGRC Pursuant to Section 72–5–304(3) Are Not Work Product; Therefore, They Are Not Exempt Under Section 63G–2–305(16) and (17) of GRAMA

¶ 23 The protections provided by section 63G–2–305(16) and (17) are nearly identical to the protection provided by both the Federal and Utah Rules of Civil Procedure rule 26(b)(3), widely referred to as the work-product doctrine. *See generally Gold Standard, Inc. v. Am. Barrick Res. Corp.*, 805 P.2d 164, 169–70 (Utah 1990) (applying Fed.R.Civ.P. 26(b)(3) and setting forth a three-part test for work product: "1) documents and tangible things otherwise discoverable, 2) prepared in anticipation of litigation or for trial, 3) by or for another party or by or for that party's representative") [hereinafter *Gold Standard I*]. Therefore, in interpreting GRAMA's work product protections, we are informed by the case law interpreting the state and federal procedural protections for work product.

¶ 24 The work-product doctrine can be divided into two sections. The Third Circuit explained it this way:

> Fed.R.Civ.P. 26(b)(3) establishes two tiers of protection: first, work prepared in anticipation of litigation by an attorney or his agent is discoverable only upon a showing of need and hardship; second, "core" or "opinion" work product that encompasses the

mental impressions, conclusions, opinion, or legal theories of an attorney or other representative of a party concerning *652 the litigation is generally afforded near absolute protection from discovery. Thus, core or opinion work product receives greater protection than ordinary work product and is discoverable only upon a showing of rare and exceptional circumstances.

In re Cendant Corp. Sec. Litig., 343 F.3d 658, 663 (3d Cir.2003) (citations and internal quotation marks omitted). Similarly, GRAMA incorporates the two-tier approach by protecting government records containing the first tier of work product with section 63G–2–305(16) and government records containing the second tier of work product with section 63G–2–305(17). The AGRC argues that the requested records are protected under both tiers; accordingly, we address each argument in turn.

1. The requested records were not prepared in anticipation of litigation

[9][10][11][12] ¶ 25 Utah Code section 63G–2–305(16) protects "records prepared by or on behalf of a governmental agency solely in anticipation of litigation that are not available under the rules of discovery." Utah Code Ann. § 63G–2–305(16) (2008). Central to our inquiry in this case is whether the requested records were prepared *in anticipation of litigation*—as required by both Utah Code section 63G–2–305(16) and rule 26(b)(3). This court has long held that for a document to be properly characterized as "prepared in anticipation of litigation" it must have been prepared primarily for use in pending or imminent litigation. *See generally Gold Standard I*, 805 P.2d at 170 (stating that inquiry should focus "on the primary motivating purpose behind the creation of the document") (internal quotation marks omitted). That is, protection for work product extends only to " 'material that would not have been generated but for the pendency or imminence of litigation.' " *Madsen v. United Television, Inc.*, 801 P.2d 912, 917 (Utah 1990) (quoting *Kelly v. City of San Jose*, 114 F.R.D. 653, 659 (N.D.Cal.1987)). The GRAMA exception uses language arguably suggesting an even higher standard, requiring that the record be prepared "*solely* " for litigation use. In any event, this requirement excludes all documentation produced in the ordinary course of business. *See* Fed.R.Civ.P. 26(b) advisory committee's note ("Materials assembled in the ordinary course of business, or pursuant to public requirements unrelated to litigation, or for other nonlitigation purposes are not under the qualified immunity provided by this subdivision."). A document is prepared in the ordinary course of business when it is created pursuant to routine procedures or public requirements unrelated to litigation. *See Soter v. Cowles Publ'g Co.*, 131 Wash.App. 882, 130 P.3d 840, 846 (2006) ("The work product doctrine does not shield records that a party would have generated pursuant to 'ordinary course of business' administrative procedures even without the prospect of litigation."). Further, "[a]cts performed by a public employee in the performance of his official[ ] duties are not 'prepared in anticipation of litigation or for trial' merely by virtue of the fact that they are likely to be the subject of later litigation"; instead they are performed in the ordinary course of business. *Indiana Bd. of Pub. Welfare v. Tioga Pines Living Ctr.*, 592 N.E.2d 1274, 1277 (Ind.Ct.App.1992) (citing *Grossman v. Schwarz*, 125 F.R.D. 376, 388 (S.D.N.Y.1989)).

¶ 26 The AGRC argues that the records requested by SUWA were created in anticipation of litigation, if not solely for litigation, because the AGRC assisted the attorney general's office in compiling data regarding potential R.S. 2477 rights-of-way. However, the AGRC's argument cannot prevail in view of the fact that the records in question are precisely those the statute requires it to create and maintain. *See* Utah Code Ann. § 72–5–304(3) (Supp.2008).[FN9] In this case, absent any litigation, the AGRC's duties regarding the SGID would be the same; those duties exist entirely independent of such litigation. The AGRC's records are created in the ordinary course of its business pursuant *653 to its statutory mandates. Their mere use in litigation does not render them exempt under GRAMA.

FN9. In reaching its decision, the district court reviewed affidavits submitted by Mr. Goreham, the manager of the AGRC, detailing how the AGRC provides litigation support to the attorney general's office. Because we decided the question of disclosure under legal grounds, we need not undertake an analysis of Goreham's affidavit.

¶ 27 The AGRC urges us to examine the legislative

history of section 72–5–304(3), arguing that the intent of the statute was to create R.S. 2477–related records solely for the purpose of supporting litigation against the federal government. A review of the plain language of the statute uncovers no reference whatsoever to litigation or to enforcement of rights associated with the subject of R.S. 2477. Thus, we would not ordinarily consider arguments about legislative history. In this instance, however, the AGRC urges that we must consider the overall statutory scheme, in which the R.S. 2477 database was separately added on to the AGRC's other record-compilation duties, in the context of legislative concern about these particular rights. The AGRC argues that the legislature established the R.S. 2477 database solely for the support of anticipated litigation. As noted, there is nothing in the language of any of the relevant statutes suggesting such intent, and our review of the legislative context and history, set forth extensively in the briefs of both parties, does not persuade us that it can or should be inferred. Indeed, as SUWA argues in its brief, the legislative history of section 72–5–304 reinforces the plain language of the statute: it directs the AGRC to maintain R.S. 2477 records for the benefit of multiple users, for purposes related to relieving counties of record-keeping burdens, supporting congressional lobbying efforts, and preparing for state participation in impending federal rulemaking, and not solely, or even mainly, for anticipated litigation. We also note, and the AGRC acknowledges in the record, that the records at issue will generally be discoverable in the course of litigation, and therefore do not meet the second requirement for exemption under section 63G–2–305(16). Therefore, we conclude that the records in question do not fall under the first tier of work-product protection and are not exempt pursuant to section 63G–2–305(16).

2. The requested records do not reflect mental impressions or legal theories

[13] ¶ 28 Utah Code section 63G–2–305(17) also codifies the work-product doctrine, but focuses on the second tier of work product—opinion work product—by protecting "records disclosing an attorney's work product, including the mental impressions or legal theories of an attorney or other representative of a governmental entity concerning litigation." Utah Code Ann. 63G–2–305(17) (2008). Under Utah law, opinion work product, which includes "mental impressions, conclusions, opinions or legal theories of an attorney or party," is afforded higher protection than fact work product. *Gold Standard I*, 805 P.2d at 168.

[14][15] ¶ 29 However, to utilize the privilege, " '[t]he party seeking to assert the ... work product privilege as a bar to discovery has the burden of establishing that [such] is applicable.' " *McEwen v. Digitran Sys., Inc.*, 155 F.R.D. 678, 683 (D.Utah 1994) (quoting *Barclaysamerican Corp. v. Kane*, 746 F.2d 653, 656 (10th Cir.1984)); *see also Askew v. Hardman*, 884 P.2d 1258, 1261 (Utah Ct.App.1994), *rev'd on other grounds*, 918 P.2d 469 (Utah 1996) ("The party asserting work-product protection must demonstrate that the documents were created to assist in pending or impending litigation."). And, "[a] blanket assertion that the work-product doctrine applies is insufficient to meet that burden. For the work-product doctrine to apply, the asserting party must show that the documents or materials were prepared in anticipation of litigation by or for a party or that party's representative." *Anaya v. CBS Broad., Inc.*, 251 F.R.D. 645, 651 (D.N.M.2007). As the AGRC argues, opinion work product is typically evident on its face. Thus, "[m]aking an *in camera* submission of materials that counsel contends are privileged is a practice both long-standing and routine in cases involving claims of privilege." *In re Grand Jury Subpoena*, 510 F.3d 180, 184 (2d Cir.2007) (internal quotation marks omitted).

¶ 30 In this case, the AGRC argues that disclosing the requested records at issue—Arc/Info computer data, aerial photographs, and digital photographs—will reveal the State and County's litigation strategy. First, the State and County argue that requested ***654** records contain comments regarding the nature of the various rights-of-way, and therefore should be protected as opinion work product. Further, the AGRC argues that by disclosing such documents, the State will be divulging the areas on which the State and County are focusing their litigation efforts and their methods of documenting the alleged rights-of-way. That is, by disclosing the requested records, the State will be divulging the focus of the attorney general's fact collection, as well as how it organized such data in the SGID. To support this argument, the AGRC provided the requested records to the court to review in camera.

¶ 31 Upon review of the records produced by the AGRC, we find no evidence of opinion work product. First, as indicated in the prior argument, we find that the R.S. 2477 database was not created in anticipation of litigation, but instead pursuant to a legislative mandate that required its creation notwithstanding any litigation. Thus, the AGRC's argument that the order in which the database is organized and the information contained therein is opinion work product fails. Any litigation strategy that it divulges is coincidental to its statutory requirements, and frankly may reflect a failure of the AGRC to create a comprehensive database. Second, upon reviewing the records produced in camera, this court is unable to discern any comment reflecting mental impressions, conclusions, or legal theories of the attorney general's office or its agents. The AGRC argues that these comments are imbedded into the metadata in the database. However, as the AGRC failed to provide the court with a readable format or method by which to review the metadata, the court cannot determine whether such comments exist and whether they constitute opinion work product. Therefore, the AGRC has failed to meet its burden to prove the existence of the opinion work product privilege. Thus, we find that the requested records are not protected as opinion work product under section 63G–3–305(17).

B. Records Maintained by the AGRC Pursuant to Utah Code Section 72–5–304(3) Are Not Privileged Communications Between a Governmental Entity and an Attorney, and Therefore, Are Not Exempt Under Section 63G–2–305(18) of GRAMA

¶ 32 Section 63G–2–305(18) protects "records of communications between a governmental entity and an attorney representing, retained, or employed by the governmental entity if the communications would be privileged as provided in Section 78B–1–137." Utah Code Ann. § 63G–2–305(18). By referencing section 78B–1–137, which protects "any communication made by the client to [his attorney] or [the attorney's] advice given regarding the communication in the course of his professional employment," *id.* § 78B–1–137(2), this section of GRAMA incorporates the statutory and common law attorney-client privilege protection for government records. *See Gold Standard, Inc. v. Am. Barrick Res. Corp.*, 801 P.2d 909, 911 (Utah 1990) [hereinafter *Gold Standard II*].[FN10] This court has held that regardless of the statutory source, the privilege is the same. *Doe v. Maret*, 1999 UT 74, ¶ 7, 984 P.2d 980, *overruled in part by Munson v. Chamberlain*, 2007 UT 91, ¶¶ 20–21, 173 P.3d 848 (overruling *Maret's* holding that all documents submitted to a prelitigation panel are confidential). Thus, we rely on our prior interpretations of both 78B–1–137 and rule 504 to interpret this exemption from GRAMA.

FN10. The attorney-client privilege is also codified in Utah Rules of Evidence 504.

[16][17][18] ¶ 33 The attorney-client privilege protects information given by a client to an attorney that is "necessary to obtain informed legal advice—which might not have been made absent the privilege." *Gold Standard II*, 801 P.2d at 911 (quoting *Fisher v. United States*, 425 U.S. 391, 403, 96 S.Ct. 1569, 48 L.Ed.2d 39 (1976)); *see also Jackson v. Kennecott Copper Corp.*, 27 Utah 2d 310, 495 P.2d 1254, 1256 (1972). In addition, the communication must be confidential. Utah R. Evid. 504 ("A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal ser*655 vices...."). And, "the mere existence of an attorney-client relationship 'does not ipso facto make all communications between them confidential.' " *Gold Standard II*, 801 P.2d at 911 (quoting *Anderson v. Thomas*, 108 Utah 252, 159 P.2d 142, 147 (1945)). Thus to rely on the attorney-client privilege, a party must establish: (1) an attorney-client relationship, (2) the transfer of confidential information, and (3) the purpose of the transfer was to obtain legal advice.

[19] ¶ 34 The AGRC argues that the information requested meets all three requirements. First, the AGRC notes that the attorney general's office represents the AGRC pursuant to statute, and therefore an attorney-client relationship exists. Additionally, the AGRC suggests that it is also included in the contractual, attorney-client relationship between the attorney general's office, the State, and Emery County "because all the entities are working together in the R.S. 2477 project with the

Attorney General as their attorney." Second, the AGRC argues that the requested records are confidential communications because they are information exchanged between the AGRC, the State, and the County. The AGRC also points to the litigation agreement between the attorney general's office, the State, and the County, which requires the parties to keep all records and information regarding the R.S. 2477 project confidential. Finally, the AGRC argues that the records were created and exchanged "for the purpose of determining valid R.S. 2477 rights-of-way in Emery County and litigating those rights-of-way." The AGRC's argument seems to suggest that it is the agent of the attorney general's office and that it created the R.S. 2477 records in the SGID as a result of the attorney general office's representation of the State and the County. That is, the AGRC seems to assert that because the information sought by SUWA and maintained by the AGRC relates to the rights-of-way in the County at issue in litigation, that information becomes privileged by virtue of coming, at some point, into the possession of the Attorney General as attorney for the County. We are not persuaded.

¶ 35 Despite the arguments urged by the AGRC, the records requested are not protected by the attorney-client privilege. First, the AGRC cannot rely on the relationship between the attorney general's office and the State and County. The AGRC is not a party to the litigation agreement that creates the contractual, attorney-client relationship. Thus, the information provided to the AGRC was not subject to an attorney-client relationship regarding R.S. 2477 litigation. Instead it was provided by municipal bodies to a nonlegal state agency, without the purpose of seeking legal advice. The AGRC, however, seems to argue that it is an agent to the attorney general's office, or the custodian of its records, and therefore, the records were created and stored at the direction of the attorney general's office as part of its representation of the State and County in R.S. 2477 litigation. However, the AGRC ignores the fact that its collection and maintenance of information provided by state agencies or political subdivisions (including the County) is merely the performance of its statutory duty for the benefit of the State and federal agencies, as well as private persons. The AGRC's duties do not extend to the preparation of records for litigation support. Thus, the records housed in the SGID, including the R.S. 2477 records, are also not confidential as they are created for the benefit of a host of agencies and the public. As discussed in Section I, the records are presumptively public, and the AGRC's refusal to disclose them does not make them confidential. Finally, the records were not created for the purpose of providing or seeking legal advice. As we have thoroughly discussed, the records are created pursuant to a statutory requirement, not pursuant to the attorney general's office's or the counties' involvement in R.S. 2477 litigation. True, the AGRC did provide the records to the attorney general's office and to the Attorney General's clients. However, "channeling work through a lawyer" does not by itself create a basis for attorney client privilege. *See* Anaya v. CBS Broad., Inc., 251 F.R.D. at 650 (citing *Burton v. R.J. Reynolds Tobacco Co.*, 170 F.R.D. 481, 485 (D.Kan.1997)).

¶ 36 Thus, we reject AGRC's position that the information it received from other state ***656** agencies and political subdivisions, pursuant to section 72–5–304(3), is privileged information.

C. Records Maintained by the AGRC Pursuant to Section 72–5–304(3) Are Not Temporary Drafts; Therefore They Are Not Exempt Under Section 63G–2–103(22)(b)(ii) of GRAMA

[20] ¶ 37 Utah Code section 63G–2–103(22)(b)(ii) provides that the definition of a record does not include "temporary drafts or similar materials prepared for the originator's personal use." Utah Code Ann. § 63G–2–103(22)(b)(ii). The AGRC contends that the data sought by SUWA are temporary drafts because they were prepared to be used in the Attorney General's strategy development on the issue of R.S. 2477 rights-of-way. We conclude that the data maintained by the AGRC are records, not drafts. Section 72–5–304(3) itself labels what the AGRC maintains on the SGID records when it states that the AGRC shall create and maintain a *record* of R.S. 2477 rights-of-way on the SGID. Thus, the data maintained by the AGRC are records.

¶ 38 Moreover, section 63G–2–103(22)(b)(ii) states that the definition of a record does not include temporary drafts or materials prepared for the *originator's personal use.* It is our opinion that the data maintained by the AGRC may not be considered temporary drafts in the

hands of a third-party user of the information. In other words, any information maintained by the AGRC is characterized as a record as defined in Utah Code section 63–2–103(22); it cannot be considered a temporary draft in the hands of the final user of the records because that user is not the originator. Labeling the data on the SGID as temporary drafts would be equivalent to a determination that the entire database is comprised of only temporary drafts, given that new data will continuously be added to the database. Such a determination would clearly undermine the provisions of sections 72–5–304(3), 63F–1–506, and GRAMA, because it would result in near total restriction of access. Therefore, we hold that the data maintained by the AGRC are records, not temporary drafts.

D. SUWA's GRAMA Request to the AGRC Did Not Unreasonably Duplicate a Prior GRAMA Request Pursuant to Section 63G–2–201(8)(a)(iv); Therefore, the AGRC Is Required to Fulfill SUWA's GRAMA Request

[21] ¶ 39 Utah Code section 63G–2–201(8)(a)(iv) [FN11] provides that, "[i]n response to a request, a governmental entity is not required to fulfill a person's records request if the request unreasonably duplicates prior records requests from that person...." Utah Code Ann. § 63G–2–201(8)(a)(iv). The AGRC argues that because an initial records request regarding R.S. 2477 roads in Emery County was made by SUWA to the Governor and the attorney general's office, the AGRC properly denied the subsequent request because the AGRC is an agent of the Attorney General. We disagree.

FN11. This section was originally codified as Utah Code section 63G–2–103(8)(c) (2004) at the time this claim arose. It is now renumbered as Utah Code section 63G–2–201(8)(a)(iv). Because there are no substantive differences between the original version and the renumbered version, we will refer to the renumbered version throughout this opinion.

¶ 40 In the plain language of section 63G–2–201(8)(a)(iv), a records request is unreasonably duplicated where a subsequent request is made to a governmental entity after the initial records request has been granted, denied, or has been adequately responded to by the *same* governmental entity [FN12] pursuant to Utah Code section 63G–2–204. *See id.* § 63G–2–204.[FN13]

FN12. Utah Code section 63G–2–103(11)(a)(i) includes executive department agencies of the state in its definition of governmental entities. Utah Code Ann. § 63G–2–103(11)(a)(i). Section 63G–2–103(11)(b) states that governmental entity means "every office, agency, board, bureau, committee, department ... of an entity listed in Subsection (11)(a)." *Id.* § 63G–2–103(11)(b).

FN13. This section provides the process for requesting information and time limits for responses to such requests.

¶ 41 SUWA's records request to the AGRC was not a subsequent request made to the same agency. First, the AGRC's argument ***657** that the AGRC and the governor's office are one governmental entity does not pass muster. The AGRC seems to suggest that all agencies, offices, or departments within the executive branch can be categorized as one governmental agency, and thus a request to one is equivalent to a request to all. This suggestion undermines the purpose of the statute and defies common sense. The AGRC is a separate statutory entity, charged with the duty to create and maintain records for the state and federal governments, state political subdivisions, and private parties. The Attorney General on the other hand is a legal adviser to state officers. Besides, section 63G–2–201(8)(a) refers to *a governmental entity* as opposed to simply *the government,* making it clear that the statute never intended to treat all governmental agencies in the state of Utah as one unit. Second, the AGRC is not an agent of the Attorney General; instead, the AGRC was created within the Division of Integrated Technology. *Id.* § 63F–1–506(1).[FN14] Therefore, SUWA's records request to the AGRC after the denial of its request to the Attorney General was not a duplicate request to the same governmental entity.

FN14. The Division of Integrated Technology was created within the Department of

> Technology Services, an executive branch agency. Utah Code Ann. § 63F–1–103.

¶ 42 Moreover, it would be unduly restrictive for us to conclude that a record request to a separate governmental entity is unreasonably duplicated whenever an initial request has been merely "responded" to pursuant to section 63G–2–204(3), since the initial request may have been submitted to a governmental entity that does not even possess or maintain the records sought.

¶ 43 Therefore, SUWA's request to the AGRC did not unreasonably duplicate a prior GRAMA request, and the AGRC is not excused from fulfilling the GRAMA request.

CONCLUSION

¶ 44 We reiterate that the AGRC is primarily governed by Utah Code section 63F–1–506, which specifically created its duties, with additional duties relating to rights-of-way established by Utah Code section 72–5–304(3). The records sought by SUWA and maintained by the AGRC pursuant to both sections are public records under GRAMA. Further, the records were not created in anticipation of litigation, but instead pursuant to a statutory requirement that exists notwithstanding any litigation. Therefore, the records are not protected as work product and were not created to seek or provide legal advice, making them ineligible for attorney-client privilege. Additionally, the R.S. 2477 records created and maintained by the AGRC are records, not drafts, as defined by statute. Finally, the AGRC's request was not unreasonably duplicated, as it was directed to a new government entity. Accordingly, we reverse the district court's judgment and hold that SUWA must be given access to the records it seeks.

¶ 45 Associate Chief Justice DURRANT, Justice WILKINS, Justice PARRISH, and Justice NEHRING concur in Chief Justice DURHAM's opinion.

Utah,2008.

Southern Utah Wilderness Alliance v. Automated Geographic Reference Center, Division of Information Technology
200 P.3d 643, 620 Utah Adv. Rep. 8, 2008 UT 88
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Paul Amann vs DCFS
Handout

63G-2-103 Definitions.

As used in this chapter:

. . . .

(22)

(a) "Record" means a book, letter, document, paper, map, plan, photograph, film, card, tape, recording, electronic data, or other documentary material regardless of physical form or characteristics:

(i) that is prepared, owned, received, or retained by a governmental entity or political subdivision; and

(ii) where all of the information in the original is reproducible by photocopy or other mechanical or electronic means.

(b) "Record" does not mean:

(i) a personal note or personal communication prepared or received by an employee or officer of a governmental entity:

(A) in a capacity other than the employee's or officer's governmental capacity; or

(B) that is unrelated to the conduct of the public's business;

(ii) a temporary draft or similar material prepared for the originator's personal use or prepared by the originator for the personal use of an individual for whom the originator is working;

. . . .

(ix) a daily calendar or other personal note prepared by the originator for the originator's personal use or for the personal use of an individual for whom the originator is working;

. . . .

63G-2-301 Public records.

. . . .

(3) The following records are normally public, but to the extent that a record is expressly exempt from disclosure, access may be restricted under Subsection 63G-2-201(3)(b), Section 63G-2-302, 63G-2-304, or 63G-2-305:

. . . .

(o) records that would disclose information relating to formal charges or disciplinary actions against a past or present governmental entity employee if:

(i) the disciplinary action has been completed and all time periods for administrative appeal have expired; and

(ii) the charges on which the disciplinary action was based were sustained;

. . . .

63G-2-302 Private records.

. . . .

(2) The following records are private if properly classified by a governmental entity:

(a) records concerning a current or former employee of, or applicant for employment with a governmental entity, including performance evaluations and personal status information such as race, religion, or disabilities, but not including records that are public under Subsection 63G-2-301(2)(b) or 63G-2-301(3)(o) or private under Subsection (1)(b);

. . . .

(d) other records containing data on individuals the disclosure of which constitutes a clearly unwarranted invasion of personal privacy;

. . . .

63G-2-305 Protected records.

The following records are protected if properly classified by a governmental entity:

. . . .

(10) records created or maintained for civil, criminal, or administrative enforcement purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if release of the records:

(a) reasonably could be expected to interfere with investigations undertaken for enforcement, discipline, licensing, certification, or registration purposes;

. . . .

(d) reasonably could be expected to disclose the identity of a source who is not generally known outside of government and, in the case of a record compiled in the course of an investigation, disclose information furnished by a source not generally known outside of government if disclosure would compromise the source; or

. . . .

(17) records that are subject to the attorney client privilege;

(18) records prepared for or by an attorney, consultant, surety, indemnitor, insurer, employee, or agent of a governmental entity for, or in anticipation of, litigation or a judicial, quasi-judicial, or administrative proceeding;

. . . .

(22) drafts, unless otherwise classified as public;

(23) records concerning a governmental entity's strategy about:

(a) collective bargaining; or

(b) imminent or pending litigation;

. . . .

(25) 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;

. . . .

(33) records that would reveal the contents of settlement negotiations but not including final settlements or empirical data to the extent that they are not otherwise exempt from disclosure;

. . . .

Paul Amann vs DCFS
Handout

Handout (Burns)

Not Reported in P.3d, 2003 WL 21356404 (Utah App.), 2003 UT App 195

(Cite as: 2003 WL 21356404 (Utah App.))

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Court of Appeals of Utah.

James C. GODFREY, Petitioner and Appellant,
v.
STATE of Utah, et al., Respondents and Appellees.
No. 20020382-CA.

June 12, 2003.
Second District, Ogden Department, The Honorable Ernest W. Jones.

James C. Godfrey, Gunnison, Appellant Pro Se.
Mark L. Shurtleff, Brent A. Burnett, J. Frederic Voros Jr., and Allan L. Larson, Salt Lake City, and David C. Wilson, Ogden, for Appellees.

Before Judges JACKSON, BILLINGS, and GREENWOOD.

MEMORANDUM DECISION (Not For Official Publication)

JACKSON, Presiding Judge:

*1 Godfrey challenges the trial court's dismissal of his complaints against the State of Utah, Ogden City, and Weber County. "We ... review the trial court's grant of a motion to dismiss ... for correctness." *Patterson v. American Fork City*, 2003 UT 7,¶ 9, 67 P.3d 466. We conclude that the trial court lacked jurisdiction to hear Godfrey's complaint against the State and affirm its dismissal of the other two complaints.

I. Claims Against State

Godfrey attempted to serve the State Records Committee (Committee) by serving the Utah Attorney General. This service was fatally defective and did not confer jurisdiction on the trial court. Utah's rule concerning service of process on a state committee states that service "[u]pon a department or agency of the state of Utah, or upon any public board, commission or body, subject to suit" is effectuated by "delivering a copy of the summons and the complaint to any member of its governing board, or to its executive employee or secretary." Utah R. Civ. P. 4(d)(1)(K).

Godfrey failed to serve a member of the Committee's governing board, its executive employee, or its secretary. Instead, he sought to serve the Committee by serving the Utah Attorney General. In the absence of effective service of process, the trial court was without jurisdiction to hear Godfrey's complaint against the State. *See Skanchy v. Calcados Ortope SA*, 952 P.2d 1071, 1074 (Utah 1998).

II. Claims Against Ogden City

The trial court did not err in dismissing Godfrey's complaint against Ogden City because Godfrey received all of the records to which he is entitled under the Government Records Access and Management Act (GRAMA).[FN1] Godfrey requested twenty-six items from Ogden City. Ogden provided fourteen of the items but denied his request for the remaining twelve items. We confine our analysis to whether Ogden City properly denied Godfrey's request as to the remaining twelve items.

> FN1. GRAMA does not impose on any governmental entity a duty to provide access to all records it can conceivably obtain. *See State v. Spry*, 2001 UT App 75,¶ 16, 21 P.3d 675 ("Requiring the State to disclose to the defense all information to which it has 'access' under GRAMA 'would place a herculean burden on the prosecutor to search through [the] records of every state agency' looking for relevant written or recorded statements on behalf of the defendant simply because the State has access to the records under GRAMA." (Citation omitted.)).

Ogden City denied Godfrey's requests 2 and 3 (wherein Godfrey requested "Detective Lucas's license plate search conducted at the police station and Detective Lucas's and Ms. Mindy Maughan's DMV license plate search") because these were manual searches done by the officer on a computer and later between the officer and Maughan and, therefore, no record existed to provide to Godfrey. Preliminary record searches are not records pursuant to Utah Code Ann. § 63-2-103(18)(b)(i) (1997), which excludes from the definition of records "temporary drafts or similar materials prepared for the originator's personal use."

Similarly, Ogden City denied Godfrey's requests 6, 7, and 8 (wherein Godfrey requested notes of interviews of the victims) because any notes potentially taken by Detective Lucas do not qualify as records under GRAMA. "Record does not mean: (i) temporary drafts or similar materials prepared for the originator's personal use or ... (vii) ... personal notes prepared ... for the originator's personal use...." *Id.*

***2 § 63-2-103(18)(b). Accordingly, Ogden City was not required to provide these documents to Godfrey under GRAMA.**

Ogden City denied Godfrey's requests 4 and 5 (wherein Godfrey requested DMV records and license plate listings for Weber County) because they were not Ogden City records. To the extent that these records exist, they are State records. Similarly, Ogden City denied Godfrey's request 16 (wherein Godfrey requested a "Booking property report") because the record was made by Weber County and was not in Ogden City's possession. Finally, Ogden City denied Godfrey's requests 23 and 24 (wherein Godfrey requested trial exhibits) because the requests were given to the Weber County Attorney's Office and are not in the City's possession. No entity is required to go looking for records compiled by another agency or political subdivision. *See State v. Spry*, 2001 UT App 75,¶ 16, 21 P.3d 675 (refusing to require State to turn over all documents that might be helpful to defendant solely because it has "potential access"). Thus, Ogden City properly denied Godfrey's request for these documents.

Ogden City properly denied Godfrey's request 12 (wherein Godfrey requested Detective Lucas's sample exhibit given to the Weber County Attorney's Office of how the Utah State database worked). Ogden City no longer possessed the exhibit and was "not required to create a record in response to [Godfrey's] request." Utah Code Ann. § 63-2-201(8)(a) (1997). Therefore, Ogden City properly denied Godfrey's request for this document.

Ogden City also denied Godfrey's request 17 (requesting the "misdemeanor police report") because it was a South Ogden Police report. Utah Code Ann. § 63-2-701 (1997) allows political subdivisions to adopt ordinances "relating to information practices, including classification, designation, access, denials, ... management, retention, and amendment of records." An Ogden ordinance provides that

> When a record is temporarily held by a custodial City agency, pursuant to that custodial agency's statutory or ordinance functions .... [t]he record shall be considered a record of the agency or agencies which usually keeps or maintains that record, and any requests for access to such records shall be directed to that agency or agencies, rather than the custodial agency.

Ogden, UT, Code § 4-5-3(C) (2003). Accordingly, Godfrey was required to submit his request for this document to the City of South Ogden.

The trial court correctly dismissed Godfrey's complaint against Ogden City because the City provided Godfrey all of the records to which he was entitled under GRAMA.

III. Claims Against Weber County

The trial court did not err in dismissing Godfrey's GRAMA complaint against Weber County because Godfrey did not present

> Weber County with an adequate GRAMA request. Specifically, paragraph 12 of Godfrey's complaint states: "On April 12, Twenty-Six (26) items were requested from the District Attorney; (ATTACHMENT 2) 2nd District Court of Utah, Clerk of the Court, Public Defender Office; Ogden City Police Department-Chief of Police. No response was timely." However, Godfrey's "Attachment 2" contained no April 12, 2001 GRAMA request to Weber County. The only letter dated April 12, 2001 was addressed to the Ogden City Police Department.

*3 The only correspondence that Godfrey made part of the record is a July 6, 2001 letter to the District Attorney's office regarding: "GRAMA Appeal Request, case no 951900679." The letter states:

> [O]n June 4th, 2001, a GRAMA request was mailed and would have been received on June 7th, 2001. This is a third request and/or appeal. On June 28th, 2001, Ogden

> City claimed ITEMS 9 thru [sic] 11, 13, 18 thru [sic] 22, 25, and 26 are within your control. Please refer to enclosed *ATTACHMENT 1* and *ATTACHMENT 2*.

However, there were no such attachments to the letter or the complaint. These documents demonstrate that Weber County did not receive appropriate notice of Godfrey's GRAMA requests. Thus, any judicial proceeding requiring Weber County to produce the documents was premature. *See* Utah Code Ann. § 63-2-204(1) (1997) ("A person making a request for a record shall furnish the governmental entity with a written request containing ... a description of the records requested that identifies the record with reasonable specificity."). Accordingly, the trial court was correct in granting Weber County's motion to dismiss.

IV. Conclusion

The trial court did not err in dismissing Godfrey's complaints against the State, Ogden City, and Weber County because (1) it lacked jurisdiction to hear Godfrey's complaint against the State; (2) Ogden City provided Godfrey all the records to which he was entitled under GRAMA; and (3) Weber County did not receive adequate notice of Godfrey's GRAMA request. Because the trial court did not err in dismissing Godfrey's complaints against the State, Ogden City, and Weber County, we do not reach Godfrey's damage claims. Accordingly, we affirm.

NORMAN H. JACKSON, Presiding Judge.

WE CONCUR: JUDITH M. BILLINGS, Associate Presiding Judge and PAMELA T. GREENWOOD, Judge. Utah App.,2003.

Godfrey v. State
Not Reported in P.3d, 2003 WL 21356404 (Utah App.), 2003 UT App 195
END OF DOCUMENT

Handout (Amann)
Paul Amann vs DCFS
Handout

STATE OF UTAH
OFFICE OF THE ATTORNEY GENERAL

SEAN D. REYES
ATTORNEY GENERAL

SPENCER E. AUSTIN
Chief Criminal Deputy

PARKER DOUGLAS
General Counsel & Chief of Staff

BRIDGET K. ROMANO
Solicitor General

BRIAN L. TARBET
Chief Civil Deputy

March 18, 2015

Re: Complaint against Paul Amann by Ann Skaggs

To Whom it May Concern:

Some time ago, I informed Jim Soper that I have no problem with the release of the notes or documents connected with my interview involving the complaint against Paul Amann made by Ann Skaggs done by Jim Soper and Etta Adkins. I still do not object to the release of these documents. As I informed Jim earlier, I had no expectation of privacy as I was being interviewed and expected these documents and notes would become public at some point.

If you have any questions please feel free to contact me at 801-366-0521.

Sincerely,

Karl G. Perry
Assistant Attorney General

Commercial Enforcement Division • 160 East 300 South, Fifth Floor • P.O. Box 140872 • Salt Lake City, UT 84114-0872
Phone: (801)366-0310 • Fax: (801)366-0315

Paul Amann <pamann@utah.gov>

Fwd: witness statement

D Davis <dscottdavis@utah.gov> Wed, Jan 14, 2015 at 8:15 AM
To: Paul Amann <pamann@utah.gov>

---------- Forwarded message ---------
From: **James Soper** <jsoper@utah.gov>
Date: Wed, Jan 14, 2015 at 8:07 AM
Subject: Re: witness statement
To: Laura Lockhart <llockhart@utah.gov>
Cc: dscottdavis@utah.gov

Laura - Scott Davis told me he doesn't care if his interview statement is given to Paul Amann, but does not want it further disseminated by Paul. I told Scott that there would be no way to control what Paul does with the statement if he were to get it. Scott's cell number is 801-473-5663 if you have further questions. Thanks, Jim

--
D. Scott Davis
Assistant Attorney General
55 North University Avenue, Suite 219
Provo, Utah 84601
Phone: 801-812-5211

Paul Amann <pamann@utah.gov>

Ann Skaggs Investigation

K Lau <dlau@utah.gov> Wed, Mar 18, 2015 at 9:37 AM
To: Paul Amann <pamann@utah.gov>

Paul,

As I informed Jim Soper, I have no problem whatsoever with the release of any and all notes, documents, or any other type of information related to my interview with Jim Soper and Etta Adkins in the Ann Skaggs investigation.

I hope you get a quick and fair resolution in this matter that has been so troubling for you.

Dan Lau

Paul Amann <pamann@utah.gov>

Records Request

1 message

Jeff Buckner <jbuckner@utah.gov> Wed, Mar 18, 2015 at 9:55 AM
To: Paul Amann <pamann@utah.gov>

I have no objection to the release of any records, notes, recordings, transcripts, information regarding my discussion with Jim Soper about the allegations of work place harassment made against Paul Amann.