

UTAH LEGAL CLINIC

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April 1, 2016



Nova Dubovik
Executive Secretary, State Records Committee
346 South Rio Grande Street
Salt Lake City, Utah 84101

VIA HAND DELIVERY AND U.S. MAIL

RE: Appeal of GRAMA Request to Utah State Records Committee
Pursuant to Utah Code Ann. 63G-2-403

Dear Ms. Dubovik:

On January 15, 2016, our office made a request under the Government Records Access and Management Act. ("GRAMA"), Utah Code Ann. §§ 63G-2-101 *et seq.* (1953 as amended), and/or pursuant to the ordinances and rules governing such requests to your county. A copy of that request is attached.

In the response, dated January 28, 2016, the City made a partial release of records stating it was redacting the records as they were deemed by the City as protected under Utah Code 63G-2-302(1)(g)(personal contact information) and 63G-2-302(2)(d)(disclosure constitutes a clearly unwarranted invasion of privacy).

On February 5, 2016, our office filed an appeal with the Salt Lake City Chief Administrative Officer asserting we received an incomplete response to our request. A copy of that appeal is attached. The appeal was based upon information and belief that the response provided lacked a complete record of the requested and non-private/unprotected documents.

On March 4, 2016, the City responded to the appeal with a partial release. The City released several emails that were not provided in the original request, but deemed the remaining withheld documents private or protected based on the following:

- Prepared for or by an attorney, consultant, surety, indemnitor, insurer, employee, or agent of a governmental entity for, or in anticipation of, litigation or judicial, quasi-judicial, or administrative proceedings (Utah Code 63G-2-305(18));
- Containing data on individuals describing medical history, diagnosis, condition, treatment, evaluation or similar medical data (Utah Code 63G-2-30929(1)(b); and
- Containing information, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy (Utah Code 63G-2-305(25)).

This letter is an appeal of that denial and/or incomplete response. This appeal is made pursuant to Utah Code Ann. § 63G-2-403 (1953 as amended). Based upon information and belief, the response lacked a complete record and/or the classification of records as private or protected

was not warranted.

For example, one email provided has clearly been altered. The email from [redacted] on August 12, 2014, is missing a portion of the previously forwarded emails. It appears that [redacted] emailed the City Council and Mayor's office regarding the pending prosecution of Trenton Mellen. This email was not address to [redacted]. The email chain then shows that [redacted] forwarded the email to her staff, adding her own words of "FYI," and classified the e-mail as high importance. There is no record in this chain showing how the original email from [redacted] was forwarded to [redacted]. It appears that when the email was printed someone deleted this portion of the email. Enclosed is a copy of the email for your review.

Our office is also aware of two other GRAMA requests that have previously been made to the City with similar inquiries. The responses were inconsistent. One email that was insignificant and could not be deemed protected under any exception, and clearly within the scope of both GRAMA requests, was only provided in one of the requests. Our office was informed that [redacted] was asking her employees to collect their own emails and forwarded them to her for review. It is deeply concerning that the subject of the GRAMA request was preparing the response. This history of inconsistency is the basis for our relief sought requiring proof of the method for which the data was collected for the GRAMA request at issue in this appeal.

Further, based on information known by this office, the emails sought are not protected or private documents. The City wishes to withhold correspondence between the City Prosecutor and her employees claiming it is in anticipation of litigation. The emails contain correspondence relating to the prosecutor of Trenton Mellen. The emails also contain correspondence regarding a City Weekly article published about Mr. Mellen and his pending prosecution. It is unreasonable to interpret 63G-2-305(18) to protect this type of litigation as this exception with envelope the rule requiring disclosure. That is, if the exception, as it is being interpreted by the City, was applied to the City Prosecutor's Office, whose only responsibilities are litigation or anticipating litigation, then every GRAMA request to their office would be denied for this reason.

Finally, even if the classification is upheld, the public interest in the disclosure of these documents heavily outweighs the restriction. Pursuant to Utah Code Ann. 63G-2-203(11), and *Shroeder v. Utah Attorney General's Office*, 358 P. 3d 1075 (Utah 2015), properly withheld documents may be required to be released if the interests in favor of disclosure outweigh those against. The public interest in exposing unethical and potentially tortious actions within the City Prosecutor's office is extremely strong. If such activities are occurring within a public office, especially on that holds such power, the public has a very strong interest in discovering this information. The City has dismissed Mr. Mellen's case and has not disclosed any interest in ever pursuing the case further. Therefore, any interest the City has in protecting their correspondence is minimal and cannot overcome the overwhelming public interest.

RELIEF SOUGHT:

We are requesting that the City provide proof of the method they used for collecting the correspondence and the results. We are also requesting that the committee review all documents generated in that collection process and to review those that have been withheld because they were deemed private or protected. We are requesting that the committee determine whether the documents were properly classified. If the committee deems then improperly classified, we are demanding that the documents be released to us immediately by the City. If they are deemed properly classified, we are asking the committee to find that they should still be released because the interest in releasing the documents outweighs the interest in restricting access to such documents. Finally, if the committee still finds that the documents were properly classified, and that

the interest is not sufficient to warrant the release ordered, we would request that the documents be released with the content redacted. Specifically, we are requesting that the emails be released with just the header information and all other correspondence redacted.

Thank you for your prompt attention to this matter.



SYDNEY M. MATEUS
Law Clerk

cc: Margaret D. Plane, Salt Lake City Attorney

Mayor Jackie Biskupski, Salt Lake City Mayor/Chief Administrative Officer

Cindi Mansell, Salt Lake City Recorder

Client

Enc: GRAMA Request dated January 15, 2016

Response dated January 28, 2016

Appeal to Administrative Officer dated February 5, 2016

Response to appeal dated March 4, 2016