

STATE RECORDS COMMITTEE

NOTICE OF PUBLIC MEETING

Thursday, April 14, 2016, 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 reconvene at 12:30 p.m. for lunch when there are two or more hearings scheduled.**

AGENDA

HEARINGS:

**Edgardo Mata vs. Utah Department of Corrections:** Mr. Mata is appealing access denial to his Security Threat Group (STG) file. Telephonic

**Roger Bryner vs. Utah Department of Health:** Mr. Bryner is appealing a fee waiver and records access denial. Telephonic.

**Utah Rivers Council vs. Washington County Water Conservation District:** Nick Schou, on behalf of Utah Rivers Council, is appealing Washington County Water Conservation District's determination it does not maintain the record.

**Bryan Thatcher vs. Utah Department of Public Safety:** Mr. Thatcher is appealing access denial to reports, notes, recordings and/or videos of interview, witness interviews and/or statements held by DPS.

**Nate Carlisle, Salt Lake Tribune vs. Attorney General's Office:** Mr. Carlisle is appealing access denial to criminal investigation records of Beaver County Sheriff Cameron Noel conducted 2014 or 2015 and requesting a fee waiver.

**Cody Black vs. Lehi City Police Department:** Mr. Black is appealing access denial to records that pertain to hiring and promoting for selected positions within the police department.

WITHDRAWN/POSTPONED HEARINGS:

**Sadie Schilaty vs. Utah Department of Human Services:** Ms. Schilaty is appealing access denial to DCFS records. (Appeal withdrawn).

**Daniel Ortiz vs. Utah Department of Corrections:** Mr. Ortiz is appealing access denial to Security Threat Group (STG) Policy FD29. Telephonic. (Postponed).

## BUSINESS

**Approval of March 17, 2016, SRC Minutes, action item**

**Retention Schedules, action item**

**SRC appeals received**

**Cases in District Court**

**Other Business**

**Discuss *Lambourne v. Provo City* Third District Court decision**

**Next meeting scheduled for May 12, 2016, @ 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.

# APPEALS TO THE STATE RECORD COMMITTEE:

## As of APRIL 2016

Appeals Request No.	Case Title/ Participants	Records Sought	Notes	Status
2016-20	Mark Kimball vs. Salt Lake County Health Department	(Appealed 10 March)	Telephonic Draper	Incomplete
Mr. Kimball is appealing the CAO's failure to reach a decision on an appeal. The Notice of Appeal missing required documents to process the appeal.				
2016-32	Donald Lyle Ashmore vs. Third District Court	(Appealed 6 April)		Outside Jurisdiction
Mr. Ashmore was denied records held at Third District Court. He requested information on how to file an appeal. An informational packet was sent containing material on how to appeal a records access denial to the courts.				
2016-34	Daniel Ortiz vs. Utah Department of Corrections	(Appealed 13 April)	Telephonic Draper	Incomplete
Mr. Ortiz is appealing access to denial to his medical/mental health records from 2004-present day. Missing original request and CAO denial letter.				
2016-35	Daniel Ortiz vs. Utah Department of Corrections	(Appealed 13 April)	Telephonic Draper	Incomplete
Mr. Ortiz is appealing a fee waiver denial for all Incident Reports regarding him from July 2015-February 2016. He does not meet the indigent status. Missing original request and governmental entity's denial letter.				

## SCHEDULED HEARINGS

<b>2016-04</b>	<b>Sadie Schilaty vs. Utah Department of Human Services (Appealed 8 January)</b>	<b>Appeal withdrawn</b>
Ms. Schilaty is appealing access denial to DCFS records. The parties are in mediation.		
<b>2016-12</b>	<b>Reginald Williams vs. Utah Department of Corrections (Appealed 19 February)</b>	<b>Telephonic Gunnison Appeal withdrawn</b>
Mr. Williams is appealing access denial to a "response letter" by a UDC employee. Committee motioned to hear the appeal. The records dispute resolved between parties.		
<b>2016-13</b>	<b>Utah Rivers Council vs. Washington County Water Conservation District (WCWCD) (Appealed 19 February)</b>	<b>Hearing scheduled April 14, 2016</b>
Nick Schou, on behalf of Utah Rivers Council, is appealing Washington County Water Conservation District's determination it does not maintain the record requested (All documentation of the WCWCD repayment plan for the proposed Lake Powell Pipeline, and schedule of payments referenced widely by the Division of Water resources and WCWCD).		
<b>2016-15</b>	<b>Bryan Thatcher vs. Utah Department of Public Safety (Appealed 3 March)</b>	<b>Hearing scheduled April 14, 2016</b>
Mr. Thatcher is appealing access denial to reports, notes, recordings and/or videos of interview, witness interviews and/or statements held by DPS.		
<b>2016-16</b>	<b>Nate Carlisle, Salt Lake Tribune vs. Attorney General's Office (Appealed 3 March)</b>	<b>Hearing scheduled April 14, 2016</b>
Mr. Carlisle is appealing access denial to criminal investigation records of Beaver County Sheriff Cameron Noel conducted 2014 or 2015 and requesting a fee waiver.		
<b>2016-18</b>	<b>Cody Black vs. Lehi City Police Department (Appealed 8 March)</b>	<b>Hearing scheduled April 14, 2016</b>
Mr. Black is appealing access denial to records that pertain to hiring and promoting for selected positions within the police department.		
<b>2016-19</b>	<b>Daniel Ortiz vs. Utah Department of Corrections (Appealed 9 March)</b>	<b>Telephonic Draper Hearing rescheduled May 12, 2016</b>
Mr. Ortiz is appealing access denial to Security Threat Group (STG) Policy FD29. Hearing postponed on April 12 <sup>th</sup> and rescheduled for May 12 <sup>th</sup> .		
<b>2016-23</b>	<b>Edgardo Mata vs. Utah Department of Corrections (Appealed 14 March)</b>	<b>Telephonic Gunnison Hearing scheduled April 14, 2016</b>
Mr. Mata is appealing access denial to his Security Threat Group (STG) file.		

<b>2016-21</b>	<b>Roger Bryner vs. Utah Department of Health (Appealed 11 March)</b>	<b>Telephonic</b>	<b>Hearing scheduled April 14, 2016</b>
Mr. Bryner is appealing a fee waiver and records access denial.			
<b>2016-05</b>	<b>Thomas Cross vs Department of Human Services, Division of Child and Family Services (DCFS) (Appealed 15 January)</b>		<b>Hearing rescheduled May 12, 2016</b>
Mr. Thomas Cross, represented by Trupiano Law, PC, is appealing denial of investigative notes and records. The Petitioner made a timely Expedited Hearing request R35-6-2), it was denied because it did not demonstrate that an expedited response to the record request benefits the public rather than the person Subsection 63G-2-204(3)(a).			
<b>2016-22</b>	<b>Roger Bryner vs. Utah Department of Health (Appealed 14 March)</b>	<b>Telephonic</b>	<b>Hearing scheduled May 12, 2016</b>
Mr. Bryner is appealing a fee waiver and access denial to database summary.			
<b>2016-08a</b>	<b>Patrick Sullivan vs. Attorney General's Office (Continuance)</b>	<b>Telephonic Draper</b>	<b>Hearing scheduled May 12, 2016</b>
Mr. Sullivan is appealing the Attorney General's Office decision to not search Google Vault for responsive emails to his GRAMA request.			
<b>2016-24</b>	<b>Chad Lambourne vs. Duchesne County Sheriff's Office (DCSO) (Appealed 18 March)</b>		<b>Appeal withdrawn</b>
Mr. Lambourne is appealing access denial to public records the DCSO possesses requested under GRAMA not Discovery. The parties resolved the records dispute through mediation.			
<b>2016-25</b>	<b>Chad Lambourne vs. Washington County Sheriff's Office (WCSCO) (Appealed 18 March)</b>		<b>Appeal withdrawn</b>
Mr. Lambourne is appealing access denial for three different clients to public records the WCSCO possesses requested under GRAMA not Discovery. The parties resolved the records dispute.			
<b>2016-26</b>	<b>Roger Bryner vs. Utah Department of Technology Services (DTS) (Appealed 24 March)</b>	<b>Telephonic</b>	<b>Hearing scheduled May 12, 2016</b>
Mr. Bryner is appeal a fee waiver and access denial to database summary. This appeal is related to Appeal Req. #2016-22.			
<b>2016-27</b>	<b>Chad Lambourne vs. Washington City Police Department (WCPD) (Appealed 28 March)</b>		<b>Hearing scheduled May 12, 2016</b>
Mr. Lambourne is appealing access denial for two different clients to public records the WCPD possesses requested under GRAMA not Discovery.			

<b>2016-28</b>	<b>Erin Alberty, Salt Lake Tribune vs. Salt Lake City Police Department/Salt Lake City Corp. (Appealed 29 March)</b>		<b>Hearing scheduled May 12, 2016</b>
	Ms. Alberty and Ms. Jessica Miller are appealing access denial to recordings of dispatch communications and police radio traffic related to an incident in February.		
<b>2016-29</b>	<b>Angela H. Elmore, on behalf of Trenton Mellen v. Salt Lake City Corporation (Appealed 1 April)</b>		<b>Hearing scheduled May 12, 2016</b>
	Ms. Elmore is appealing SLC classification of emails, collection methods and results, pertaining to her client's case.		
<b>2016-30</b>	<b>Becky Wright, Standard-Examiner vs. North Ogden City (Appealed 4 April)</b>		<b>Hearing scheduled May 12, 2016</b>
	Ms. Wright is appealing access denial to an incident report related to a substitute teacher alleged to be under the influence or impaired, N. Ogden Jr. High School.		
<b>2016-17</b>	<b>Patrick Sullivan vs. University of Utah, Medical Center (Appealed 4 April)</b>	<b>Telephonic Draper</b>	<b>Hearing scheduled May 12, 2016</b>
	Mr. Sullivan is appealing access denial to emails and names of all orthopedic surgeons/residents who worked the Prison Telemed Clinic on September 22, 2014. He is requesting a fee waiver.		
<b>2016-31</b>	<b>Alba &amp; Noemi Cruz vs. Department of Human Services, Division of Aging and Adult Services (Appealed 5 April)</b>		<b>Hearing scheduled June 09, 2016</b>
	Ms. Cruz is appealing partial access denial to a record that contains the referent's name in the Division of Aging and Adult Services (DAAS) system.		
<b>2016-33</b>	<b>Colby Frazier, Salt Lake City Weekly vs. Salt Lake City Police Department (Appealed 7 April)</b>		<b>Hearing scheduled June 09, 2016</b>
	Mr. Frazier is appealing the scope of redactions on a police report that restrict persons contacted and persons voluntarily contacted the police.		

## April 2016 State Records Committee Case Updates

### District Court Cases

**Jordanelle Special Service Dist. v. State Auditor**, 3<sup>rd</sup> District, Salt Lake County, Judge Chon, Case No. 160901401, filed Feb. 25, 2016.

**Current Disposition:** Potential voluntary dismissal of case by Jordanelle Special Service District.

**Chad Lambourne v. Provo City**, 3<sup>rd</sup> District, Salt Lake County, Judge Stone, Case No. 160901346, filed Feb. 24, 2016.

**Current Disposition:** Case dismissed by court after finding that the appeal filed with the State Records Committee was untimely. Court found that Provo City “properly preserved” the objection before the Committee.

**Ramon Somoza v. Utah County Comm.**, 4<sup>th</sup> District, Utah County, Judge McDade, Case No. 150401904, filed Dec. 10, 2015.

**Current Disposition:** Motion filed by Utah County to quash service of process for failure to perform service as required by civil rules. Answer filed on behalf of Committee on April 4, 2016.

**Bryner v. City of Clearfield**, 2<sup>nd</sup> District, Davis County, Judge Morris, Case No. 150701062, filed October 20, 2015.

**Current Disposition:** Oral argument scheduled for May 9, 2016. Court denied motion to recuse judges because of conflict.

**Paul Amann v. Utah Dept. of Human Resources**, 3<sup>rd</sup> District, Salt Lake County, Case No. 150904275, filed June 24, 2015.

**Current Disposition:** Answer filed on behalf of the Committee. Potential that case may be combined with other GRAMA appeal.

**Swen Heimberg v. Utah Dept. of Public Safety**, 3<sup>rd</sup> District, Salt Lake County, Case No. 150904273, Judge Brereton, filed June 24, 2015.

**Current Disposition:** Answer filed on behalf of the Committee on January 19, 2016. Discovery served on Department in March 2016.

**Utah Attorney General v. Salt Lake Tribune**, 3<sup>rd</sup> District, Salt Lake County, Case No. 150904266, Filed June 24, 2015.

**Current Disposition:** Order granting request to file documents under seal filed on April 11, 2016.

**Robert Baker v. Utah Dept. of Corrections**, 3<sup>rd</sup> District, Salt Lake County, Case No. 150903610, Judge Harris, filed May 29, 2015.

**Current Disposition:** Motion to Quash service denied by trial court. Answer to be filed by Corrections.

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

**Current Disposition:** Motion to consolidate the case with Case No. 150904275 filed on September 22, 2015.

### Appellate Court Cases

**Salt Lake City v. Jordan River Restoration Network**, 3<sup>rd</sup> Judicial District, Salt Lake County, Case No. 100910873.

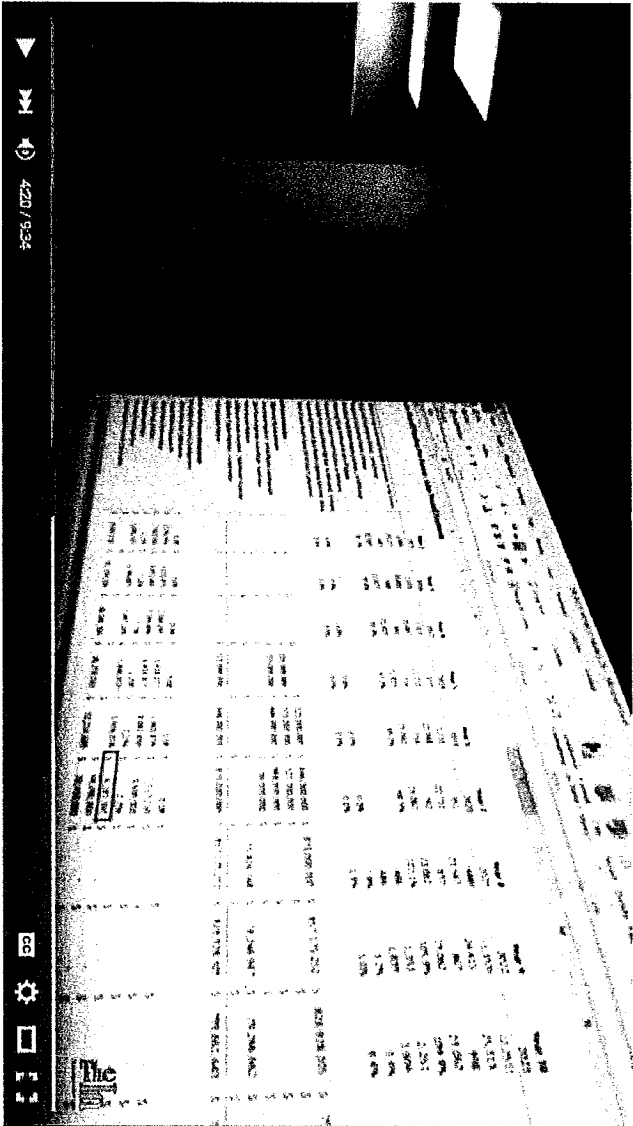
**Current Disposition:** A Notice of Appeal was filed on January 29, 2016, indicating an intention to have the District Court's decision reviewed by either the Utah Court of Appeals or the Utah Supreme Court.



Utah River Council vs. WCEWCD



cirpac meeting



### CIRPAC 11-21-13 (Part 8)



The Independent  
Subscribe

+ Add to Share ... More

39 views

0 0 0

Published on Nov 22, 2013  
Washington County Water Conservancy District meeting, 11/21/13.

Up next



CIRPAC 11-21-13 (Part 3)  
The Independent  
30 views



CIRPAC 11-21-13 (Part 4)  
The Independent  
22 views



CIRPAC 11-21-13 (Part 5)  
The Independent  
26 views



CIRPAC 11-21-13 (Part 6)  
The Independent  
30 views



CIRPAC 11-21-13 (Part 2)  
The Independent  
34 views



CIRPAC 11-21-13 (Part 1)  
The Independent  
95 views



CIRPAC 11-21-13 (Part 7)  
The Independent  
38 views



Isaac Sloan flying a s800 hexacopter to get the aerial footage of the St. George Blvd  
The Independent  
80 views

## Washington County Water District CIRPAC meeting on 11/21/2013

From (Part 7) of video: <https://www.youtube.com/watch?v=TwVXUXsrSZI>

Minute: 2:40

".....I would like to talk to you about the model that we created to essentially look at the same thing (as the economists did).

Minute 11:40

....I'm going to come back to this but I'd like to flip over to our model.....

Minute 13:02

....here's our initial capital payment....and where the money will come from...

Initial capital payment by WCWCD = \$96,000,000

Year WCWCD makes payment = 2020

Method = Pay as you go financing

Debt term = 30 years

Percentage paid through water rates = 10%

Percentage paid through impact fees = 40%

Land sale = 50%

From (Part 8) of video: <https://youtu.be/oQUVq70Fs7g>

Minute 00:59

"....So here's our model (showing Agüero's excel model on the screen) I'm just going to make a few adjustments as we go through, bare with me for just a second."  
(Agüero then goes through and makes changes to certain aspects of the repayment model on the presentation screen)

Minute 2:43

"...We have all the exact same assumptions we looked at before all of them are included here for the purposes of our model, again it's the same model we walked through earlier today. We tried to build on the good things the Economists did..."

Minute 4:10

"...Pay as you go, which means that for the initial \$98 million you're going to pay \$48 million from cash sale for WCWCD's land....you're going to get an additional \$6 million from annual impact fees, and water rates are going to be another \$9.6 million..."

UTAH DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF ARCHIVES & RECORDS SERVICE

Home / GRAMA and Open Government / State Records Committee

## STATE RECORDS COMMITTEE APPEAL 2013-13

### BEFORE THE STATE RECORDS COMMITTEE OF THE STATE OF UTAH

ERIC PETERSON, REPORTER FOR THE CITY WEEKLY, Petitioner, vs.

UTAH ATTORNEY GENERAL'S OFFICE, Respondent.

### DECISION AND ORDER

#### Case No. 13-13

By this appeal, Petitioner, Eric Peterson, Reporter for the City Weekly, seeks access to records with Respondent, the Utah Attorney General's Office ("AG's Office").

#### FACTS

On May 22, 2013, Mr. Peterson filed a records request pursuant to the Utah Government Records Access and Management Act ("GRAMA") with the AG's Office. Mr. Peterson requested all documents pertaining to the "Whitewater VII" development investigation. The request included e-mails, documents, text messages, and other correspondence between employees in the AG's Office and specified individuals related to the Whitewater VII development investigation.

In a letter dated May 31, 2013, the Records Officer in the Investigation Division of the AG's Office denied the records request pursuant to Utah Code § 63G-2-305(10). Mr. Peterson filed an appeal with Kirk Torgensen, Chief Deputy Attorney General with the AG's Office, arguing that the investigation has "been going on since 2010" and that the "public deserves to know why it's not resolved or get some kind of status update." In a letter dated June 13, 2013, Mr. Torgensen denied the appeal stating that the records were classified as protected "because the records were created or maintained for criminal enforcement purposes and release of the records reasonably could be expected to interfere with investigations undertaken for enforcement purposes."

Petitioner now appeals the denial of Mr. Peterson's request for records to the State Records Committee ("Committee"). This matter originally was heard by the Committee on August 8, 2013 when it was determined that an in camera review of the disputed records was necessary pursuant to Utah Code § 63G-2-403(9). However, since the disputed records were too numerous to review in their entirety during the hearing and a portion of the disputed records were not provided to the Committee to review at the time of the hearing, the Committee continued the hearing until September 12, 2013. During the September 12, 2013 hearing, it was determined by the Committee that the parties should have an opportunity to brief whether Fed. R. Crim. P. 6 is applicable to the present case. See, Utah Code § 63-2-201(3)(b). Accordingly, the hearing was continued a second time until October 10, 2013, in order to allow the parties to address the applicability of Fed. R. Crim. P. 6 to the present case by filing written memoranda concerning this subject. See, Peterson v. Utah Attorney Gen. Office, State Records Committee Case No. 13-08 (Sep. 23, 2013). Although the parties had previously made their arguments before the Committee, with the new argument presented by the AG's Office, the Committee believed that the Petitioner should have an opportunity to respond.

The Committee having reviewed the arguments submitted by the parties and having heard oral argument and testimony, and having reviewed in camera some of the disputed records, now issues the following Decision and Order.

#### STATEMENT OF REASONS FOR DECISION

1. The Government Records Access and Management Act ("GRAMA") specifies that "all records

are public unless otherwise expressly provided by statute.” Utah Code § 63G-2-201(2). Records that are not public are designated as either “private,” “protected,” or “controlled.” See, Utah Code §§ 63G-2-302, -303, -304 and -305.

2. Records created or maintained for civil, criminal, or administrative enforcement purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, can be classified as protected records by a governmental entity if release of the records reasonably could be expected to interfere with investigations undertaken for enforcement, discipline, licensing, certification, or registration purposes. Utah Code § 63G-2-305(10).

3. A record that is classified as protected pursuant to Utah Code § 63G-2-305(10) may be ordered to be disclosed under the provisions of Utah Code § 63G-2-403(11)(b) only if the person or party seeking disclosure of the record has established, by a preponderance of the evidence, that the public interest favoring access is equal to or greater than the interest favoring restriction of access.

4. Counsel for the AG’s Office argued that all of the requested documents should not be disclosed because they involved a criminal and/or civil investigation undertaken by the AG’s Office. Counsel also argued that many of the requested documents not only involved the AG’s Office investigation of the Whitewater VII development, but also involved a Federal investigation of the AG’s Office’s handling of the Whitewater VII development investigation.

5. Mr. Peterson argued that even if the disputed documents were related to a criminal and/or civil investigation, the public’s interest in knowing about the investigation is greater than the interest favoring restriction to access to the records. See, Utah Code §§ 63G-2-403(11) & 63G-2-406(1).

6. After reviewing the arguments submitted by the parties, hearing oral arguments and testimony, and reviewing a portion of the disputed records in camera, the Committee makes the following findings:

7. The records designated as the “Whitewater VII investigation records” were properly classified as protected records pursuant to Utah Code § 63G-2-305(10)(a).

8. Outside of the “Whitewater VII investigation records,” are two sets of e-mails designated as “Group 1” and “Group 2.” Group 1 consists of six e-mails referred to as the “Jeff Jones Group.” The Committee finds that these six e-mails are responsive to Mr. Peterson’s records request, are not considered protected records because they are not part of an investigation, and therefore, are public records and should be released after any personal information has been redacted prior to their release.

9. “Group 2” consists of a set of twenty-four e-mails referred to as the “Gang Bills Group.” The Committee finds that Utah Code § 63G-2-305(10)(a) does not apply to the Group 2 e-mails because it is not reasonably expected that release of the e-mails would interfere with investigations undertaken for enforcement by the AG’s Office. The Committee finds that e-mail #20 should be considered a protected record pursuant to Utah Code § 63G-2-305(17) because it is subject to the attorney client privilege. However since Utah Code § 63G-2-305(10)(a) does not apply, the remaining twenty-three e-mails in this group should be considered public records and released.

## **ORDER**

THEREFORE, IT IS ORDERED THAT the appeal of Petitioner, Eric Peterson, Reporter for the City Weekly, for the “Whitewater VII investigation records” and e-mail #20 is DENIED, and his request for correspondence related to the investigation consisting of twenty-nine e-mails as detailed above is GRANTED.

## **RIGHT TO APPEAL**

Either party may appeal this Decision and Order to the District Court. The petition for review must be filed no later than thirty (30) days after the date of this order. The petition for judicial review must be a complaint. The complaint and the appeals process are governed by the Utah Rules of Civil Procedure and Utah Code § 63G-2-404. The court is required to make its decision de novo. In order to protect its rights on appeal, a party may wish to seek advice from an attorney.

## **PENALTY NOTICE**

Pursuant to Utah Code § 63G-2-403(14)(d), the government entity herein shall comply with the order of the Committee and, if records are ordered to be produced, file: (1) a notice of compliance

with the records committee upon production of the records; or (2) a notice of intent to appeal. If the government entity fails to file a notice of compliance or a notice of intent to appeal, the Committee may do either or both of the following: (1) impose a civil penalty of up to \$500 for each day of continuing noncompliance; or (2) send written notice of the entity's noncompliance to the Governor for executive branch entities, to the Legislative Management Committee for legislative branch entities, and to the Judicial Council for judicial branch agencies' entities.

Entered this 22nd day of October 2013,

BY THE STATE RECORDS COMMITTEE

---

LEX HEMPHILL, Chairperson  
State Records Committee

*Page Last Updated*

[Utah.gov Home](#) | [Utah.gov Terms of Use](#) | [Utah.gov Privacy Policy](#) | [Utah.gov Accessibility Policy](#) |  
[Translate Utah.gov](#)

Copyright © 2016 State of Utah - All rights reserved.

UTAH DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF ARCHIVES & RECORDS SERVICE

Home / GRAMA and Open Government / Page Title

## STATE RECORDS COMMITTEE APPEAL 2015-34

**BEFORE THE STATE RECORDS COMMITTEE OF THE STATE OF UTAH**  
**ROBERT GEHRKE, REPORTER FOR THE SALT LAKE TRIBUNE, Petitioner, v.**  
**UTAH ATTORNEY GENERAL'S OFFICE. Respondent.**

### DECISION AND ORDER

#### Case No. 15-34

By this appeal, Petitioner, Robert Gehrke, Reporter for the Salt Lake Tribune, seeks access to records allegedly held by Respondent, the Utah Attorney General's Office. The subject of the alleged records, Phil Lyman, was also allowed to participate as an Intervenor.

#### FACTS

On July 21, 2015, Mr. Gehrke made a records request to the Utah Attorney General's Office ("AG's Office"), pursuant to the Government Records Access and Management Act ("GRAMA"). Mr. Gehrke requested "...copies of the file of any closed investigation conducted into San Juan County Commissioner Phil Lyman within the last five years." On October 23, 2015, Blaine Ferguson, an Assistant Attorney General with the AG's Office, denied Mr. Gehrke's records request stating "[w]ithout saying whether it has any records responsive to your request, the Office respectfully denies your request. The Office can provide you with no further information in response to your request."

On October 26, 2015, Mr. Gehrke filed an appeal, via e-mail, with the AG's Office. In a letter dated October 30, 2015, Parker Douglas, Chief of Staff and Federal Solicitor for the AG's Office, denied Mr. Gehrke's appeal, claiming that he could neither confirm nor deny that any records exist that were responsive to Mr. Gehrke's records request. Mr. Douglas added that if any records did exist, "release of those records would constitute a clearly unwarranted invasion of privacy" under Utah Code Ann. § 63G-2-302(2)(d).

On November 3, 2015, Mr. Gehrke filed an appeal on behalf of the Salt Lake Tribune with the State Records Committee ("Committee"). Pursuant to Utah Code § 63G-2-403(6), Mr. Lyman was allowed to intervene, after the Committee received his request to intervene on November 13, 2015.

On November 24, 2015, the AG's Office filed with the Committee, a "Motion for Order Implementing Certain Procedures to Preserve Confidentiality" ("Motion"). In the Motion, the AG's Office requested that the Committee allow presentation of "all of its submissions to the Committee under seal" and not allow the presentation to be disclosed "to anyone else, including the Petitioner Robert Gehrke, [Mr. Lyman], other State Records Committee staff, or the public." The AG's Office also offered to have counsel for the AG's Office "available to answer questions to the Committee on an ex parte basis in a closed hearing." Petitioner opposed the Motion and provided arguments against the Motion in an email submitted to the Committee dated November 25, 2015. Counsel for Mr. Lyman submitted a Memorandum supporting the Motion, requesting that any information and/or data gathered by the AG's Office about him [Mr. Lyman] "only be referenced and not produced" and that Mr. Gehrke "should have limited, to no involvement, regarding the relief presently sought by the AG's Office."

On December 10, 2015, the Committee held a public hearing to consider the merits of the Motion and Petitioner's Appeal. After having reviewed the arguments submitted by Petitioner, the AG's Office, and Mr. Lyman's legal counsel, hearing oral argument and testimony from all of the parties,

and carefully considering the requested relief of the parties, the Committee issues the following Decision and Order.

## STATEMENT OF REASONS FOR DECISION

1. If the decision of the Chief Administrative Officer of a governmental entity is to affirm the denial of a record request, the requester may appeal the decision to the Committee as provided in Utah Code § 63G-2-403. Utah Code § 63G-2-402(1)(a). The notice of appeal shall include a copy of the decision being appealed and state the relief sought. Utah Code § 63G-2-403(2)(b) & (c). The records committee appellant may file a short statement of facts, reasons, and legal authority in support of the appeal. Utah Code § 63G-2-403(3)(b).

2. After receiving a copy of the notice of appeal, the governmental entity shall submit to the Committee a written statement of facts, reasons, and legal authority in support of the governmental entity's position. Utah Code § 63G-2-403(5)(a). The governmental entity shall send a copy of the written statement "to the requester or interested party involved in the appeal." Utah Code § 63G-2-403(5)(b). Similarly, a person whose legal interests may be substantially affected by the proceedings before the Committee, may file a request for intervention before the Committee, and "written statement of facts, reasons, and legal authority in support of the intervenor's position shall be filed with the request for intervention." Utah Code § 63G-2-403(6)(b), emphasis added. Additionally, copies of these materials shall be provided "to all parties to the proceedings before the records committee." Utah Code § 63G-2-403(6)(c).

3. The Committee "shall hold a hearing" and at the hearing, "shall allow the parties to testify, present evidence, and comment on the issues" and "may allow other interested persons to comment on the issues." Utah Code § 63G-2-403(9)(b), emphasis added. The Committee may review the disputed records in camera, and members of the Committee "may not disclose any information or record reviewed by the committee in camera unless the disclosure is otherwise authorized" by GRAMA. Utah Code § 63G-2-403(9).

4. In addition to the hearing procedures outlined in GRAMA, the Committee is considered a "Public Body" subject to the Utah Open and Public Meetings Act ("OPMA") pursuant to Utah Code § 52-4-103(9), and is required to "take their actions openly" and "conduct their deliberations openly" See, Utah Code § 52-4-102(2).

5. The AG's Office argued that GRAMA allows a governmental entity to not disclose a description of a record or citations to GRAMA or other authority, when denying access to a record, if that descriptive information or citation discloses private, controlled, or protected information or information exempt from disclosure under Utah Code § 63G-2-201(3)(b). See, Utah Code § 63G-2-205(2)(b) & (c). The AG's Office further argued that similar provisions exist for the Committee because an order from the Committee shall include citations and a description of the record unless the information discloses "private, controlled, or protected information..." See, Utah Code § 63G-2-403(12)(a) & (b). The AG's Office claims that a combination of these two provisions shows that the Legislature intended to allow a governmental entity to make arguments before the Committee, ex parte.

6. Petitioner argued that allowing a governmental entity to argue before the Committee, ex parte, would deny a records committee appellant "a fair and impartial hearing on the matter at hand."

It would create a scenario where one party, the Attorney General's office, would have unfettered access to the filings and arguments being made by the Tribune, while the other parties in the matter would have to simply guess at what contentions are being raised by the state, essentially fighting in the dark with one arm behind their [back]. As the motion notes, it would leave the ability of the Tribune to have "substantive involvement being very limited."

7. After carefully considering the parties' arguments, the Committee unanimously finds that the "Motion for Order Implementing Certain Procedures to Preserve Confidentiality" should be denied. The Committee's procedures are outlined in statute by the Legislature in both GRAMA and OPMA, and a review of the plain language of these statutes shows that they do not provide a mechanism where one party may argue before the Committee, ex parte, while excluding the opposing party and the public in general. While Courts may have the authority to close hearings, allow ex parte arguments, or even allow the disclosure of non-public records to legal counsel for a party, the Committee does not believe that it has such authority. Allowing only the governmental entity to

make arguments before the Committee would not allow "the parties to testify, present evidence, and comment on the issues." See, Utah Code § 63G-2-403(8).

8. Further, one of the primary purposes of hearings before the Committee is to allow Requestors an opportunity to have their GRAMA requests heard by a neutral third party without requiring legal counsel or court filing fees. If the Committee were to allow a governmental entity to make ex parte arguments in a closed hearing, it would set a dangerous precedent where other governmental entities would seek similar hearings, effectively eliminating a records committee appellant's right to argue and have a fair hearing before the Committee without legal counsel. Further, the Committee's refusal to hold a closed hearing for a governmental entity would not be prejudicial to the governmental entity because an appeal to district court is de novo, and a Court may through its inherent authority, limit access to individuals concerning records and arguments presented to the Court. See, Utah Code § 63G-2-404(4) & (5). Accordingly, based upon the Committee's interpretation of applicable law, the Motion is denied.

9. After the Committee denied the AG's Office's Motion, the AG's Office did not present any argument or citations to statute concerning why the records, if they exist, should not be made public. The AG's Office claimed that any citations, or even an acknowledgement that records exist, would itself be a disclosure of private, controlled, or protected information.

10. GRAMA specifies that "all records are public unless otherwise expressly provided by statute." Utah Code Ann. § 63G-2-201(2). Records that are not public are designated as either "private," "protected," or "controlled." See, Utah Code Ann. §§ 63G-2-302, -303, -304 and -305.

11. Without any reference to any citation that designates the records as private, protected, or controlled, and having been denied the opportunity to review records in camera, the Committee cannot find that Petitioner should be denied access to the records because all records are public unless expressly provided by statute. The Committee does not have any evidence that a record does not exist that is responsive to Petitioner's request, or a citation to a statute that allows the AG's Office to not disclose whether a responsive record exists. Accordingly, the Committee finds that the AG's Office possesses a record that is responsive to Petitioner's request, and the record should be classified as a "public" record subject to disclosure.

## **ORDER**

THEREFORE, IT IS ORDERED THAT the appeal of Petitioner is GRANTED.

## **RIGHT TO APPEAL**

A party to a proceeding before the Committee may seek judicial review in District Court of a Committee's Order by filing a petition for review of the Committee Order as provided in Utah Code § 63G-2-404. Utah Code § 63G-2-403(14). A petition for judicial review of a Committee Order "shall be filed no later than 30 days" after the date of the Committee Order. Utah Code § 63G-2-404(1)(a). The petition for judicial review must be a complaint which is governed by the Utah Rules of Civil Procedure, and include the Committee as a necessary party and contain the required information listed in Subsection -404(2). Utah Code § 63G-2-404(1) & (2). The court shall make its decision de novo, but shall allow introduction of evidence presented to the Committee, determine all questions of fact and law without a jury, and decide the issue at the earliest practical opportunity. Utah Code § 63G-2-404(6). In order to protect its rights on appeal, a party may wish to seek advice from an attorney.

## **PENALTY NOTICE**

Pursuant to Utah Code § 63G-2-403(15)(c), if the Committee orders the governmental entity to produce a record and no appeal is filed, the government entity herein shall comply with the order of the Committee and shall: (1) Produce the record; and (2) File a notice of compliance with the Committee. If the governmental entity ordered to produce a record fails to file a notice of compliance or a notice of intent to appeal, the Committee may do either or both of the following: (1) Impose a civil penalty of up to \$500 for each day of continuing noncompliance; or (2) Send written notice of the entity's noncompliance to the Governor for executive branch entities, to the Legislative Management Committee for legislative branch entities, and to the Judicial Council for judicial branch agencies' entities. Utah Code § 63G-2-403(15)(d)(i). In imposing a civil penalty, the 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. Utah Code § 63G-2-403(15)(d)  
(ii).

Entered this 21st day of December, 2015.

BY THE STATE RECORDS COMMITTEE

---

PATRICIA SMITH-MANSFIELD, Chairperson  
State Records Committee

*Page Last Updated January 6, 2016*

[Utah.gov Home](#) | [Utah.gov Terms of Use](#) | [Utah.gov Privacy Policy](#) | [Utah.gov Accessibility Policy](#) |  
[Translate Utah.gov](#)

Copyright © 2016 State of Utah - All rights reserved.

UTAH DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF ARCHIVES & RECORDS SERVICE

Home / GRAMA and Open Government / State Records Committee Decisions

## STATE RECORDS COMMITTEE DECISION 2013-10

**BEFORE THE STATE RECORDS COMMITTEE OF THE STATE OF UTAH**  
**ROBERT GEHRKE, REPORTER FOR THE SALT LAKE TRIBUNE, Petitioner, vs.**  
**UTAH ATTORNEY GENERAL'S OFFICE, Respondent.**

### DECISION AND ORDER

#### Case No. 13-10

By this appeal, Petitioner, Robert Gehrke, Reporter for The Salt Lake Tribune, seeks access to records from Respondent, the Utah Attorney General's Office (AG's Office), pursuant to Utah's Government Records Access and Management Act ("GRAMA").

#### FACTS

On July 16, 2013, Mr. Gehrke made a request from the AG's Office for "copies of any subpoenas for testimony or documents received by the Attorney General's office or members of the office from federal investigative agencies since April 1, 2013." Mr. Gehrke also requested copies of correspondence "regarding any such subpoenas and copies of documents provided in response to the above subpoenas." Mr. Gehrke added that the request made by The Salt Lake Tribune was intended for use in a news article for publication to the general public. In an e-mail dated July 30, 2013, Paul Murphy, Director of Communications for the AG's Office, stated that the AG's Office and federal investigative agencies cannot confirm or deny whether any subpoenas have been issued, and that any such records would be considered protected records pursuant to Utah Code § 63G-2-305(10)(a).

On July 31, 2013, Mr. Gehrke filed an appeal with Kirk Torgensen, Chief Deputy with the AG's Office. In the appeal, Mr. Gehrke disagreed with the AG's Office's classification of the records as protected claiming that Utah Code § 63G-2-305(10)(a) was written to protect law enforcement or other agencies from disclosing ongoing investigations "being conducted by those agencies [and] does not apply when those agencies are witnesses to or the subject of an investigation." Mr. Gehrke also noted that in April 2012, the AG's Office had released documents similar to the requested documents relating to a different federal investigation. Mr. Gehrke further stated:

The Tribune contends that the disclosure of correspondence regarding the subpoenas would not impede a law enforcement investigation. Such correspondence would not relate to the facts being investigated, but rather to the manner in which the office responds to matters under investigation. Again, that response is not as part of any investigation being conducted by the office, but rather reveals the function of an office that holds a profound public trust.

In a letter dated August 6, 2013, Mr. Torgensen denied Petitioner's appeal stating that the records were exempt under GRAMA "because the disclosure of records relating to federal grand jury proceedings is limited by Rule 6 of the Federal Rules of Criminal Procedure" pursuant to Utah Code § 63G-2-201(6)(a). Petitioner now appeals the denial of the GRAMA request to the State Records Committee ("Committee"). The Committee having reviewed the submissions of the parties and having heard oral argument and testimony on September 12, 2013, now issues the following Decision and Order.

#### STATEMENT OF REASONS FOR DECISION

1. GRAMA specifies that "all records are public unless otherwise expressly provided by statute." Utah Code § 63G-2-201(2).

2. Utah Code § 63G-2-201(3) provides that the following records are not public: (1) A record that is designated “private,” “protected,” or “controlled” pursuant to Utah Code §§ 63G-2-302, -303, -304 and -305; and (2) A record to which access is restricted pursuant to court rule, another state statute, federal statute, or federal regulation, including records for which access is governed or restricted as a condition of participation in state or federal program or for receiving state or federal funds.

3. The disclosure of a record to which access is governed or limited pursuant to court rule, another state statute, federal statute, or federal regulation, is governed by the specific provisions of that statute, rules, or regulation. Utah Code § 63G-2-201(6)(a).

4. Counsel for the AG’s Office argued that the Federal Rules of Criminal Procedure, which govern the procedure in all criminal proceedings in United States district courts, the United States Courts of Appeals, and the Supreme Court of the United States, apply to the records requested by Petitioner. See, Fed. R. Crim. P. 1(a)(a). Specifically, counsel claimed that Fed. R. Crim. P. 6(e) did not allow disclosure by the AG’s Office of matters occurring before a grand jury unless it “is pursuant to an order issued by the Federal District Court according to the procedures set forth in Rule 6(e)(3)(E).”

5. Fed. R. Crim. P. 6(e)(2) states that no obligation of secrecy may be imposed on any person regarding Federal grand jury proceedings except in accordance with Rule 6(e)(2)(B). Fed. R. Crim. P. 6(e)(2)(B) states that the following persons must not disclose a matter occurring before the grand jury: A grand juror; An interpreter; A court reporter; An operator of a recording device; A person who transcribes recorded testimony; An attorney for the government; or A person to whom disclosure is made under Fed. R. Crim. P. 6(e)(3)(A)(ii) or (iii).

6. Fed. R. Crim. P. 1(b)(1) defines “attorney for the government” as (1) the Attorney General or an authorized assistant; (2) a United States attorney or an authorized assistant; (3) when applicable to cases arising under Guam law, the Guam Attorney General or other person whom Guam law authorizes to act in the matter; and (4) any other attorney authorized by law to conduct proceedings under these rules as a prosecutor. Fed. R. Crim. P. 6(e)(3)(A)(ii) states that disclosure of a grand jury matter, other than the grand jury’s deliberations or any grand juror’s vote, may be made to “any government personnel—including those of a state, state subdivision, Indian tribe, or foreign government—that an attorney for the government considers necessary to assist in performing that attorney’s duty to enforce federal criminal law.”

7. After hearing the arguments of the parties, the Committee finds that Fed. R. Crim. P. 6 does not prohibit disclosure of the subject records. Fed. R. Crim. P. 6(e)(2) places no obligation of secrecy on any person regarding Federal grand jury proceedings except in accordance with Rule 6(e)(2)(B). The only subsections of Fed. R. Crim. P. 6(e)(2)(B) that could be considered applicable to the AG’s Office are “an attorney for the government” or a person to whom disclosure is made under Fed. R. Crim. P. 6(e)(3)(A)(ii). As the subject of a Federal investigation, the AG’s Office cannot be considered an “attorney authorized by law to conduct proceedings under these rules as a prosecutor” pursuant to the definition of an “Attorney for the government” in Fed. R. Crim. P. 1(b)(1). Similarly, the AG’s office as the recipient of a Federal subpoena regarding a Federal investigation of the AG’s office is not “assisting” the enforcement of federal criminal law as contemplated by Fed. R. Crim. P. 6(e)(3)(A)(ii). Reception of a Federal subpoena by a law enforcement agency, especially by one being investigated by Federal prosecutors, does not automatically result in that law enforcement agency “assisting” the enforcement of federal criminal law. Accordingly, without an applicable statutory, rule or other regulatory restriction regarding disclosure of the requested records, the records are considered public records pursuant to Utah Code § 63G-2-201(2).

## **ORDER**

THEREFORE, IT IS ORDERED THAT the appeal of Petitioner, Robert Gehrke, Reporter for The Salt Lake Tribune, is GRANTED and Respondent, the Utah Attorney General’s Office shall disclose the requested records.

## **RIGHT TO APPEAL**

Either party may appeal this Decision and Order to the District Court. The petition for review must be filed no later than thirty (30) days after the date of this order. The petition for judicial review must be a complaint. The complaint and the appeals process are governed by the Utah Rules of Civil Procedure and Utah Code § 63G-2-404. The court is required to make its decision de novo. In order to protect its rights on appeal, a party may wish to seek advice from an attorney.

**PENALTY NOTICE**

Pursuant to Utah Code § 63G-2-403(14)(d), the government entity herein shall comply with the order of the Committee and, if records are ordered to be produced, file: (1) a notice of compliance with the records committee upon production of the records; or (2) a notice of intent to appeal. If the government entity fails to file a notice of compliance or a notice of intent to appeal, the Committee may do either or both of the following: (1) impose a civil penalty of up to \$500 for each day of continuing noncompliance; or (2) send written notice of the entity's noncompliance to the Governor for executive branch entities, to the Legislative Management Committee for legislative branch entities, and to the Judicial Council for judicial branch agencies' entities.

Entered this 23rd day of September 2013.

BY THE STATE RECORDS COMMITTEE

---

LEX HEMPHILL, Chairperson  
State Records Committee

*Page Last Updated*

[Utah.gov Home](#) | [Utah.gov Terms of Use](#) | [Utah.gov Privacy Policy](#) | [Utah.gov Accessibility Policy](#) |  
[Translate Utah.gov](#)

Copyright © 2016 State of Utah - All rights reserved.