



Jennifer Orten v. Salt Lake County (2022-02)

Salt Lake County's Response



Overview

- Jurisdiction of State Records Committee
- Timeline
- Committee Lacks Jurisdiction Over Requests 1, 2, and 4
- Denial of Fee Waiver is Reasonable
- Fees are Reasonable
- Committee Lacks Jurisdiction to Grant Petitioner Expedited Response



State Records Committee Statutory Jurisdiction

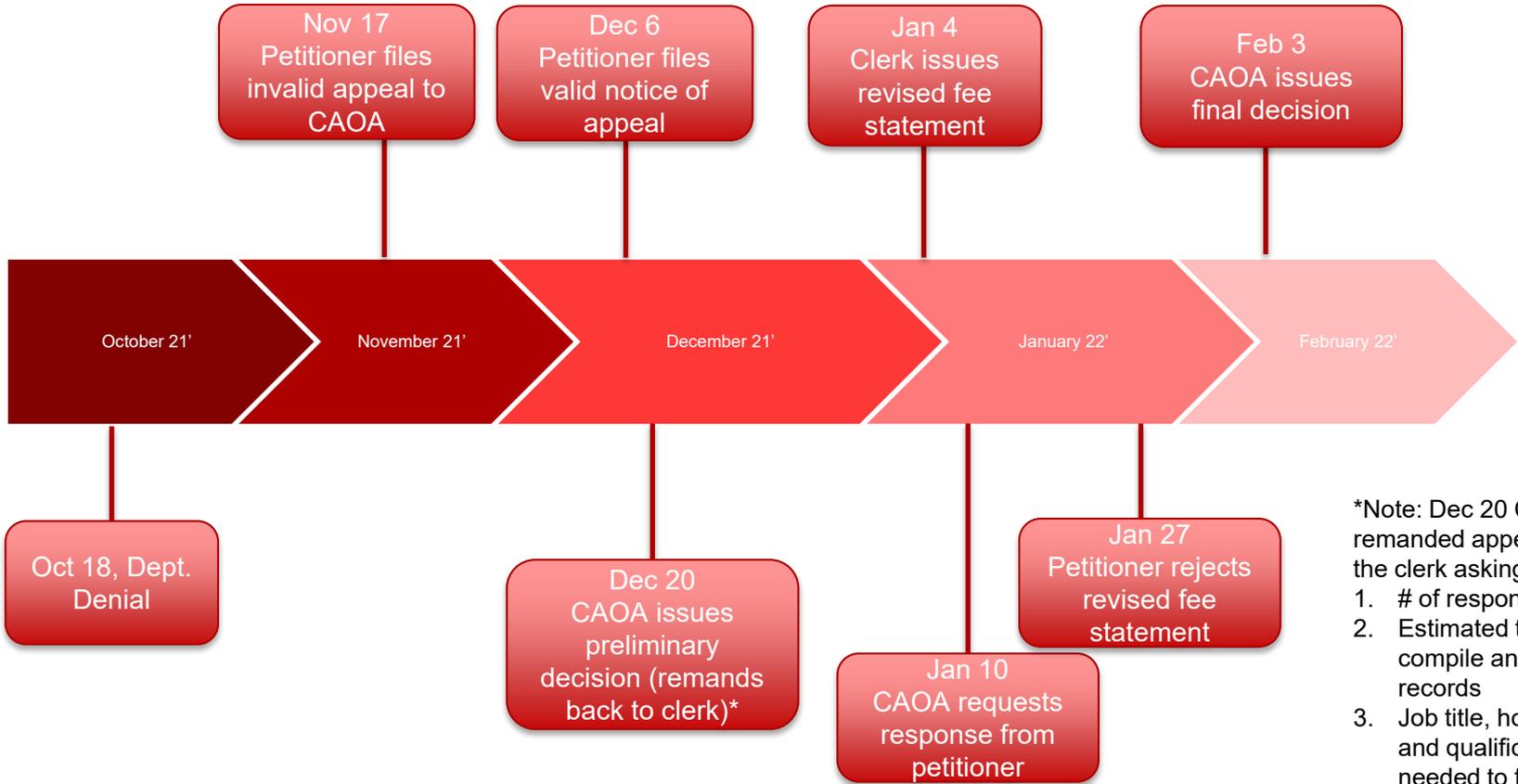
If the decision of the chief administrative officer of a governmental entity under Section 63G-2-401 is to affirm the denial of a record request, the requester may:

(a) appeal the decision to the State Records Committee, as provided in Section 63G-2-403;

Utah Code 63G-2-402(1)



Timeline



*Note: Dec 20 CAO remanded appeal back to the clerk asking for:

1. # of responsive records
2. Estimated time to compile and prepare records
3. Job title, hourly wage and qualifications needed to fulfill request



Committee Lacks Jurisdiction Over Requests 1, 2, and 4.

I.

The Committee's jurisdiction is statutorily limited to review of a CAO's final decision. Utah Code 63G-2-402. **The CAO can only issue a final decision on matters over which she has jurisdiction.** Here the CAO's jurisdiction was statutorily limited by Salt Lake County Policy 2040, which was adopted under Utah Code 63G-2-701.



Committee Lacks Jurisdiction Over Requests 1, 2, and 4.

II.

“Inadvertence, ignorance of the rules, or mistakes construing the rules do not usually constitute ‘excusable’ neglect ...” *Serrato v. Utah Transit Auth.*, 2000 UT App 299, ¶ 9, 13 P.3d 616, 619–20, quoting *Pioneer Inv. Servs. Co. v. Brunswick Assoc.*, 507 U.S. 380, 392. **Petitioner neglected to heed the clear and unambiguous prohibition against emailed filing of a notice of appeal, resulting in the CAO having no choice but to reject the notice.**



Committee Lacks Jurisdiction Over Requests 1, 2, and 4.

III.

“... the Utah Code does not provide a mechanism to enlarge the appeal period due to the ‘excusable neglect’ of the requester or an interested party. . . .” *James Duran v. Utah Department of Human Services*, SRC Case No. 16-45.



Denial of Fee Waiver was Reasonable

I.

Petitioner must show that not only is her request in the public interest, but that the CAO's analysis and conclusions are unreasonable. *Brent Cobb v Utah Department of Corrections*, SRC Case No. 19-39.



Denial of Fee Waiver was Reasonable

II.

“[U]pon judicial review of a government entity's fee waiver denial, **the ultimate question is not whether the entity abused its discretion, but whether its decision was reasonable** . . . The court should examine this and any other evidence it finds relevant to the reasonableness of the entity's denial . . . whether releasing the record benefitted the public, along with the time and effort required . . . to fulfill the request, the extreme breadth of the request, and the fact that some of the material requested duplicated records the City had already produced . . .” *Salt Lake City Corp. v. Jordan River Restoration Network*, 2018 UT 62, ¶¶ 53-54, 435 P.3d 179, 189.



Denial of Fee Waiver was Reasonable

III.

The CAO assumed, for the sake of argument, that Petitioner was acting in the public interest. She then followed the Utah Supreme Court's guidance in *Salt Lake City Corp. v. Jordan River Restoration Network*, and **considered that the request would involve the identification, compilation, review, and possible redactions to an estimated 2,234 records. The CAO recognized that the time and effort to prepare the Petitioner's request would be a substantial burden and diminish the OSLCC's ability to fulfill its other mandated responsibilities.** She determined that it was reasonable under these circumstances to require Petitioner to pay reasonable fees to cover the costs of responding to her GRAMA requests.



Fees Are Reasonable

I.

Petitioner agreed that \$23.76 was a reasonable hourly rate.



Fees Are Reasonable

II.

Two minutes per record is a reasonable estimate of the time it will take to review all of the records.



Fees Are Reasonable

III.

Petitioner only required to pay half of the estimated total fees in advance.



Fees Are Reasonable

IV.

Petitioner only required to pay the actual cost to process the request.



Committee Lacks Jurisdiction to Grant Petitioner's Remaining Claims

I.

Premature to order verification that response was complete since the legal obligation to respond has not matured.



Committee Lacks Jurisdiction to Grant Petitioner's Remaining Claims

II.

Final Decision ordered response within 15 days of Petitioner paying fees.