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FOR IMMEDIATE RELEASE

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Salt Lake County GRAMA Appeals Board rejects ACLU request for release of Mohamed shooting footage

SALT LAKE CITY, UT —The Salt Lake County GRAMA Appeals Board has upheld the Salt Lake County District Attorney’s decision to continue to withhold from the public body camera footage and other media relevant to the February 2016 shooting of Abdi Mohammed, despite requests made by the ACLU of Utah under the Government Records Access & Management Act.

“While we appreciate the time and attention the Board members dedicated to this matter, we respectfully disagree with their conclusion,” said cooperating attorney David Reymann of Parr Brown Gee & Loveless. “This information *should* be made public; we will appeal this decision.”

Abdi Mohamed, an 18-year-old community member who relocated to Utah from Somalia with his family, was shot multiple times by Salt Lake City police officers on February 27, 2016, in the downtown Rio Grande neighborhood. He was in a coma for several weeks and is currently confined to a wheelchair due to his injuries.

The ACLU of Utah legal team appeared before the Salt Lake County GRAMA Appeals Board on October 18. The ACLU of Utah filed its original GRAMA request in May. In response, the County released some information about the incident, but excluded footage from police body cameras, as well as several still photographs and surveillance camera footage from the scene of the incident.

“The public has a right to know what happened in a critical incident like this one,” said Leah Farrell, ACLU of Utah staff attorney. “The important transparency function of law enforcement body cameras is undermined when government officials withhold footage in the face of overwhelming public interest.”

Attached is a copy of the Decision and Order of the Salt Lake County GRAMA Appeals Board.

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SALT LAKE COUNTY GRAMA APPEALS BOARD

In the matter of the review of the Salt Lake County Chief Administrative Officer of Appeals Decision and August 18, 2016 Denial

DECISION AND ORDER

Case No. 2016-01

This case comes before the Salt Lake County GRAMA Appeals Board (the “Board”) following Salt Lake County’s denial of some responsive records requested by the American Civil Liberties Union of Utah (“ACLU”) under the Governmental Records Access and Management Act (“GRAMA”), Utah Code §63G-2-101, *et seq.*, relating to a February 27, 2016, officer-involved critical incident (the “Incident”). The incident ended with an officer-involved shooting of a 17-year old Kenyan refugee (the “Juvenile”).

PROCEDURAL HISTORY

On May 12, 2016, the ACLU submitted a records request to the Salt Lake County District Attorney’s Office under GRAMA seeking records relating to the Incident (the “GRAMA Request”). In a letter dated June 11, 2016 Salt Lake County (“County”) issued a response providing some records responsive to the request but denying access to others including body camera footage from two officers, a surveillance video and at least 11 crime scene photographs (“Contested Records”) having classified them as “protected” under §63G-2-305(10)(a) & (c), in part due to its ongoing investigation into the Incident. On June 21, 2016, the County supplemented its response regarding an additional surveillance video but similarly denied access to the record as “protected” under §63G-2-305(10)(a) & (c), (part of the “Contested Records”). On July 7, 2016 the ACLU appealed these denials to the Salt

Lake County Chief Administrative Officer of Appeals (“CAOA”). On July 15, 2016 the CAO, issued a decision affirming the County’s June denials (“CAOA Denial”).

The County issued a second supplemental response to the GRAMA request upon the completion of its investigation and subsequent to the CAO Denial on August 18, 2016; producing some additional records which had previously been withheld due to the ongoing investigation under §63G-2-305(10)(a). However, the Contested Records remained classified as “protected” under §63G-2-305(10)(b) as material evidence in a pending criminal prosecution which release “reasonably could be expected to interfere with ... [an] enforcement proceeding” and §63G-2-305(10)(c) because their release “would create a danger of depriving a person of a right to a fair trial” and under the County’s balancing test the “constitutional rights and interests of the [juvenile] outweighed the constitutional rights and interest of the [public].” (“August Denial”) The County agreed that the ACLU could appeal the August Denial directly to the Board.

On August 31, 2016, the ACLU appealed the CAO Denial and August Denial to the Board. A hearing was set for October 18, 2016. On September 14, 2016, Salt Lake City petitioned to intervene in the hearing which petition was granted by the Board. The Board having thoroughly reviewed the arguments submitted by the parties, having heard oral argument by the parties at the hearing on October 18, 2016 and having viewed the Contested Records during a closed portion of the hearing, now issues the following Decision and Order.

STATEMENT OF REASONS FOR DECISION

1. The Board reviewed and discussed the Contested Records individually. While the Board finds that the strength of the classification and balancing of interests differs by record, the reasoning is the same for all the Contested Records.

2. The Board finds that the Contested Records were classified correctly by the County as “protected” under §63G-2-305(10)(b). As material evidence (“records created or maintained for...enforcement purposes...”) in a pending criminal prosecution, release of the Contested Records “reasonably could be expected to interfere with ... [an] enforcement proceeding.” In reviewing the Contested Records, the Board finds that the Contested Records remain properly classified as “protected” under §63G-2-305(10)(b).
3. The Board finds that the Contested Records were properly classified by the County as “protected” under §63G-2-305(10)(c), as their release “would create a danger of depriving a person of a right to a fair trial”. In reviewing the Contested Records, the Board finds that the Contested Records remain properly classified as “protected” under §63G-2-305(10)(c).
4. Under §63G-2-305(10)(c), the question is not whether release of the records **would deprive** a person of a fair trial but rather whether it **would create a danger** of depriving a person of a fair trial. The Board finds that it would.
5. The Board finds that release of the Contested Records could reasonably be expect to taint the testimony of potential witnesses and thus interfere with a pending criminal prosecution. Additionally, tainted witness testimonies would create a danger of depriving the Juvenile of the right to a fair trial.
6. The Board finds, given the Juvenile’s previous public statements regarding the Incident that release of the Contested Records would create a danger of depriving the Juvenile of the right to a fair trial and could interfere with the pending criminal proceeding.
7. While the Board recognizes that there may be efforts a court can take to potentially cure a release of the Contested Records in depriving the Juvenile of a fair trial; that is not the question under GRAMA. Records are protected if their release would create a danger of depriving a person of a fair trial or reasonably could be expected to interfere with an enforcement proceeding.
8. In making its decision, the Board is required to consider and weigh the various interests and public policies pertinent to the classification and disclosure or nondisclosure and order the disclosure if the public interest favoring access outweighs the interest in favoring restriction of access. See, Countywide Policy 2040 2.2.3.2 and §63G-2-401(6).

9. "A record that is classified as protected under Subsection 63G-2-305(10) . . . may be ordered to be disclosed under the provisions of Subsection 63G-2-401(6) . . . 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." §63G-2-406(1).
10. The Board finds that there is significant public interest in this Incident especially with the numerous cases nationwide of young African American men being shot or killed by police officers.
11. The Board finds that there is significant public interest in ensuring the transparency and review of the actions of public officials, in this case the actions of the police officers and the decisions of District Attorney Sim Gill.
12. The Board finds the case of State v. Allgier, 2011 UT 47, 258 P.3d 589, distinguishable from the facts in this matter as Allgier introduced the parts of the actual document himself into the public record. In this matter, release of the Contested Records would be without any input from the Juvenile and moreover, the Board finds that the description of the body camera footage by either Mr. Gill or in the Citizen Review Board report is not as effective as the actual footage.
13. The Board also finds the cases of Utah Dep't of Pub. Safety v. State Records Comm., 2010 WL 2487352 (Utah 3d Dist Ct. 2010) and Deseret News Publ'g Co. v. Salt Lake Cnty., 2008 UT 26, 182 P3d 372, distinguishable as they involved the actions of public officials. The Juvenile whose rights are at issue in this appeal is not a public official.
14. The Board finds that the Police Citizen Review Board's report **does not** contradict the statements by Mr. Gill in August as the Board's decision was based on City policy and Mr. Gill was reviewing state law. Therefore, the Board finds no increased public concern based on release of the Board's report.
15. The Board finds that the fact that the Juvenile or his attorney have not had an opportunity to comment on this GRAMA Request, weighs against disclosure of the Contested Records.
16. The Board finds that the balancing of the privacy and constitutional interests of the Juvenile with the legitimate strong public interest in disclosure, a very close call. In the end, the Board is persuaded by the County's argument that the constitutional, statutory

and rule-based rights of the Juvenile in this matter outweigh the right of the public in assuring transparency and accountability of its public officials at this time.

17. The benefit of release is not equal to the interest favoring restriction. Releasing the photographs and/or body camera footage and/or surveillance videos could interfere with the pending criminal proceeding and could endanger the Juvenile's right to a fair trial. The Board feels strongly that protecting material evidence in this pending criminal proceeding, which could interfere with the proceeding if it were to be released; and, protecting the Juvenile's rights and not burdening his ability to a fair trial outweighs the public's right to the information.

ORDER

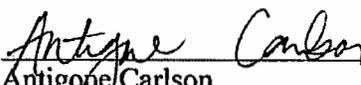
Therefore, it is ordered that ACLU's appeal is denied and the Board affirms the CAO A Denial and the August Denial.

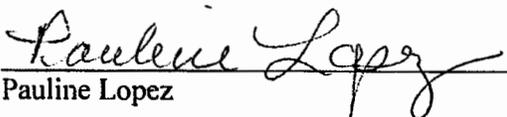
RIGHT TO APPEAL

Any party to this proceeding may appeal the decision to the state records committee or district court by filing an appeal within thirty (30) days of this decision. A decision to appeal to the state records committee does not waive either parties' right to seek judicial review of a decision by the records committee.

Entered this 25 day of October, 2016.


Chris Calton


Antigone Carlson


Pauline Lopez