



Ralph Chamness
*Chief Deputy
Civil Division*

Lisa Ashman
*Administrative
Operations*

SIM GILL
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June 21, 2016

BY E-MAIL (LFARRELL@ACLUUTAH.ORG) AND FIRST-CLASS MAIL

Ms. Leah Farrell, Staff Attorney
American Civil Liberties Union of Utah
355 North 300 West
Salt Lake City, Utah 84103

Re: ACLU of Utah GRAMA Request (dated May 12, 2016)

Dear Leah:

This is a supplemental joint response from the Salt Lake County District Attorney's Office and Salt Lake City to your request for records under the Utah Governmental Records Access and Management Act, 63G-2-101, et seq. ("GRAMA"), dated May 12, 2016.

In our further review of records collected in connection with our Office's investigation of the February 27, 2016, officer-involved critical incident near 250 South Rio Grande Street, we located one additional surveillance video that is responsive to your GRAMA request. That surveillance video is classified as "protected" pursuant to Utah Code Annotated section 63G-2-305(10)(a), (c), because we believe releasing it now reasonably could be expected to interfere with our investigation and might deprive an individual (whether the juvenile, an officer, or someone else) of the right to a fair trial. For further explanation of this classification, please see my earlier letter to you dated June 11, 2016 (copy enclosed).

As to the County, you have the right to appeal this determination as set forth in Salt Lake County ordinance 2.82.100 and Salt Lake County Policy 2040 (copy enclosed). Because the Office designee for GRAMA appeals, Ralph Chamness (Chief Deputy of the Civil Division), was involved in reviewing and classifying these materials, we are willing to waive the first, agency-designee level of appeal.

As to the City, you may appeal to the City's Chief Administrative Officer by filing written notice with the City Recorder within 30 calendar days after the date that the joint City and County response was issued, pursuant to Utah Code Annotated section 63G-2-401. The notice of appeal must state your name, mailing address, daytime telephone number, and the relief you seek. The City requests that you also include a copy of your GRAMA request, if applicable. You may include a short statement of facts, reasons, and legal authority in support of

Ms. Leah Farrell
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your appeal. The address of the City Recorder is P.O. Box 145515, Salt Lake City, Utah 84114-5515.

If you have any questions or concerns, please do not hesitate to contact me at dgoddard@slco.org or 385.468.7761.

Best regards,
/s
Darcy M. Goddard
Chief Policy Advisor (Civil) & Deputy District Attorney

Enclosures

cc (by e-mail only):

David C. Reymann (dreymann@parrbrown.com)
Mark Kittrell (mark.kittrell@slcgov.com)
Margaret Plane (margaret.plane@slcgov.com)





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Ms. Leah Farrell, Staff Attorney
American Civil Liberties Union of Utah
355 North 300 West
Salt Lake City, Utah 84103

Re: ACLU of Utah GRAMA Request (dated May 12, 2016)

Dear Leah:

We received your request for records under the Utah Governmental Records Access and Management Act, 63G-2-101, et seq. (“GRAMA”), dated May 12, 2016. Please consider this response to be jointly provided by the Salt Lake County District Attorney’s Office (“Office”) and the Salt Lake City Police Department (“City”), which received a largely identical GRAMA request from you on or about the same date.

Timeline of response

Given the significant volume of records to be evaluated in connection with your request, and the need to confer with counsel for the City, we advised you by letter dated May 18, 2016, that we would be unable to process your request on the expedited five-day timeline you requested. *See, e.g.*, Utah Code Ann. § 63G-2-204(3)(b)(iv), (5)(c)(i), (f); *see also* Salt Lake County ordinance 2.82.080(C)(2)(b), (d). We thereafter met with you and David Reymann (copied) on May 24, 2016 (“May 24 Meeting”), to discuss and refine your GRAMA request given its very broad language. Thank you again for engaging in that frank dialogue, which enabled us to focus our inquiry on the materials with which we understand you are primarily concerned.

Status of investigation and related classifications

As I stated at our May 24 Meeting, our Office’s investigation of the February 27, 2016, officer-involved critical incident near 250 South Rio Grande Street (“Rio Grande OICI”) is ongoing, such that certain of the requested records are presently classified by this Office and the City as “protected” under GRAMA, Utah Code Ann. § 63G-2-305(10)(a). That classification may change as the investigation continues or concludes.

In addition, as required by GRAMA, Utah Code Ann. § 63G-2-201(5)(b), we analyzed each individual record classified as “protected” to determine whether, on balance, the public’s interest in disclosure was equal to or greater than this Office’s or the City’s interest in restricting access at this time. That balancing test is reflected in each determination explained below.

Records requested

1. Chronological logs, complaint logs or service calls

The requested records are produced with the hard copy of this correspondence, Bates stamped SLCo-SLCity ACLU GRAMA Resp. 0001-0077. Where necessary to protect the identities of specific witnesses in connection with the Office’s on-going investigation of the Rio Grande OICI, or to protect the identity of juvenile(s), limited portions of those records have been redacted consistent with their “protected” classification under GRAMA. Utah Code Ann. § 63G-2-305(10); *see also* Utah Code. Ann. § 63G-2-302(2)(d).

2. Initial contact reports

The requested records are produced with the hard copy of this correspondence, Bates stamped SLCo-SLCity ACLU GRAMA Resp. 0078-0083. Where necessary to protect the identities of specific witnesses in connection with the Office’s on-going investigation of the Rio Grande OICI, or to protect the identity of juvenile(s), limited portions of those records have been redacted consistent with their “protected” classification under GRAMA. Utah Code Ann. § 63G-2-305(10); *see also* Utah Code. Ann. § 63G-2-302(2)(d).

3. After-incident reports

These records are currently classified as “protected” under GRAMA. Utah Code Ann. § 63G-2-305(10). That classification may change as the investigation continues or concludes, but the records will not be produced at this time.

4. Photographs

As we discussed and agreed at our May 24 Meeting, I examined approximately 500 images collected in connection with the Office’s on-going investigation of the Rio Grande OICI. Of the approximately 500 photographs I reviewed, 93 fit the refined criteria to which you agreed at that meeting, i.e., photographs of the injured juvenile or photographs depicting the specific area where the Rio Grande OICI took place or evidence relevant to the Rio Grande OICI itself.

None of the photographs depict the injured juvenile. The photographs do depict, among other things, the physical location where the OICI occurred, evidence relating to the OICI and the events that preceded it, evidence tags, police tape, clothing, and other personal items we believe are relevant to our on-going investigation into the Rio Grande OICI. After carefully reviewing the 93 photographs falling within your refined criteria, we are producing 25 to you in connection with your GRAMA request. Those photographs are produced with the hard copy of this correspondence, Bates stamped SLCo-SLCity ACLU GRAMA Resp. 0084-0108.

The remaining 68 photographs are classified as “protected” pursuant to Utah Code Annotated section 63G-2-305(10)(a), (c), because we believe releasing them now reasonably could be expected to interfere with our investigation and might deprive an individual (whether the juvenile, an officer, or someone else) of the right to a fair trial.

5. Body camera footage

As we discussed at our May 24 Meeting, given the events that unfolded after the Rio Grande OICI and the number of officers from various jurisdictions who responded, we have collected over 60 records that might reasonably fall within the broad scope of your request for “body camera footage.” As such, we thank you for clarifying that, for now, you are seeking only footage relevant to the OICI itself.¹ We have two records that fall within your refined criteria, both of which are classified as “protected” pursuant to Utah Code Annotated section 63G-2-305(10)(a), (c), because we believe releasing them now reasonably could be expected to interfere with our investigation and might deprive an individual (whether the juvenile, an officer, or someone else) of the right to a fair trial.

The above classification is based not on the existence of an investigation generally, or due process concerns in the abstract, but on the specific facts of this investigation into both the Rio Grande OICI and the juvenile’s actions that preceded it. Those incidents both occurred in a public place with many witnesses present, not all of whom have been interviewed (and some of whom, given the transient nature of the area, may never be interviewed) and some of whom are depicted in the footage itself. As our investigation into these incidents continues, it is imperative that we get at the truth in a way that does not potentially taint evidence or witness testimony. To that end, we feel strongly that we must protect the independent recollections and rights of all persons depicted in the body camera footage at issue, including victims, alleged criminal perpetrators, police officers, witnesses and bystanders. And, while it is still unknown if any criminal charges will result (whether against the juvenile, a police officer, or someone else), we feel equally strongly that premature release of these records would run the risk of negatively affecting the due process rights of potential criminal defendant(s), if any, by unfairly tainting any potential jury pool.

¹ As discussed and agreed, however, I will review randomly selected “body camera footage” (comprising approximately 10%-20% of the total) and provide you with a general description of what it depicts. Should you wish thereafter to refine your GRAMA request to address more specifically any additional footage you wish to see released, we will be happy to consider that refined request.

6. Other video footage of the Incident and area, including but not limited to dash-cam and/or surveillance video

As we discussed at our May 24 Meeting, Salt Lake City does not utilize dash cams and I am not aware of any other dash cam footage responsive to your request. The Office did, however, collect some surveillance footage from areas surrounding the shelter. After reviewing the footage that was collected, I located only one video that depicted the specific area where the Rio Grande OICI took place or evidence relevant to the Rio Grande OICI itself. That footage is classified as “protected” pursuant to Utah Code Annotated section 63G-2-305(10)(a), (c), because we believe releasing it now reasonably could be expected to interfere with our investigation and might deprive an individual (whether the juvenile, an officer, or someone else) of the right to a fair trial.

Again, that classification is based not on the existence of an investigation generally, or due process concerns in the abstract, but on the specific facts of this investigation into both the Rio Grande OICI and the juvenile’s actions that preceded it. For a fuller explanation of our reasoning in that regard, please see section (5) above relating to body camera footage.

7. All other public records concerning the Incident

This portion of your request is, of course, both very broad and very vague. At this point, I am not aware of any records held by either this Office or the City that would be responsive to this request.

Appeal rights

You have the right to appeal this determination as set forth in Salt Lake County ordinance 2.82.100 and Salt Lake County Policy 2040 (enclosed). Because the Office designee for GRAMA appeals, Ralph Chamness (Chief Deputy of the Civil Division), was involved in reviewing and classifying these materials, we are willing to waive the first, agency-designee level of appeal.

If you have any questions or concerns, please do not hesitate to contact me at dgoddard@slco.org or 385.468.7761.

Best regards,

/s

Darcy M. Goddard
Chief Policy Advisor (Civil) & Deputy District Attorney

Ms. Leah Farrell
June 11, 2016
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Enclosures

cc (w/o encl.; by e-mail only):

David C. Reymann (dreymann@parrbrown.com)

Mark Kittrell (mark.kittrell@slcgov.com)

Margaret Plane (margaret.plane@slcgov.com)



SALT LAKE COUNTY
COUNTYWIDE POLICY
ON
GRAMA APPEALS PROCEDURE

Reference --

Government Records Access and Management Act (GRAMA), Utah Code Annotated, Sections 63G-2-401 through 407 & 701

Records Management, Salt Lake County Ordinance, Section 2.82.100

Purpose --

The appeals process provides members of the public with a process for petitioning Salt Lake County to reconsider records request issues.

1.0 Types of Appeals

Members of the public may appeal a decision made by the County concerning:

- 1.1 records classifications
- 1.2 fees charged for records
- 1.3 an agency's response to a records request

2.0 Appeals

- 2.1 Chief Administrative Officer for Appeals
 - 2.1.1 County agencies shall attempt to resolve public complaints concerning records requests informally and at the lowest possible administrative level.
 - 2.1.2 If a requestor is aggrieved by the county's classification of a record, the fees charged for a record, or by an agency's response to a record request, the requestor may request and be granted an initial administrative appeal of that grievance, in accordance with countywide policies and procedures adopted by the council. The initial administrative appeal is made to the agency designee pursuant to countywide policies and procedures adopted by council. Designee shall provide a written decision to the appellant.
 - 2.1.3 If a requestor and a County agency designee cannot resolve a complaint at the agency level, the requestor may submit a written notice of appeal to the Chief Administrative Officer for Appeals ("CAOA"). The notice of appeal shall state the basis of the appeal and the relief requested. The requestor shall file the notice of appeal within

thirty (30) calendar days of receiving an adverse decision from a County agency.

2.1.4 A notice of appeal is considered filed when it is received and date-stamped at the County office of the CAO A designated to respond to the specific records request, located at 2001 South State Street, N2200, Salt Lake City, Utah 84190. No notices of appeal sent by facsimile, e-mail, or any other electronic submission will be accepted.

2.1.5 Upon receiving an appeal notice of an agency decision, the CAO A shall have seven (7) calendar days after the CAO A's receipt of the notice of appeal (or fourteen (14) calendar days after the county sends a notice of appeal to a person who submitted a claim of business confidentiality) to respond to the record request.

2.1.5.1 The county shall send written notice of the CAO A's decision to all participants.

2.1.6 Appeal of a CAO A's decision to affirm an access denial

2.1.6.1 In the event the CAO A affirms the access denial, or fails to respond to the records request within the time limits listed above, the person aggrieved may then appeal the CAO A's decision.

2.1.6.2 An appeal of a CAO A's determination shall be heard by an appeals board, as designated by the county.

2.1.6.3 No later than fourteen (14) calendar days after the notice of the appeal is sent, a person whose legal interests may be substantially affected by the proceeding may file a request for intervention before the appeals board.

2.1.6.4 The parties to an appeal, including any intervenors, may submit a written statement of facts, reasons, and legal authority to support their position at least fourteen (14) calendar days prior to the appeal hearing date. The parties may not conduct formal discovery prior to an appeal hearing under this section.

2.1.6.5 Any party who needs special accommodations shall notify the appeals board of their needs at least seven (7) calendar days prior to the hearing. Parties may appear telephonically upon application and good cause shown.

2.2 Appeals Board

2.2.1 An appeals board established by the county shall be composed of three members: one of whom shall be an employee of the county; and two of whom shall be members of the public, at least one of whom shall have professional experience with requesting or managing records.

2.2.2 Appeals Board Hearing Procedure

2.2.2.1 At the appeal hearing, the appeals board shall allow the parties to testify, present evidence, and comment on the issues. The appeal hearing shall be guided by the legal rules of evidence. The parties may question and cross examine witnesses and may be represented by legal counsel. The appeals board shall conduct the hearing in accordance with the Utah Open Meetings Act, except as necessary to prevent the disclosure of private, protected, or controlled information.

2.2.2.2 Where the agency's decision is based, in whole or in part, on a classification placed on a shared record by the governmental entity that created the record, the appeals board is bound to uphold the originating entity's classification. The appeals board shall therefore not hear any portion of the appeal pertaining to shared records, but shall summarily uphold the agency's decision as it pertains to shared records.

2.2.2.2.1 In cases where a requestor seeks records created by another governmental entity that were provided to the county, the requestor is encouraged to make a public record request directly to the originating entity.

2.2.2.3 The appeals board may review disputed records, but may not reveal any private, protected, or controlled information during the course of the appeal hearing. If the appeals board finds it necessary to discuss private, protected, or controlled information during the course of a hearing, it may enter into closed session as a quasi-judicial body to avoid disclosure of that information.

2.2.2.4 The appeals board may close the meeting to discuss its decision and order at the end of the hearing so long as it is acting as a quasi-judicial body.

2.2.2.5 The appeals board may uphold, amend, or reverse an agency decision.

2.2.3 Decision and Order

2.2.3.1 No later than seven (7) calendar days after an appeal hearing, the appeal board shall issue a signed order upholding, amending, or reversing the agency action.

2.2.3.2 The appeals board 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 outweighs the interest favoring restriction of access.

2.2.3.3 In making its decision, the appeals board 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 a private or controlled record; business confidentiality interests in the case of a record protected under the Act; and privacy interests or the public interest in the case of other protected records.

2.2.3.4 The appeals board's final order shall include:

2.2.3.4.1 A statement of reasons for the decision, including legal authority supporting the decision.

2.2.3.4.2 Where applicable, a description of the record or portions of the record to which access is ordered or denied, so long as the description does not reveal private, protected or controlled information.

2.2.3.4.3 A statement that any party to the proceeding may appeal the decision to the state records committee or district court; including a statement that an appeal to the state records committee does not waive either parties' right to seek judicial review of a decision by the records committee.

2.2.3.4.4 A summary of the appeals process, the time limits for filing an appeal, and a notice that

to protect its rights, a party may wish to seek advice from an attorney.

2.2.4 If the appeals board fails to issue a final order within the stated time period, the petitioner's appeal shall be deemed denied. A party shall notify the CAO in writing, and consistent with subsection 2.1.4 of this policy, if it deems an appeal denied.

2.2.4.1 Upon receipt of the written notification that the party deems the appeal denied, the CAO shall then inform the party in writing:

2.2.4.1.1 That any party to the proceeding may appeal the decision to the state records committee or district court; including a statement that an appeal to the state records committee does not waive either parties' right to seek judicial review of a decision by the records committee.

2.2.4.1.2 A summary of the appeals process, the time limits for filing an appeal, and a notice that to protect its rights, a party may wish to seek advice from an attorney.

2.3 Appeal of an Appeals Board Decision

2.3.1 Either the county or the appellant may appeal the appeals board decision to the state records committee or by filing a petition for judicial review with the district court.

2.3.2 A party 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.

APPROVED and PASSED this 8th day of December, 2015.

SALT LAKE COUNTY COUNCIL:

By _____
Richard Snelgrove, Chair

ATTEST:

Sherrie Swensen, County Clerk

Approved as to form and legality:

Deputy District Attorney
Date: _____