

EXHIBIT A

David C. Reymann (8495) (dreymann@parrbrown.com)
Jeremy M. Brodis (16006) (jbrodis@parrbrown.com)
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Attorneys for Petitioners

IN THE SECOND JUDICIAL DISTRICT COURT

DAVIS COUNTY, STATE OF UTAH

ACLU of UTAH FOUNDATION, INC. and
DISABILITY LAW CENTER,

Petitioners,

vs.

DAVIS COUNTY, a political subdivision of
the State of Utah, and the UTAH STATE
RECORDS COMMITTEE,

Respondents.

DECLARATION OF LEAH FARRELL

Case No.: 180700511

Judge David Connors

I, Leah Farrell, declare and state as follows:

1. I am a Senior Staff Attorney at the ACLU of Utah Foundation, Inc. (“ACLU of Utah”), which is named as a petitioner in the above-captioned matter.
2. I respectfully submit this declaration in support of Petitioners’ Motion for Summary Judgment.
3. The ACLU of Utah is a non-profit organization that operates through public education, legal advocacy, litigation, and lobbying to ensure the constitutional rights and freedoms of everyone living in or visiting Utah.

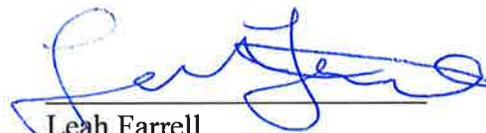
4. More specifically, through litigation, advocacy, and public education, the ACLU of Utah is committed to ensuring that conditions of confinement and treatment of inmates in Utah's prisons and jails are constitutional and consistent with health, safety, and human dignity.

5. To that end, the ACLU of Utah has a particularized interest in obtaining documents reflecting the standards that guide the operations of Utah's prisons and jails, including the Davis County Jail, as well as documents that reflect compliance (or lack of compliance) with those standards.

6. The ACLU of Utah's use of such documents would be for nonprofit advocacy and educational purposes and not for commercial purposes.

I declare under criminal penalty of the laws of the Utah that the foregoing is true and correct to the best of my knowledge.

DATED this 14th day of May 2019.



Leah Farrell

EXHIBIT B

David C. Reymann (8495) (dreymann@parrbrown.com)
Jeremy M. Brodis (16006) (jbrodis@parrbrown.com)
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Attorneys for Petitioners

IN THE SECOND JUDICIAL DISTRICT COURT

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ACLU of UTAH FOUNDATION, INC. and
DISABILITY LAW CENTER,

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vs.

DAVIS COUNTY, a political subdivision of
the State of Utah, and the UTAH STATE
RECORDS COMMITTEE,

Respondents.

DECLARATION OF AARON KINIKINI

Case No.: 180700511

Judge David Connors

I, Aaron Kinikini, declare and state as follows:

1. I am the Legal Director at Disability Law Center (“DLC”), which is named as a petitioner in the above-captioned matter.
2. I respectfully submit this declaration in support of Petitioners’ Motion for Summary Judgment.
3. DLC is a non-profit organization that has a specific interest in the civil rights and proper treatment of inmates in the State’s care.

4. In particular, DLC works to protect and advance the civil rights of people with disabilities, helps people with disabilities when their rights have been violated and seeks to ensure that people with disabilities have access to information about their rights.

5. For example, DLC works to protect and advance the civil rights of people with disabilities to vindicate their rights to reasonably safe conditions of confinement, including access to adequate medical care and rehabilitation services.

6. Some examples of DLC's work in the area of protection and civil rights include:

- a. Investigating allegations of abuse, neglect or exploitation of people with disabilities;
- b. Ensuring that restraint and seclusion are only used in compliance with laws, regulations and best practices;
- c. Ensuring that the rights of individuals with disabilities who come into contact with law enforcement are protected; and
- d. Ensuring that individuals with disabilities who are confined in jails and prisons are treated humanely and that their constitutional rights are respected.

7. To that end, DLC has a particularized interest in obtaining documents reflecting the standards that guide the operations of Utah's prisons and jails, including the Davis County Jail, as well as documents that reflect compliance (or lack of compliance) with those standards.

8. The DLC's use of such documents would be for nonprofit advocacy and educational purposes and not for commercial purposes.

I declare under criminal penalty of the laws of the Utah that the foregoing is true and correct to the best of my knowledge.

DATED this 13 th day of May 2019.



Aaron Kimikini

EXHIBIT C

David C. Reymann (8495) (dreymann@parrbrown.com)
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Attorneys for Petitioners

IN THE SECOND JUDICIAL DISTRICT COURT

DAVIS COUNTY, STATE OF UTAH

ACLU of UTAH FOUNDATION, INC. and
DISABILITY LAW CENTER,

Petitioners,

vs.

DAVIS COUNTY, a political subdivision of
the State of Utah, and the UTAH STATE
RECORDS COMMITTEE,

Respondents.

**DECLARATION OF JEREMY M.
BRODIS**

Case No.: 180700511

Judge David Connors

I, Jeremy M. Brodis, declare and state as follows:

1. I am a lawyer at Parr Brown Gee & Loveless, P.C. and counsel of record for petitioners ACLU of Utah Foundation, Inc. (“ACLU”) and Disability Law Center (“DLC,” and collectively with ACLU, “Petitioners”) in the above-captioned matter.

2. I respectfully submit this declaration in support of Petitioners’ Motion for Summary Judgment.

3. Petitioners, through their legal counsel, submitted a GRAMA request (the “GRAMA Request”) to Davis County on October 31, 2017. A true and correct copy of

Petitioners' October 31, 2017 GRAMA Request is attached hereto as Exhibit 1. Among other things, the GRAMA Request sought "All correspondence, including emails, between Davis County (including the Sheriff's Department), on the one hand, and Mr. Gary DeLand, Mr. Tate McCotter, the Utah Sheriffs' Association, the National Institute of Jail Operations, and/or DeLand and Associates, on the other hand, regarding the Utah Jail Standards or any portion thereof, including but not limited to any claims of business confidentiality (including any statements of reasons) submitted to Davis County pursuant to Utah Code § 63G-2-309." See Ex. 1 hereto.

4. By letter dated December 6, 2017, Davis County responded to the GRAMA Request. A true and correct copy of Davis County's December 6, 2017 response to the GRAMA Request is attached hereto as Exhibit 2.

5. On January 5, 2018, Petitioners appealed the County's denial to the CAO of GRAMA appeals for Davis County. A true and correct copy of Petitioners' January 5, 2018 appeal to Davis County's CAO is attached hereto as Exhibit 3.

6. On January 19, 2018, the CAO issued a "Notice of Decision Regarding GRAMA Appeal." A true and correct copy of Davis County's CAO's January 19, 2018 Notice of Decision Regarding GRAMA Appeal is attached hereto as Exhibit 4.

7. On February 16, 2018, Petitioners appealed Davis County's CAO's decision to the State Records Committee. A true and correct copy of Petitioners' February 16, 2018 appeal to the State Records Committee is attached hereto as Exhibit 5.

8. On April 12, 2018, the State Records Committee held a hearing on Petitioners' appeal.

9. On April 23, 2018, the State Records Committee issued a written “Decision and Order.” A true and correct copy of the State Records Committee’s April 23, 2018 Decision and Order is attached hereto as Exhibit 6.

10. Among other things, the GRAMA Request sought “[a]ll . . . claims of business confidentiality (including any statements of reasons) submitted to Davis County pursuant to Utah Code § 63G-2-309.” Ex. 1 hereto.

11. I have reviewed the documents produced by Davis County in response to the GRAMA Request.

12. To the best of my knowledge and based on my understanding from my review of the documents produced, Davis County has not produced any documents relating to the Utah Jail Standards wherein any person or entity made an express claim of business confidentiality, or any statement of reasons accompanying such an express claim of business confidentiality, to Davis County at the time of providing such records.

I declare under criminal penalty of the laws of the Utah that the foregoing is true and correct to the best of my knowledge.

DATED this 15th day of May 2019.



Jeremy M. Brodis

EXHIBIT 1

October 31, 2017

VIA EMAIL AND U.S. MAIL

Ms. Laura Stubbs
Records Administrator
Davis County Jail/Sheriff's Department
800 West State Street
Farmington, Utah 84025
lstubbs@co.davis.ut.us

Mr. Curtis Koch
Davis County Clerk/Auditor
P.O. Box 618
Farmington, Utah 84025
grama@daviscountyutah.gov

Re: GRAMA Request for Utah Jail Standards and Related Records

Dear Ms. Stubbs and Mr. Koch:

I represent the ACLU of Utah ("ACLU") and the Disability Law Center ("DLC") with respect to the matters that follow.

Pursuant to the Utah Government Records and Management Act, Utah Code §§ 63G-2-101, *et seq.*, my clients hereby request to inspect and/or receive copies of the following records:

1. All written standards used or relied upon by Davis County in its administration and operation of the Davis County Jail at any time during the past five (5) years, including but not limited to the Utah Jail Standards;
2. All written contracts or agreements relating to or governing Davis County's use of the standards referenced in request no. 1, including but not limited to

any written license agreements and any documents reflecting any consideration paid by Davis County for use of the Utah Jail Standards;

3. All correspondence, including emails, between Davis County (including the Sheriff's Department), on the one hand, and Mr. Gary DeLand, Mr. Tate McCotter, the Utah Sheriffs' Association, the National Institute of Jail Operations, and/or DeLand and Associates, on the other hand, regarding the Utah Jail Standards or any portion thereof, including but not limited to any claims of business confidentiality (including any statements of reasons) submitted to Davis County pursuant to Utah Code § 63G-2-309; and
4. All final written audits and other reports assessing Davis County's compliance with the standards referenced in request no. 1 issued at any time during the past five (5) years.

While my clients do not believe that any portion of the foregoing records contains any non-public information under GRAMA, I respectfully remind Davis County of its affirmative obligation under GRAMA to segregate information Davis County legitimately believes is non-public and to release the remainder, rather than withholding such records in their entirety. *See* Utah Code § 63G-2-308.

As you are likely aware, the subject of the Utah Jail Standards is an issue of substantial public interest relating to the administration of a public institution supported by public funds. This interest is particularly acute in light of the rash of recent incidents involving deaths of jail inmates in Utah, including Heather Miller's death in the Davis County Jail late last year. As such, even if Davis County should determine that any portion of the records requested above is properly classified as non-public, my clients request that Davis County nonetheless release those records in full because the interests favoring access are greater than or equal to the interests, if any, favoring restriction of access. *See* Utah Code §§ 63G-2-201(5)(b), -202(9)(a).

My clients are requesting these records for the public benefit in order to bring transparency and public accountability to the ways in which Utah's correctional institutions are operating and the standards to which they seek to adhere. Accordingly, my clients request an expedited response to this request within five (5) business days. *See* Utah Code § 63G-2-204(3)(b).

Ms. Laura Stubbs
Mr. Curtis Koch
October 31, 2017
Page 3

For the same reason, and because both of my clients are non-profit entities, my clients request that Davis County fulfill this request without charge. *See* Utah Code § 63G-2-203(4). Nonetheless, if Davis County intends to charge fees to respond to this request, my clients will authorize up to \$100 in fees. If fees are expected to exceed this amount, please contact me before those fees are incurred. My clients may wish to exercise their option to inspect records free of charge if that is the case, or to make additional arrangements for payment. *See* Utah Code §§ 63G-2-203(5)(b). Before any records are compiled in a form other than that normally maintained by Davis County, please contact me to determine whether my clients are actually seeking records in such form, as we do not believe any of the above requests require such work.

Both of my clients may be reached through me. My mailing address is David C. Reymann, PARR BROWN GEE & LOVELESS, 101 South 200 East, Suite 700, Salt Lake City, Utah 84111. My daytime telephone number is 801-532-7840, and my email address is dreymann@parrbrown.com. If you need any additional information, please let me know.

Feel free to contact me with any questions. Thank you for your prompt attention to these matters.

Sincerely,

PARR BROWN GEE & LOVELESS



David C. Reymann

cc (via email): Troy Rawlings, Davis County Attorney
John Mejia, ACLU of Utah
Marina Lowe, ACLU of Utah
Aaron Kinikini, Disability Law Center

EXHIBIT 2



Clerk/Auditor

Davis County Administration Building - P.O. Box 618 - Farmington Utah 84025
Telephone: (801) 451-3213 - Fax: (801) 451-3421

Curtis Koch, MBA, CGFM
Clerk/Auditor

December 6, 2017

David Reymann
Parr Brown Gee & Loveless
101 SOuth 200 East, Suite 700
Salt Lake City, UT 84111

RE: Notice of Partial Denial of GRAMA Request for Records

Dear Mr. Reymann:

This letter is in response to your GRAMA request for records dated October 31, 2017. As you are aware, your original request was as follows:

- 1) All written standards used or relied upon by Davis County in its administration and operation of the Davis County Jail at any time during the past five (5) years, including but not limited to the Utah Jail Standards;
- 2) All written contracts or agreements relating to or governing Davis County's use of the standards referenced in request no. 1, including but not limited to any written license agreements and any documents reflecting any consideration paid by Davis County for the use of the Utah Jail Standards;
- 3) All correspondence, including emails, between Davis County (including the Sheriff's Department), on the one hand, and Mr. Gary DeLand, Mr. Tate McCotter, the Utah Sheriffs' Association, the National Institute of Jail Operations, and/or DeLand and Associates, on the other hand, regarding the Utah Jail Standards or any portion thereof, including but not limited to any claims of business confidentiality (including any statements of reasons) submitted to Davis County pursuant to Utah Code § 63G-2-309; and
- 4) All final written audits and other reports assessing Davis County's compliance with the standards referenced in request no. 1 issued at any time during the past five (5) years.

In response to your request please find the following:

Item 1: Davis County Sheriff Administration has indicated that they have used the Utah Jail Standards during the entire time specified in your request. They have informed all other Davis County employees that these standards are copyrighted and proprietary and that they are owned by DeLand and Associates. Additionally they have indicated that

they do not have a copy of these standards. They are provided log in access to a software to which they can view the Utah Jail Standards.

Davis County does not have a responsive record to this portion of your request.

Item 2: Davis County Sheriff Administration has indicated that they are authorized to use the Utah Jail Standards simply by being members of the Utah Sheriff's Association. Membership is established by paying annual dues. I have included copies of paid invoices for the following years as requested by you: 2018, 2017, 2016, 2015, and 2014. Davis County Sheriff Administration has indicated that there are no other records responsive to this portion of your request.

Item 3: Davis County Records Department has worked with Davis County Information Systems Department to obtain email correspondence requested in item 3 of your request. These emails were reviewed and then redacted by the Davis County Records Department and then by the Davis County Attorney's Office. I have provided you a spreadsheet documenting 27 email records that we found to be responsive. Some of these emails contained attachments and we have provided attachments where appropriate. The spreadsheet identifies the email (numbered in the top right hand corner), any attachments it contained, and notes which document legal basis for any redactions or documents withheld.

To the best of our knowledge these are the only responsive records to this portion of your request.

Item 4: Davis County Sheriff Administration has indicated to all other Davis County employees that they do not receive an inspection or audit report. They have indicated that they access any inspections or audits by logging into the same software program that they have been provided access to in order to view the Utah Jail Standards. Other than the attachment referenced in item no. 17 on the above mentioned spreadsheet, Davis County has found no responsive records to this portion of your request.

You have the right, pursuant to Section 63G-2-401, Utah Code Annotated, to appeal the access denials or partial denials in this response by filing a notice of appeal with James E. Smith, Chief Administrative Officer of GRAMA Appeals for Davis County, within 30 days after Davis County sends this notice of denial to you. Your appeal should be addressed to: James E. Smith, Chief Administrative Officer of GRAMA Appeals for Davis County, P.O. Box 618, Farmington, UT 84025

Sincerely,


Rebecca Abbott

Records Manager

Davis County

Email	Attachments	Total # of pages (Email & Attachments)	Redactions	Notes
13	No	1	Yes	Partial email addresses and personal info redacted. Copyright or proprietary information redacted. Legal basis for redactions - UCA 63G-2-302(2)(d), 63G-2-103(22)(b)(iv), and 63G-2-305(1), (2)
14	Attachment #1 - 9 pgs	11	Yes	Partial email addresses redacted. Copyright or proprietary information redacted. Legal basis for redactions - UCA 63G-2-302(2)(d), 63G-2-103(22)(b)(iv), and 63G-2-305(1), (2), (10)(e), (11), (12), and (13)
15	No	1	Yes	Partial email addresses redacted. Legal basis for redactions - UCA 63G-2-302(2)(d)
16	No	1	Yes	Partial email addresses redacted. Legal basis for redactions - UCA 63G-2-302(2)(d)
17	Attachment #1 - 10 pgs Attachment #2 - 10 pgs	21	Yes	Copyright or proprietary information redacted or withheld. Legal basis for redactions - UCA 63G-2-302(2)(d), 63G-2-103(22)(b)(iv), and 63G-2-305(1), (2), (10)(e), (11), (12), and (13)
18	Attachment #1 - 1 pg	3	Yes	Legal basis for redactions - UCA 63G-2-302(2)(d), 63G-2-103(22)(b)(iv), and 63G-2-305(1), (2), (10)(e), (11), (12), and (13)
19	Attachment #1 - 1 pg	2	Yes	Copyright or proprietary information redacted or withheld. Legal basis for redactions - UCA 63G-2-302(2)(d), 63G-2-103(22)(b)(iv), and 63G-2-305(1), (2), (10)(e), (11), (12), and (13)
20	Attachment #1 - 1 pg	3	Yes	Copyright or proprietary information redacted or withheld. Legal basis for redactions - UCA 63G-2-302(2)(d), 63G-2-103(22)(b)(iv), and 63G-2-305(1), (2), (10)(e), (11), (12), and (13)
21	Attachment #1 - 4 pgs Attachment #2 - 3 pgs	8	Yes	Partial email addresses redacted. Legal basis for redactions - UCA 63G-2-302(2)(d)
22	No	1	Yes	Partial email addresses redacted. Legal basis for redactions - UCA 63G-2-302(2)(d)
23	No	3	Yes	Partial email addresses redacted. Redacted emails that were not responsive Legal basis for redactions - UCA 63G-2-302(2)(d)
24	No	3	Yes	Partial email addresses redacted. Redacted emails that were not responsive Legal basis for redactions - UCA 63G-2-302(2)(d)
25	Attachment #1 - 1 pg.	2	Yes	Partial email addresses redacted. Copyright or proprietary information redacted or withheld. Legal basis for redactions - UCA 63G-2-302(2)(d), 63G-2-103(22)(b)(iv), and 63G-2-305(1), (2), (10)(e), (11), (12), and (13)

Email	Attachments	Total # of pages (Email & Attachments)	Redactions	Notes
26	Attachment #1 - 1 pg.	2	Yes	Partial email addresses redacted. Copyright or proprietary information redacted or withheld. Legal basis for redactions - UCA 63G-2-302(2)(d), 63G-2-103(22)(b)(iv), and 63G-2-305(1), (2), (10)(e), (11), (12), and (13)
27	No	3	Yes	Partial email addresses redacted. Copyright or proprietary information redacted or withheld. Redacted emails that were not responsive. Legal basis for redactions - UCA 63G-2-302(2)(d), 63G-2-103(22)(b)(iv), and 63G-2-305(1), (2), (10)(e), (11), (12), and (13)

EXHIBIT 3

January 5, 2018

VIA EMAIL AND HAND-DELIVERY

Mr. James E. Smith
CAO for GRAMA Appeals, Davis County
61 South Main Street (Suite 301)
Farmington, Utah 84025
commissioners@daviscountyutah.gov

Re: Appeal of GRAMA Denial

Dear Mr. Smith:

I represent the ACLU of Utah (“ACLU”) and the Disability Law Center (“DLC”) with respect to the matters that follow.

Pursuant to the Utah Government Records Access and Management Act (“GRAMA”), Utah Code § 63G-2-101, *et seq.*, including, in particular, Utah Code § 63G-2-401, and Section 2.36.120 of the Davis County Code of Ordinances, this letter constitutes my clients’ notice of appeal of the GRAMA denial issued by Davis County (“County”) on December 6, 2016 (“Denial”). A copy of my clients’ initial GRAMA request dated October 31, 2017 (“Request”) is attached hereto as Exhibit A, and a copy of the Denial is attached hereto as Exhibit B.

Both of my clients may be reached through me. My mailing address is David C. Reymann, PARR BROWN GEE & LOVELESS, 101 South 200 East, Suite 700, Salt Lake City, Utah 84111. My daytime telephone number is 801-532-7840, and my email address is dreymann@parrbrown.com.

I. Background.

Utah currently has the highest per capita death rate of inmates held in jails of any state in the nation. That tragic distinction includes the death of 28-year old Heather Ashton Miller, who died approximately a year ago of blunt force trauma injuries suffered while she was incarcerated in the Davis County Jail. Across Utah and the nation at large, the treatment of

inmates charged to the care of the government has become an increasingly urgent issue that has rightly drawn the scrutiny of the public, who pays for the operation of correctional institutions and trusts its public officials to comply with minimum standards for the care of those who are incarcerated.

During the time of Ms. Miller's death, and for at least the prior four years, the Davis County Jail has operated and been legally governed by the Utah Jail Standards ("Jail Standards"), a set of written standards governing virtually all aspects of operations at the Jail. These Standards were apparently originally written by Gary DeLand and sold by him to the County (and various other counties in Utah) through either one of his companies or the Utah Sheriff's Association. During that same period of time, the Davis County Jail has undergone at least annual audits to monitor its compliance with the Jail Standards, which has resulted in both internal self-audit documents and final audit reports (collectively, "Audit Reports").

My clients are both non-profit organizations that have specific interests in the civil rights and proper treatment of inmates in the state's care. To that end, they submitted a GRAMA request seeking, in essence, two categories of documents: (1) the Jail Standards (including any related contracts and correspondence), and (2) the Audit Reports. *See* Ex. A.

The County denied access to virtually all of the requested documents. With regard to the Jail Standards, it claimed that those Standards are "copyrighted and proprietary" because they were written by Mr. DeLand. The County also claimed that it does "not have a copy of these standards" because they reside online, and Jail personnel must log in to see them. *See* Ex. B.

With regard to the Audit Reports, the County likewise claimed that it did "not receive an[y] inspection or audit report[s]" because they also reside online, and Jail personnel have to log in to view them. The County neither acknowledged nor provided copies of any internal self-audits. *Id.*

Finally, with regard to the few documents the County did provide, largely consisting of emails between County officials and Mr. DeLand and his associates, the County heavily redacted those emails to obscure *any* substantive discussion of the Jail Standards, their content, or the Jail's compliance with them. The County's justifications for these redactions ran the gamut from copyright to trade secrets to safety and security concerns. *Id.*

Collectively, these withheld and redacted records are referred to as the "Withheld Records."

II. The County's Obligations Under GRAMA.

The foundation of GRAMA is the presumption of public access to government records. “A record is public unless otherwise expressly provided by statute.” Utah Code § 63G-2-201(2). In enacting GRAMA, the Legislature declared its intent to “promote the public’s right of easy and reasonable access to unrestricted public records;” to “specify those conditions under which the public interest in allowing restrictions on access to records may outweigh the public’s interest in access;” and to “prevent abuse of confidentiality by governmental entities by permitting confidential treatment of records only as provided in this chapter....” Utah Code § 63G-2-102(3); *see also Deseret News Publ’g Co. v. Salt Lake Cnty.*, 2008 UT 26, ¶ 13, 182 P.3d 372, 376. The Utah Supreme Court has long “recognize[d] that it is the policy of this state that public records be kept open for public inspection in order to prevent secrecy in public affairs.” *KUTV Inc. v. Utah State Bd. of Educ.*, 689 P.2d 1357, 1361 (Utah 1984). And it has specifically instructed governmental entities not to engage in “adversarial combat over record requests.” *Deseret News*, 2008 UT 26, ¶ 25. Rather, an entity is “required to conduct a conscientious and neutral evaluation” of every GRAMA request, *id.* ¶ 24, and engage in “an impartial, rational balancing of competing interests.” *Id.* ¶ 25. “[T]he overriding allegiance of the governmental entity must be to the goals of GRAMA and not to its preferred record classification,” *id.*, always conscious of the “mandate that when competing interests fight to a draw, disclosure wins.” *Id.* ¶ 24.

The public interest in open government and accountability for public officials is perhaps nowhere more urgent than in the conduct of the public’s law enforcement officers. “Law enforcement officers carry upon their shoulders the cloak of authority to enforce the laws of the state. In order to maintain trust in its police department, the public must be kept fully informed of the activities of its peace officers.” *Comm’n on Peace Officer Standards and Training v. Superior Court*, 64 Cal. Rptr. 3d 661, 674 (Cal. 2007) (citation omitted).

The recent rash of deaths in Utah jails, situated amidst a national conversation about the treatment of those in state custody, underscores the critical importance of fostering both accountability for public officers charged with treatment of inmates and public confidence in our system of criminal justice. Those goals are ill-served by withholding records that are critical to the public’s understanding of how public officials are performing their jobs and how those in the custody of the County are being treated.

III. The County's Denial of Access to the Withheld Records is Improper.

Government officials are not allowed to outsource core governmental functions to private parties and then claim the public is not entitled to see documents governing their official duties. GRAMA is replete with provisions stating the opposite, beginning with its bedrock presumption in favor of “the public’s right of access to information concerning the conduct of the public’s business.” Utah Code § 63G-2-102(1)(a).

The County’s justifications for its Denial all rely on general provisions in GRAMA’s exclusion sections, asserting that the Jail Standards and Audit Reports, though not specifically enumerated in GRAMA as private or protected, are still non-public. It is particularly telling, then, to look at the records that GRAMA enumerates as *public* records, as even that non-exhaustive list contains multiple provisions that apply to the records here, including:

- Section 301(3)(a) – “administrative staff manuals, instructions to staff, and statements of policy;”
- Section 301(3)(b) – “records documenting a contractor’s or private provider’s compliance with the terms of a contract with a governmental entity;”
- Section 301(3)(c) – “records documenting the services provided by a contractor or a private provider to the extent the records would be public if prepared by the governmental entity;”
- Section 301(3)(k) – “drafts that have never been finalized but were relied upon by the governmental entity in carrying out action or policy;” and
- Section 301(3)(q) – “final audit reports.”

Utah Code § 63G-2-301.

It is the County’s burden to justify its refusal to provide records, not my clients’ burden to prove their public status under GRAMA. *See Deseret News*, 2008 UT 26, ¶ 53. But these affirmative statutory pronouncements leave little doubt that the Legislature intended documents governing policy and operation of the public’s institutions to be public. Regardless of what types of restraints or conditions Mr. DeLand has attempted to impose on the various counties with whom he does business, those private agreements do not trump GRAMA. The various justifications offered by the County are unsupported by GRAMA and should be reversed.

A. Copyright Protection.

The County claims that because Mr. DeLand wrote the Jail Standards, he owns the copyright in them and therefore can preclude access to those documents. The County relies on Utah Code § 63G-2-103(22)(b)(iv), which excludes from the definition of “record” “material to which access is limited by the laws of copyright or patent unless the copyright or patent is owned by a governmental entity or political subdivision.” This argument is misplaced for several reasons.

First, in the context of open records statutes, the protections of copyright concern only *duplication* of records, not *access* to them. There is nothing in the Copyright Act that restricts inspection; indeed, most copyright registrants must lodge their works with the Copyright Office in order to obtain a registration. GRAMA does not require a governmental entity to duplicate a record in response to a request; it preserves the right of the public “to inspect a public record free of charge” instead of receiving a copy. Utah Code § 63G-2-201(1). My clients requested the opportunity to “inspect and/or receive copies” of the Jail Standards. *See* Ex. A. At a bare minimum, even if the County’s copyright argument were valid (and it is not, for the reasons set forth below), the County must allow my clients to inspect the Jail Standards at the Davis County Jail.

Second, with respect to duplication, it is not the law that simply because a private person creates a record, and thus owns the copyright in it, the government is powerless to release that record. If that were the case, no record created and provided by a private individual would ever be subject to release under GRAMA. The statutory scheme is exactly the opposite, providing extremely limited circumstances in which those doing business with the government can subsequently restrict release of that information, none of which turn on the minimal fact that a person owns a copyright. *See, e.g.*, Utah Code § 63G-2-305(1), (2).

It is only when duplication of information subject to a copyright claim would constitute *infringement* that the governmental entity may be restricted from duplicating that information. And an infringing use requires that the person seeking a copy of the work use it in a way that is competitive with the original author’s use. When a requestor seeks to use a copyrighted work for a different or transformative purpose, and in a way that does not economically compete with the author, that use is fair use, not infringement. As my clients are not in the business of selling standards to jails, but seek the Jail Standards instead for the purpose of education and advocacy, duplication of the Jail Standards for release to them is not restricted by the Copyright Act.

Third, the County's argument ignores the fact that the County is not merely in *possession* of a copyrighted work, like a library, but is *actively using that work* to fulfill its core governmental functions. Even more, the County has agreed to be "legally bound" by the Jail Standards and the results of audits regarding compliance. *See Ex. C* hereto. Because such records document the services provided by a government contractor and would unquestionably be public if prepared by Davis County itself, GRAMA classifies such records as public. *See Utah Code § 63G-2-301(2)(c)* (classifying as public "records documenting the services provided by a contractor or a private provider to the extent the records would be public if prepared by the governmental entity"). And thus even if the Jail Standards at one time could have been seen as a privately-held copyrighted work, they are no longer so; they are in essence governing regulations for the Davis County Jail, which are public under GRAMA. *See Utah Code § 63G-2-301(2)(a)*.

Finally, with regard to the redacted emails, the County's attempt to cite copyright protection to justify its sweeping redactions has no legal basis. Even if the Jail Standards themselves were properly copyrighted, emails discussing them would not be protected any more than a book report on a novel would be owned by the original author. For that reason, the redactions are independently improper.

B. "The Records are Only Online."

Equally unavailing is the County's assertion that it "has no records" because the Jail Standards and Audit Reports have to be accessed online, even while admitting that its personnel have login credentials to access them. That is like arguing that an entity has no responsive emails because those messages are stored on a remote email server and require a password to access. GRAMA expressly prohibits an entity from refusing to provide access to records based on such assertions:

A governmental entity may not use the physical form, electronic or otherwise, in which a record is stored to deny, or unreasonably hinder the rights of a person to inspect and receive a copy of a record under this chapter.

Utah Code § 63G-2-201(12). *See also id.* § 63G-2-103(22)(a) ("Record" means a book, letter, document, paper, map, plan, photograph, film, card, tape, recording, electronic data, or other documentary material *regardless of physical form or characteristics*[.] (emphasis added)).

To the extent the County intends to draw a distinction between records it accesses online that it “owns” and records that it believes a private person owns, that is a distinction without a difference. It does not mean the County “has no records,” and the fact that Mr. DeLand may assert an ownership interest in the records does not trump the County’s duties under GRAMA.

C. Business Confidentiality.

The County also seeks to withhold the Jail Standards and justify its redactions of emails as “protected” on the basis of two sections in GRAMA that allow a private individual to assert a claim of “business confidentiality” under very limited circumstances. *See* Utah Code §§ 63G-2-305(1), (2). This argument also fails.

First, Sections -305(1) (dealing with trade secrets) and -305(2) (dealing with certain types of “commercial information”) can only be invoked if the person who submitted the information at issue has made an express claim—in writing, at the time of providing the record, and with a statement of reasons—of “business confidentiality.” Utah Code § 63G-2-309. In the absence of such a concurrent and express claim, the government need not protect the purported interests of a third party, and indeed *cannot* do so under the express statutory language.

My clients asked for all records that would constitute any such express claim of business confidentiality relating to the Jail Standards, Audit Reports, or any related records. The County has produced none. Its invocation of these sections as a basis for its Denial is therefore improper.

Second, even if Mr. DeLand had made a concurrent and express claim of business confidentiality, the Jail Standards fit within neither section. They do not meet the narrow definition of a “trade secret” under Utah law, Utah Code § 13-24-2(4), because, among other things, they are not kept secret. Mr. DeLand has sold the Standards to dozens of jails in Utah and around the country, where they are now used by hundreds of personnel, and he has lodged at least one original version with the Copyright Office. Discriminating among whom you provide certain information, especially when those to whom you provide it are governmental entities with statutory disclosure obligations, is not the same as taking reasonable measures to promote secrecy.

Nor do the Jail Standards constitute “commercial information,” as required by Section -305(2). To the contrary, they deal only with the operation of *governmental* entities. Most states who are not in business with Mr. DeLand post such standards on their jail websites or readily provide them as public records. The fact that Mr. DeLand has sought to profit on the outsourcing of government functions does not mean that the subject matter of government regulations somehow becomes “commercial.” And regardless, Mr. DeLand cannot satisfy the independent requirement of this section that whatever interest he might still have in the Jail Standards outweighs the substantial public interest in governmental transparency. *See* Utah Code § 63G-2-305(2)(b).

For these reasons, Sections -305(1) and (2) justify neither the withholding of the Jail Standards nor the County’s redactions.

D. Audit Techniques.

GRAMA expressly classifies “final audit reports” as public. Utah Code § 63G-2-301(3)(q). The County has refused to produce the Audit Reports based on the assertion that it has no physical records, an argument that fails for the reasons set forth above. But it has also redacted various emails discussing these audits as “protected” on the basis of Utah Code § 63G-2-305(10)(e), which covers certain audit records if disclosure “reasonably could be expected to disclose investigative or audit techniques, procedures, policies, or orders *not generally known outside of government* if disclosure *would interfere* with enforcement or audit efforts.” (Emphasis added).

The County’s argument satisfies none of the requirements of this section. The Audit Reports detail the findings of the Sheriff’s Association audits, not their particular “techniques.” Those are different concepts, as the GRAMA mandate of making “final audit reports” public shows. Moreover, the techniques that the Sheriff’s Association uses for its audits are obviously known outside of government because the Sheriff’s Association is not a governmental entity. And, finally, the County has made no attempt to show that even if those audit techniques were unknown and disclosed, they would somehow interfere with audits of the Davis County Jail.

E. Safety and Security.

The last category of justifications offered by the County concerns three sections of GRAMA designed to protect safety and security. Utah Code §§ 63G-2-305(11), (12), (13). These sections are variously directed at the safety of individuals, governmental programs, and

correctional facilities and inmates. My clients have no doubt that these are legitimate concerns; indeed, the safety and security of correctional institutions is the reason that secrecy in these matters is contrary to the public interest. And it may be that some small part of the Jail Standards, and even more improbably the Audit Reports, has some type of information in it, such as the location of the safe where firearms are stored, that such information could properly be withheld as protected. But there are certainly vast portions of both categories of documents that do not implicate this concern at all, such as standards for medical care, food and food safety, mental health policies, hygiene, cell dimension requirements and overcrowding, inmate segregation policies, and any number of other routine guidelines that govern the everyday operation of the Jail.

GRAMA does not allow an entity to withhold an entire record just because some part of it may properly be classified as non-public. It imposes an affirmative obligation on the entity to segregate and redact such information, and release the remainder to the public. *See* Utah Code § 63G-2-308. To the extent there is anything that legitimately poses a safety risk if released, my clients ask that the County redact that limited information, describe what has been redacted with particularity, and release the remainder of the Withheld Records.

IV. The Withheld Records Should Be Released Because the Public Interest Outweighs the Interests in Secrecy.

As detailed above, and for many different reasons that go beyond just the events in Davis County, the legitimate public interest in the standards that govern Utah's jails is significant. Jails perform a public function carried out by public officials who are charged with a weighty public duty of caring for those whose liberty has been taken away. The public interest in ensuring that this public duty is being discharged appropriately is not served by moving the entire process behind a veil of secrecy, depriving the public of knowing not only whether jails are living up to the standards they have set for themselves, but even what those standards are in the first place. Secrecy in this situation benefits no one—not the jails that are acting properly, and not the inmates who are harmed by those that are not.

Weighed against this substantial public interest in disclosure are the justifications by the County addressed above, which consist almost entirely of the desire of Mr. DeLand to profit off of the government while keeping rules governing official conduct secret. That interest is not legitimate, but even if it were, it is substantially outweighed by the public's right to know.

Mr. James E. Smith
January 5, 2018
Page 10

Consequently, even if the Withheld Records are properly classified as non-public under GRAMA, my clients request that they be released under Utah Code § 63G-2-401(6) because “the interests favoring access are greater than or equal to the interests favoring restriction of access.” *Id.*

V. Response Time.

My clients are non-profit organizations seeking the Withheld Records to benefit the public through education and advocacy, rather than their own organizations. Accordingly, they request an expedited five-day response to this appeal under Utah Code § 63G-2-401(5)(a)(i)(B).

VI. Conclusion.

For all of these reasons, the County’s refusal to release the Withheld Records should be reversed.

Sincerely,

PARR BROWN GEE & LOVELESS

A handwritten signature in black ink, appearing to read "D. C. Reymann", with a long horizontal line extending to the right.

David C. Reymann

cc (via email): Rebecca Abbott, Davis County Records Manager
Troy Rawlings, Davis County Attorney

4819-1144-0474

EXHIBIT 4



Davis County Commission

Commissioner P. Bret Millburn

Commissioner James E. Smith

Commissioner Randy B. Elliott

January 19, 2018

*Via E-mail and
United States Mail*

Parr Brown Gee & Loveless
Attn: David C. Reymann
101 South 200 East, Suite 700
Salt Lake City, UT 84111
dreyman@parrbrown.com

Re: Notice of Decision Regarding GRAMA Appeal

Dear Mr. Reymann:

I thank you and your clients for your interest in Davis County. I also thank you for your professionalism and courtesy in providing Davis County with some additional time to analyze, consider and respond to the *Appeal of GRAMA Denial* (the "GRAMA Appeal") that you submitted to Davis County on behalf of your clients.

This Notice of Decision Regarding GRAMA Appeal is made in response to the GRAMA Appeal received by Davis County on January 5, 2018. As you are aware, your initial request under the Government Records Access and Management Act ("GRAMA") sought the following:

1. All written standards used or relied upon by Davis County in its administration and operation of the Davis County Jail at any time during the past five (5) years, including but not limited to the Utah Jail Standards;
2. All written contracts or agreements relating to or governing Davis County's use of the standards referenced in request no. 1, including but not limited to any written license agreements and any documents reflecting any consideration paid by Davis County for use of the Utah Jail Standards;
3. All correspondence, including emails between Davis County (including the Sheriff's Department), on the one hand, and Mr. Gary DeLand, Mr. Tate McCotter, the Utah Sheriffs' Association, the National Institute of Jail Operations and/or DeLand and Associates, on the other hand, regarding the Utah Jail Standards or any portion thereof, including but not limited to any claims of business confidentiality (including any statements of reasons) submitted to Davis County pursuant to Utah Code § 63-2-309; and



Davis County Administration Building P.O. Box 618 • Farmington, Utah 84025
Telephone: 801-451-3200 • Fax: 801-451-3202 • TDD: 801-451-3228
E-mail: commissioners@daviscountyutah.gov • Website: www.daviscountyutah.gov

Connects.You.

4. All final written audits and other reports assessing Davis County's compliance with the standards referenced in request no. 1 issued at any time during the past five (5) years.

After analyzing and reviewing the GRAMA Appeal, seeking and obtaining input from several Davis County representatives regarding the GRAMA Appeal, and engaging in significant thought and consideration of the GRAMA Appeal, I notify you of my decision to affirm Davis County's initial decision to partially deny the GRAMA request and to further deny the GRAMA Appeal.

In addition to the bases set forth in Davis County's response to the GRAMA request for partial denial, the GRAMA Appeal regarding the Utah Jail Standards and final written audits and other reports assessing Davis County's compliance with the Utah Jail Standards, in general, is denied because the Utah Jail Standards and the final written audits and other reports assessing Davis County's compliance with the Utah Jail Standards, in general, are not records under GRAMA. Specifically, the Utah Jail Standards and the final written audits and other reports assessing Davis County's compliance with the Utah Jail Standards, in general, are not books, letters, documents, paper, maps, plans, photographs, films, cards, tapes, recordings, electronic data or other documentary material regardless of physical form or characteristics that is prepared, owned, received or retained by Davis County. *See* Utah Code Ann. §63G-2-103(22)(a). More specifically, Davis County did not prepare, does not own, does not receive and does not retain the Utah Jail Standards and/or the final written audits and other reports assessing Davis County's compliance with the Utah Jail Standards, in general.

You may appeal this decision to the State Records Committee, pursuant to the provisions of Section 63G-2-403, Utah Code Annotated, by filing a notice of appeal with the executive secretary of the State Records Committee no later than thirty days after the date of issuance of this decision. The name, business address, telephone number and email address of the executive secretary of the State Records Committee is as follows:

Nova Dubovik
346 S. Rio Grande
Salt Lake City, UT 84101-1106
Phone: (801) 531-3834
Email: ndubovik@utah.gov

Alternatively, you may appeal this decision to the district court, pursuant to the provisions of Section 63G-2-404, Utah Code Annotated, by filing a petition for judicial review of a decision no later than thirty days after the date of issuance of this decision.

Sincerely,



James E. Smith, Chief Administrative Officer
of GRAMA Appeals for Davis County

EXHIBIT 5

February 16, 2018

VIA HAND-DELIVERY AND EMAIL

Ms. Nova Dubovik
UTAH STATE RECORDS COMMITTEE
346 South Rio Grande
Salt Lake City, Utah 84101-1106
ndubovik@utah.gov

Re: GRAMA Appeal of Denials of Records Requests Relating to Davis County Jail Standards

Dear Ms. Dubovik:

I represent the ACLU of Utah (“ACLU”) and the Disability Law Center (“DLC”) with respect to the matters that follow.

Pursuant to Utah Code § 63G-2-403 of the Utah Government Records Access and Management Act (“GRAMA”), my clients hereby appeal to the State Records Committee a GRAMA denial issued by Davis County (“County”) on December 6, 2016 (“Denial”), in which the County refused to release the standards that govern operations at the Davis County Jail, final audit reports documenting the Jail’s compliance with those standards, and substantive communications relating to those records.

A copy of my clients’ initial GRAMA request dated October 31, 2017 (“Request”) is attached hereto as Exhibit A, and a copy of the Denial is attached hereto as Exhibit B. Before appealing to this body, my clients timely appealed the Denial to Mr. James Smith, the Chief Administrative Officer for GRAMA Appeals for Davis County. A copy of that appeal is attached hereto as Exhibit C, and a copy of Mr. Smith’s letter affirming the denial is attached hereto as Exhibit D.

Both of my clients may be reached through me. My mailing address is David C. Reymann, PARR BROWN GEE & LOVELESS, 101 South 200 East, Suite 700, Salt Lake City, Utah 84111. My daytime telephone number is 801-532-7840, and my email address is dreymann@parrbrown.com.

I. Background.

Utah currently has the highest per capita death rate of inmates held in jails of any state in the nation. That tragic distinction includes the death of 28-year old Heather Ashton Miller, who died approximately a year ago of blunt force trauma injuries suffered while she was incarcerated in the Davis County Jail. Across Utah and the nation at large, the treatment of inmates charged to the care of the government has become an increasingly urgent issue that has rightly drawn the scrutiny of the public, who pays for the operation of correctional institutions and trusts its public officials to comply with minimum standards for the care of those who are incarcerated.

During the time of Ms. Miller's death, and for at least the prior four years, the Davis County Jail has operated and been legally governed by the Utah Jail Standards ("Jail Standards"), a set of written standards governing virtually all aspects of operations at the Jail. These Standards were apparently originally written by Gary DeLand and sold by him to the County (and various other counties in Utah) through either one of his companies or the Utah Sheriff's Association. During that same period of time, the Davis County Jail has undergone at least annual audits to monitor its compliance with the Jail Standards, which have resulted in both internal self-audit documents and final audit reports (collectively, "Audit Reports").

My clients are both non-profit organizations that have specific interests in the civil rights and proper treatment of inmates in the state's care. To that end, they submitted a GRAMA request seeking, in essence, two categories of documents: (1) the Jail Standards (including any related contracts and correspondence), and (2) the Audit Reports. *See* Ex. A.

The County denied access to virtually all of the requested documents. With regard to the Jail Standards, it claimed that those Standards are "copyrighted and proprietary" because they were written by Mr. DeLand. The County also claimed that it does "not have a copy of these standards" because they reside online, and Jail personnel must log in to see them. *See* Exs. B, D.

With regard to the Audit Reports, the County likewise claimed that it did "not receive an[y] inspection or audit report[s]" because they also reside online, and Jail personnel have to log in to view them. The County neither acknowledged nor provided copies of any internal self-audits. *Id.*

Finally, with regard to the few documents the County did provide, largely consisting of emails between County officials and Mr. DeLand and his associates, the County heavily redacted those emails to obscure *any* substantive discussion of the Jail Standards, their content, or the Jail's compliance with them. The County's justifications for these redactions ran the gamut from copyright to trade secrets to safety and security concerns. *Id.*

Collectively, these withheld and redacted records are referred to as the "Withheld Records."¹

II. The County's Obligations Under GRAMA.

The foundation of GRAMA is the presumption of public access to government records. "A record is public unless otherwise expressly provided by statute." Utah Code § 63G-2-201(2). In enacting GRAMA, the Legislature declared its intent to "promote the public's right of easy and reasonable access to unrestricted public records;" to "specify those conditions under which the public interest in allowing restrictions on access to records may outweigh the public's interest in access;" and to "prevent abuse of confidentiality by governmental entities by permitting confidential treatment of records only as provided in this chapter...." Utah Code § 63G-2-102(3); *see also Deseret News Publ'g Co. v. Salt Lake Cnty.*, 2008 UT 26, ¶ 13, 182 P.3d 372, 376. The Utah Supreme Court has long "recognize[d] that it is the policy of this state that public records be kept open for public inspection in order to prevent secrecy in public affairs." *KUTV Inc. v. Utah State Bd. of Educ.*, 689 P.2d 1357, 1361 (Utah 1984). And it has specifically instructed governmental entities not to engage in "adversarial combat over record requests." *Deseret News*, 2008 UT 26, ¶ 25. Rather, an entity is "required to conduct a conscientious and neutral evaluation" of every GRAMA request, *id.* ¶ 24, and engage in "an impartial, rational balancing of competing interests." *Id.* ¶ 25. "[T]he overriding allegiance of the governmental entity must be to the goals of GRAMA

¹ Recently, perhaps owing to increasing public awareness that core governmental documents are being systematically withheld from the public, the Utah Sherriff's Association announced that it was writing a new set of jail standards and would release those to the public when they are done. The Association appears to have since released some standards on its website, albeit in partial form and with information removed. That gesture, if it ever comes fully to fruition, does not affect this appeal because whatever new standards are created and released will not be the standards that have been in effect at the Davis County Jail for the past five years. An entity is not allowed to conceal public documents based on the promise of future disclosure of different documents. And if anything, these partial releases show there is no legitimate basis for Davis County's wholesale denial.

and not to its preferred record classification,” *id.*, always conscious of the “mandate that when competing interests fight to a draw, disclosure wins.” *Id.* ¶ 24.

The public interest in open government and accountability for public officials is perhaps nowhere more urgent than in the conduct of the public’s law enforcement officers. “Law enforcement officers carry upon their shoulders the cloak of authority to enforce the laws of the state. In order to maintain trust in its police department, the public must be kept fully informed of the activities of its peace officers.” *Comm’n on Peace Officer Standards and Training v. Superior Court*, 64 Cal. Rptr. 3d 661, 674 (Cal. 2007) (citation omitted).

The recent rash of deaths in Utah jails, situated amidst a national conversation about the treatment of those in state custody, underscores the critical importance of fostering both accountability for public officers charged with treatment of inmates and public confidence in our system of criminal justice. Those goals are ill-served by withholding records that are critical to the public’s understanding of how public officials are performing their jobs and how those in the custody of the County are being treated.

III. The County’s Denial of Access to the Withheld Records is Improper.

Government officials are not allowed to outsource core governmental functions to private parties and then claim the public is not entitled to see documents governing their official duties. GRAMA is replete with provisions stating the opposite, beginning with its bedrock presumption in favor of “the public’s right of access to information concerning the conduct of the public’s business.” Utah Code § 63G-2-102(1)(a).

The County’s justifications for its Denial all rely on general provisions in GRAMA’s exclusion sections, asserting that the Jail Standards and Audit Reports, though not specifically enumerated in GRAMA as private or protected, are still non-public. It is particularly telling, then, to look at the records that GRAMA enumerates as *public* records, as even that non-exhaustive list contains multiple provisions that apply to the records here, including:

- Section 301(3)(a) – “administrative staff manuals, instructions to staff, and statements of policy;”
- Section 301(3)(b) – “records documenting a contractor’s or private provider’s compliance with the terms of a contract with a governmental entity;”

- Section 301(3)(c) – “records documenting the services provided by a contractor or a private provider to the extent the records would be public if prepared by the governmental entity;”
- Section 301(3)(k) – “drafts that have never been finalized but were relied upon by the governmental entity in carrying out action or policy;” and
- Section 301(3)(q) – “final audit reports.”

Utah Code § 63G-2-301.

It is the County’s burden to justify its refusal to provide records, not my clients’ burden to prove their public status under GRAMA. *See Deseret News*, 2008 UT 26, ¶ 53. But these affirmative statutory pronouncements leave little doubt that the Legislature intended documents governing policy and operation of the public’s institutions to be public. Regardless of what types of restraints or conditions Mr. DeLand has attempted to impose on the various counties with whom he does business, those private agreements do not trump GRAMA. The various justifications offered by the County are unsupported by GRAMA and should be reversed.

A. Copyright Protection.

The County claims that because Mr. DeLand wrote the Jail Standards, he owns the copyright in them and therefore can preclude access to those documents. The County relies on Utah Code § 63G-2-103(22)(b)(iv), which excludes from the definition of “record” “material to which access is limited by the laws of copyright or patent unless the copyright or patent is owned by a governmental entity or political subdivision.” This argument is misplaced for several reasons.

First, in the context of open records statutes, the protections of copyright concern only *duplication* of records, not *access* to them. *See Ali v. Philadelphia City Planning Comm'n*, 125 A.3d 92, 111 n.14 (Pa. Commw. Ct. 2015) (“We emphasize . . . that where a conflict is established under [Pennsylvania’s access act], the Copyright Act will limit the level of access to a public record only with respect to duplication, because ***the Copyright Act does not restrict inspection***. The public record must, therefore, still be made available for inspection under the [access act], allowing the public to scrutinize a local agency’s reliance on or consideration of the copyrighted material.” (emphasis added)); *id.* at 105 (“There is material difference between an exempt and/or nonpublic record, which an agency is not required to provide access to at all under the [access act], and a public and nonexempt record that may be

subject to limited access under the [access act]. Copyrighted information falls into the latter category. ***The Copyright Act limits the level of access to a public record only with respect to duplication, not inspection.*** The public record must, therefore, still be made available for inspection under the RTKL, allowing the public to scrutinize a local agency's reliance on or consideration of the copyrighted material.” (emphasis added)).

There is nothing in the Copyright Act that restricts inspection; indeed, most copyright registrants must lodge their works with the Copyright Office in order to obtain a registration. GRAMA does not require a governmental entity to duplicate a record in response to a request; it preserves the right of the public “to inspect a public record free of charge” instead of receiving a copy. Utah Code § 63G-2-201(1). My clients requested the opportunity to “inspect and/or receive copies” of the Jail Standards. *See* Ex. A. At a bare minimum, even if the County’s copyright argument were valid (and it is not, for the reasons set forth below), the County must allow my clients to inspect the Jail Standards at the Davis County Jail.

Second, with respect to duplication, it is not the law that simply because a private person creates a record, and thus owns the copyright in it, the government is powerless to release that record. If that were the case, no record created and provided by a private individual would ever be subject to release under GRAMA. The statutory scheme is exactly the opposite, providing extremely limited circumstances in which those doing business with the government can subsequently restrict release of that information, none of which turn on the minimal fact that a person owns a copyright. *See, e.g.*, Utah Code § 63G-2-305(1), (2).

It is only when duplication of information subject to a copyright claim would constitute *infringement* that the governmental entity may be restricted from duplicating that information. And an infringing use requires that the person seeking a copy of the work use it in a way that is competitive with the original author’s use. When a requestor seeks to use a copyrighted work for a different or transformative purpose, and in a way that does not economically compete with the author, that use is fair use, not infringement. *See Zellner v. Cedarburg Sch. Dist.*, 731 N.W.2d 240, 246-47 (Wis. 2007) (release of copyrighted records for non-commercial purpose not restricted by Copyright Act). As my clients are not in the business of selling standards to jails, but seek the Jail Standards instead for the purpose of education and advocacy, duplication of the Jail Standards for release to them is not restricted by the Copyright Act.

Third, the County’s argument ignores the fact that the County is not merely in *possession* of a copyrighted work, like a library, but is *actively using that work* to fulfill its core governmental functions. Even more, the County has agreed to be “legally bound” by the

Jail Standards and the results of audits regarding compliance. *See* Ex. E hereto. Because such records document the services provided by a government contractor and would unquestionably be public if prepared by Davis County itself, GRAMA classifies such records as public. *See* Utah Code § 63G-2-301(2)(c) (classifying as public “records documenting the services provided by a contractor or a private provider to the extent the records would be public if prepared by the governmental entity”). And thus, even if the Jail Standards at one time could have been seen as a privately-held copyrighted work, they are no longer so; they are in essence governing regulations for the Davis County Jail, which are public under GRAMA. *See* Utah Code § 63G-2-301(2)(a).

Finally, with regard to the redacted emails, the County’s attempt to cite copyright protection to justify its sweeping redactions has no legal basis. Even if the Jail Standards themselves were properly copyrighted, emails discussing them would not be protected any more than a book report on a novel would be owned by the original author. For that reason, the redactions are independently improper.

B. “The Records are Only Online.”

Equally unavailing is the County’s assertion that it “has no records” because the Jail Standards and Audit Reports have to be accessed online, even while admitting that its personnel have login credentials to access them. That is like arguing that an entity has no responsive emails because those messages are stored on a remote email server or in the cloud and require a password to access. GRAMA expressly prohibits an entity from refusing to provide access to records based on such assertions:

A governmental entity may not use the physical form, electronic or otherwise, in which a record is stored to deny, or unreasonably hinder the rights of a person to inspect and receive a copy of a record under this chapter.

Utah Code § 63G-2-201(12). *See also id.* § 63G-2-103(22)(a) (“‘Record’ means a book, letter, document, paper, map, plan, photograph, film, card, tape, recording, electronic data, or other documentary material *regardless of physical form or characteristics*[.]” (emphasis added)).

Further, the County’s argument with respect to the Audit Reports is demonstrably incorrect because other counties in Utah have produced such audit reports from the Utah Sheriff’s Association, all of which are in physical form. *See* Ex. F hereto.

To the extent the County intends to draw a distinction between records it accesses online that it “owns” and records that it believes a private person owns, that is a distinction without a difference. It does not mean the County “has no records,” and the fact that Mr. DeLand may assert an ownership interest in the records does not trump the County’s duties under GRAMA.

C. Business Confidentiality.

The County also seeks to withhold the Jail Standards and justify its redactions of emails as “protected” on the basis of two sections in GRAMA that allow a private individual to assert a claim of “business confidentiality” under very limited circumstances. *See* Utah Code §§ 63G-2-305(1), (2). This argument also fails.

First, Sections -305(1) (dealing with trade secrets) and -305(2) (dealing with certain types of “commercial information”) can only be invoked if the person who submitted the information at issue has made an express claim—in writing, at the time of providing the record, and with a statement of reasons—of “business confidentiality.” Utah Code § 63G-2-309. In the absence of such a concurrent and express claim, the government need not protect the purported interests of a third party, and indeed *cannot* do so under the express statutory language.

My clients asked for all records that would constitute any such express claim of business confidentiality relating to the Jail Standards, Audit Reports, or any related records. The County has produced none. Its invocation of these sections as a basis for its Denial is therefore improper.

Second, even if Mr. DeLand had made a concurrent and express claim of business confidentiality, the Jail Standards fit within neither section. They do not meet the narrow definition of a “trade secret” under Utah law, Utah Code § 13-24-2(4), because, among other things, they are not kept secret. Mr. DeLand has sold the Standards to dozens of jails in Utah and around the country, where they are now used by hundreds of personnel, and he has lodged at least one original version with the Copyright Office. Discriminating among whom you provide certain information, especially when those to whom you provide it are governmental entities with statutory disclosure obligations, is not the same as taking reasonable measures to promote secrecy.

Nor do the Jail Standards constitute “commercial information,” as required by Section -305(2). To the contrary, they deal only with the operation of *governmental* entities. Most states who are not in business with Mr. DeLand post such standards on their jail websites or readily provide them as public records. The fact that Mr. DeLand has sought to profit on the outsourcing of government functions does not mean that the subject matter of government regulations somehow becomes “commercial.” And regardless, Mr. DeLand cannot satisfy the independent requirement of this section that whatever interest he might still have in the Jail Standards outweighs the substantial public interest in governmental transparency. *See* Utah Code § 63G-2-305(2)(b).

For these reasons, Sections -305(1) and (2) justify neither the withholding of the Jail Standards nor the County’s redactions.

D. Audit Techniques.

GRAMA expressly classifies “final audit reports” as public. Utah Code § 63G-2-301(3)(q). The County has refused to produce the Audit Reports based on the assertion that it has no physical records, an argument that fails for the reasons set forth above. But it has also redacted various emails discussing these audits as “protected” on the basis of Utah Code § 63G-2-305(10)(e), which covers certain audit records if disclosure “reasonably could be expected to disclose investigative or audit techniques, procedures, policies, or orders *not generally known outside of government* if disclosure *would interfere* with enforcement or audit efforts.” (Emphasis added).

The County’s argument satisfies none of the requirements of this section. The Audit Reports detail the findings of the Sheriff’s Association audits, not their particular “techniques.” Those are different concepts, as the GRAMA mandate of making “final audit reports” public shows. Moreover, the techniques that the Sheriff’s Association uses for its audits are obviously known outside of government because the Sheriff’s Association is not a governmental entity. And, finally, the County has made no attempt to show that even if those audit techniques were unknown and disclosed, they would somehow interfere with audits of the Davis County Jail.

E. Safety and Security.

The last category of justifications offered by the County concerns three sections of GRAMA designed to protect safety and security. Utah Code §§ 63G-2-305(11), (12), (13). These sections are variously directed at the safety of individuals, governmental programs, and

correctional facilities and inmates. My clients have no doubt that these are legitimate concerns; indeed, the safety and security of correctional institutions is the reason that secrecy in these matters is contrary to the public interest. And it may be that some small part of the Jail Standards, and even more improbably the Audit Reports, has some type of information in it, such as the location of the safe where firearms are stored, that such information could properly be withheld as protected. But there are certainly vast portions of both categories of documents that do not implicate this concern at all, such as standards for medical care, food and food safety, mental health policies, hygiene, cell dimension requirements and overcrowding, inmate segregation policies, and any number of other routine guidelines that govern the everyday operation of the Jail.

GRAMA does not allow an entity to withhold an entire record just because some part of it may properly be classified as non-public. It imposes an affirmative obligation on the entity to segregate and redact such information, and release the remainder to the public. *See* Utah Code § 63G-2-308. To the extent there is anything that legitimately poses a safety risk if released, my clients ask that the County redact that limited information, describe what has been redacted with particularity, and release the remainder of the Withheld Records.

IV. The Withheld Records Should Be Released Because the Public Interest Outweighs the Interests in Secrecy.

As detailed above, and for many reasons that go beyond just the events in Davis County, the legitimate public interest in the standards that govern Utah's jails is significant. Jails perform a public function carried out by public officials who are charged with a weighty public duty of caring for those whose liberty has been taken away. The public interest in ensuring that this public duty is being discharged appropriately is not served by moving the entire process behind a veil of secrecy, depriving the public of knowing not only whether jails are living up to the standards they have set for themselves, but even what those standards are in the first place. Secrecy in this situation benefits no one—not the jails that are acting properly, and not the inmates who are harmed by those that are not.

Weighed against this substantial public interest in disclosure are the justifications by the County addressed above, which consist almost entirely of the desire of Mr. DeLand to profit off of the government while keeping rules governing official conduct secret. That interest is not legitimate, but even if it were, it is substantially outweighed by the public's right to know.

Consequently, even if the Withheld Records are properly classified as non-public under GRAMA, this Committee should release the records under Utah Code § 63G-2-403(11)(b) because “the public interest favoring access is greater than or equal to the interest favoring restriction of access.” *Id.*

V. In Camera Review.

The County’s wholesale refusal to produce any portion of the Jail Standards or Audit Reports, and its excessive redaction of all substantive communications relating to those records, has made a meaningful examination of the substance of those records by my clients impossible, with the County essentially asking my clients to trust that their characterization of those records is correct. To the extent the Committee has any doubt that these records are public and should be released, my clients request that the Committee review those records in camera.

VI. Conclusion.

For all of these reasons, the County’s refusal to release the Withheld Records should be reversed.

Sincerely,

PARR BROWN GEE & LOVELESS

A handwritten signature in black ink, appearing to read 'D. C. Reymann', with a long horizontal line extending to the right.

David C. Reymann

cc (via email): James E. Smith, Davis County GRAMA CAO
Troy Rawlings, Davis County Attorney

4832-5018-9149

EXHIBIT 6

BEFORE THE STATE RECORDS COMMITTEE OF THE

STATE OF UTAH

ACLU of Utah and the Disability Law
Center,

Petitioner,

v.

DAVIS COUNTY,

Respondent.

DECISION AND ORDER

Case No. 18-15

By this appeal, Petitioner, the American Civil Liberties Union of Utah and the Disability Law Center, seeks access to records held by Respondent, Davis County.

FACTS

In a letter dated October 31, 2017, David C. Reymann, legal counsel for Petitioner, filed a request for records pursuant to the Government Records Access and Management Act (“GRAMA”). Counsel on behalf of Petitioner requested:

1. All written standards used or relied upon by Davis County in its administration and operation of the Davis County Jail at any time during the past five (5) years, including but not limited to the Utah Jail Standards;
2. All written contracts or agreements relating to or governing Davis County’s use of the standards referenced in request no. 1, including but not limited to any written license agreements and any documents reflecting any consideration paid by Davis County for use of the Utah Jail Standards;

3. All correspondence, including emails, between Davis County (including the Sheriff's Department), on the one hand, and Mr. Gary DeLand, Mr. Tate McCotter, the Utah Sheriffs' Association, the National Institute of Jail Operations, and/or DeLand and Associates, on the other hand, regarding the Utah Jail Standards or any portion thereof, including but not limited to any claims of business confidentiality (including any statements of reasons) submitted to Davis County pursuant to Utah Code § 63G-2-309; and
4. All final written audits and other reports assessing Davis County's compliance with the standards reference in request no. 1 issued at any time during the past five (5) years.

In a letter dated December 6, 2017, the Records Officer for Respondent granted in part and denied in part Petitioner's request for records.

An appeal was filed with James E. Smith, Chief Administrative Officer for GRAMA Appeals for Respondent. Mr. Smith affirmed the decision of the Records Officer finding that some of the requested records are not records under GRAMA because Respondent "did not prepare, does not own, does not receive and does not retain the Utah Jail Standards and/or the final written audits and other reports assessing [Respondent's] compliance with the Utah Jail Standards, in general."

Petitioner filed an appeal with the State Records Committee ("Committee"). The Committee having reviewed the arguments submitted by the parties, having reviewed the records *in camera* and having heard oral argument and testimony on April 12, 2018, 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. An *in camera* review of the records showed that Document 17 (unredacted Document 30), Document 24 (unredacted Document 49), Document 50, and Document 27 (unredacted Document 53) are public records subject to release to Petitioner.
3. Regarding the standards and final audit reports requested by Petitioner, the Committee finds that those records are not Respondent’s records. Therefore, since Respondent is not the owner of the records, Respondent is not required under GRAMA to produce the records to Petitioner. See, *Bryner v. Utah Dept. of Technology Serv.*, State Records Committee Case No. 16-27 (July 26, 2016). Records requests under GRAMA should be made to the actual record holder of a record and not to the governmental entity to whom the record has been shared. See, Utah Code § 63G-2-206(4); *Onysko v. Utah State Tax Commission*, State Records Committee Case No. 11-08 (June 20, 2011).

ORDER

THEREFORE, IT IS ORDERED THAT the appeal of Petitioner, ACLU of Utah and the Disability Law Center, is **GRANTED in part** and **DENIED in part**.

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 a parties' rights on appeal, a party may wish to seek advice from an attorney.

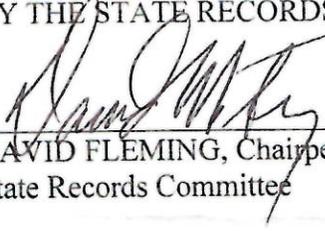
PENALTY NOTICE

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. Utah Code § 63G-2-403(15)(d)(i)(B). 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 23 day of April 2018

BY THE STATE RECORDS COMMITTEE



DAVID FLEMING, Chairperson
State Records Committee

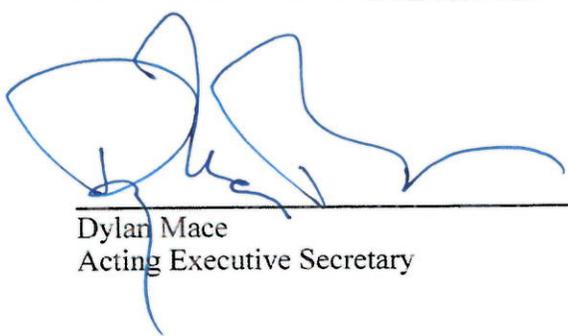
CERTIFICATE OF SERVICE

I hereby certify that I mailed a true and correct copy of the foregoing Order, U.S. mail postage prepaid, this ___ day of April 2018 to the following:

DAVID C. REYMAN
c/o Parr Brown Gee & Loveless
101 South 200 East, Suite 700
Salt Lake City, UT 84111
*Attorney for Petitioner,
ACLU of Utah and the Disability Law Center*

MICHAEL KENDALL
Davis County Attorney's Office
800 West State Street
P.O. Box 618
Farmington, UT 84025
*Counsel for Respondent,
Davis County*

BLAKE HAMILTON
c/o Durham Jones & Pinegar
111 Main Street, Suite 2400
Salt Lake City, UT 84111



Dylan Mace
Acting Executive Secretary

EXHIBIT D

ACLU OF UTAH FOUNDATION, INC.

VS

DAVIS COUNTY

ARNOLD BUTCHER

January 17, 2019



333 South Rio Grande
Salt Lake City, Utah 84101
www.DepoMaxMerit.com

Toll Free 800-337-6629
Phone 801-328-1188
Fax 801-328-1189

January 17, 2019

IN THE SECOND JUDICIAL DISTRICT COURT
IN AND FOR DAVIS COUNTY, STATE OF UTAH

* * *

ACLU of UTAH FOUNDATION,
INC. and DISABILITY LAW
CENTER,

Petitioners,

v.

DAVIS COUNTY, a political
subdivision of the State
of Utah, and the UTAH
STATE RECORDS COMMITTEE,

Respondents.

)
) Civil No. 180700511
)
) Deposition of:
)
) ARNOLD BUTCHER



* * *

January 17, 2019
9:20 a.m.

Law Offices of Parr, Brown, Gee & Loveless
101 South 200 East, Suite 700
Salt Lake City, Utah

* * *

Shelly Wadsworth
- Certified Realtime Reporter -
Registered Professional Reporter
Certified Realtime Captioner

January 17, 2019

		2			4
A P P E A R A N C E S					
1			No. 14	Davis County's First Supplemental	39
2	For the Petitioners:	Jeremy M. Brodis		Response to Petitioners' Clarified	
		David C. Reymann		First Set of Discovery Requests	
3		PARR BROWN GEE & LOVELESS			
		101 South 200 East	No. 15	9/6/17 E-mail Chain	50
4		Suite 700		In re: Policy Committee Log-Ons	
		Salt Lake City, Utah 84111	No. 16	1/11/18 E-mail from DeLand	54
5				In re: DeLand Copyright	
6		John M. Mejia	No. 17	2/24/18 E-mail DeLand to Kendall	54
		ACLU OF UTAH		In re: GRAMA Appeal	
7		355 North 300 West	No. 18	5/24/18 E-mail from Kendall	55
		Salt Lake City, Utah 84103		In re: Suit by ACLU	
8		Aaron M. Kinikini	No. 19	5/25/18 E-mail from Kendall	56
		Craig B. Blake		In re: Lawsuit by ACLU	
9		DISABILITY LAW CENTER	No. 20	End User License Agreement	58
		205 North 400 West	No. 21	2/12/16 E-mail from Durfey	61
10		Salt Lake City, Utah 84103		In re: Utah Sheriffs' Association	
11	For the Respondents:	Michael D. Kendall		Status Report 2016	
		DAVIS COUNTY ATTORNEY'S OFFICE	No. 22	4/29/15 E-mail from Durfey	61
12		98 South 100 East		In re: Self Audits and Jail	
		Farmington, Utah 84025	No. 23	8/24/18 E-mail Chain	61
13				In re: Motion to Intervene	
14		Paul H. Tonks			
		UTAH ATTORNEY GENERAL'S OFFICE			
15		5110 State Office Building			
16	Also Present:	Salt Lake City, Utah 84114			
17		Nicole Alder			
18		* * *			
19					
20					
21					
22					
23					
24					
25					

		3			5
I N D E X					
1			1	PROCEEDINGS	
2	EXAMINATION	PAGE	2	ARNOLD BUTCHER,	
3			3	called as a witness by and on behalf of the	
4	By Mr. Brodis	5	4	petitioners, being duly sworn, was examined and	
5			5	testified as follows:	
6	EXHIBITS		6	EXAMINATION	
7	No. 1	Petitioners' Second Amended Notice	7	BY MR. BRODIS:	
8	No. 2	Utah Jail Standards Release	8	Q. Good morning, Mr. Butcher.	
9	No. 3	10/31/17 GRAMA Request	9	A. Good morning.	
10	No. 4	12/6/17 Notice of Partial Denial	10	Q. My name is Jeremy Brodis. I represent the	
11	No. 5	1/19/18 Decision of GRAMA Appeal	11	petitioners in this case, the ACLU of Utah and the	
12	No. 6	April 2018 E-mail Chain	12	Disability Law Center. Would everyone like to state	
		Davis County's Response to GRAMA	13	their names and appearances for the record.	
13	No. 7	Utah Sheriffs' Association Jail	14	MR. REYMANN: David Reymann also here on	
		Accreditation Agreement	15	behalf of the petitioners.	
14	No. 8	November 2015 E-mail Chain	16	MR. MEJIA: John Mejia for the ACLU of	
		Inspection Letter/Issues	17	Utah.	
15	No. 9	Policy and Procedures Manual	18	MR. KINIKINI: Aaron Kinikini for the	
			19	Disability Law Center.	
16	No. 10	3/15/16 E-mail from Durfey	20	MR. BLAKE: Craig Blake for the Disability	
		In re: Update on Self Audit	21	Law Center.	
17	No. 11	9/29/15 E-mail from Durfey	22	MS. ALDER: Nicole Alder, Attorney	
		In re: PDF Files CutePDPwriter	23	General's Office, on behalf of the State Records	
18	No. 12	10/14/16 E-mail from Durfey	24	Committee.	
		In re: 2016 Checklist and Site	25	MR. TONKS: Paul Tonks, Attorney General's	
19	No. 13	Inspection			
		Davis County's Amended Response to			
20		Petitioners' Clarified First Set of			
21		Discovery Requests			
22					
23					
24					
25					

January 17, 2019

<p style="text-align: right;">6</p> <p>1 Office, also on behalf of the State Records 2 Committee. 3 MR. KENDALL: Mike Kendall representing 4 Davis County. 5 MR. BUTCHER: And Arnold Butcher, Davis 6 County Sheriff's Office. 7 Q. Thank you, everyone. Mr. Butcher, could 8 you please spell your name for the record. 9 A. First name is A-r-n-o-l-d. Last name 10 Butcher, B-u-t-c-h-e-r. 11 Q. Thank you. And what's your current work 12 address? 13 A. 800 West State Street, Farmington, Utah 14 84025. 15 Q. Have you ever had your deposition taken 16 before? 17 A. Yes. 18 Q. How many times? 19 A. Not a hundred percent sure. Probably half 20 a dozen times. 21 Q. I'm going to give you the same ground 22 rules that you've probably heard a few times before. 23 You're aware you're under oath today. The same 24 penalties apply as would apply in court. 25 A. Yes.</p>	<p style="text-align: right;">8</p> <p>1 answer any questions fully and truthfully today? 2 A. No. 3 Q. And tell me if that changes at any time 4 during the deposition, please. 5 A. I understand. 6 Q. You understand that you've been designated 7 to testify on behalf of Davis County today. 8 A. I do. 9 Q. So sometimes I might refer to "you" or ask 10 about what "you" did. But so that our record is 11 clear, I'll be referring to Davis County, unless I 12 specifically ask for your personal involvement. 13 I'll try to be clear on that. If you're unclear, 14 please ask me to clarify. 15 A. I understand. 16 Q. So I'd like to start with your background. 17 Can you please state your present employer. 18 A. Davis County Sheriff's Office. 19 Q. And what is your position? 20 A. I am currently the chief deputy over the 21 corrections division. 22 Q. And how long have you been in that 23 position? 24 A. I was interim chief deputy for about seven 25 months prior to the new administration. And I was</p>
<p style="text-align: right;">7</p> <p>1 Q. Please answer audibly, if you can. The 2 record doesn't really tend to pick up nodding, head 3 shakes, "uh-huh," "huh-uh." So I'd appreciate an 4 audible answer. 5 A. I understand. 6 Q. Because Shelly here is writing everything 7 down, it's important that we not talk over each 8 other. So if you'll wait for me to finish asking a 9 question all the way, then I'll try to do my best to 10 wait until you've finished answering it before I 11 move to my next question. 12 A. Okay. 13 Q. Your counsel is here with you today. He 14 might make objections. Those are being made to 15 preserve the record. So please allow your counsel 16 to finish making his objection before you answer. 17 And then I'll ask that you answer my question unless 18 your lawyer directs you not to do so. 19 A. I understand. 20 Q. We can take breaks when you need anytime. 21 Just ask. The only thing I'll mention is that if 22 there's a question pending, I'll ask that you finish 23 answering it before we take a break. 24 A. I understand. 25 Q. Is there any reason why you'd be unable to</p>	<p style="text-align: right;">9</p> <p>1 just re-selected for that same position currently 2 January 7th by the new sheriff. 3 Q. And then what about before those seven 4 months as the interim chief deputy? 5 A. Prior to that for about a year, 6 approximately, I was the captain over the 7 corrections division. 8 Q. And before that? 9 A. Before that for one year I was captain 10 over the detective civil justice division. And 11 prior to that I was captain over the patrol 12 division. 13 Q. So how long in total have you worked sort 14 of in law enforcement incarcerations generally? 15 A. In law enforcement, total of 29 years. 16 Q. Can you describe for me your 17 responsibilities in your current position. By 18 "current," I'd like to include that time as interim 19 chief deputy. 20 A. So currently I oversee all functions of 21 the corrections division, the operations, full 22 operations of the jail. 23 Q. So you oversee all functions. Could you 24 be just a little more specific about sort of what 25 your day-to-day activities look like.</p>

January 17, 2019

<p style="text-align: right;">10</p> <p>1 A. Well, specifically day to day I come in 2 with a list of 10 things I want to accomplish, and 3 at the end of the day it's 20 and I didn't touch the 4 first 10. More specifically, it's a lot of 5 administrative things, reviewing policies, reviewing 6 budget, reviewing things that have happened within 7 the housing portions of the jail. Things that 8 happened with all of the specialty units, the 9 transportation unit, the classification unit. 10 Reviewing anything that might have happened since 11 the last time I was there in the office, whether it 12 be just from overnight or from a weekend. 13 Addressing issues or matters that need to be 14 handled. Dealing with personnel issues. 15 Q. And, typically, do you personally resolve 16 the issues or is your role more recommendations up 17 to someone else that you report to or are you the 18 decision-maker, would you say? 19 A. So a lot of the decisions are actually 20 made at levels below me, and I am just briefed on 21 those and make sure that those are appropriate. I 22 do answer to the sheriff and keep him briefed and 23 informed. 24 Q. So just walk me through, basically, the 25 chain as it's reported up to you to help me</p>	<p style="text-align: right;">12</p> <p>1 knowledge, you didn't talk to anyone to educate 2 yourself about, say, the background of what was 3 going on in the documents? 4 A. Not specifically, no. Not with any of 5 these particular documents. 6 Q. So I just want to make a clear record 7 today so that we don't have any confusion as I'm 8 going forward with some of these questions. I'm 9 going to be referring to documents in any form. I 10 may refer to them as "records" today. I just want 11 to be clear so that your counsel understands and our 12 record is clear that just because I say, "Well, what 13 about the records that say," and you answer it in a 14 certain way, we're not intending to treat that as an 15 admission that they are or are not records for 16 GRAMA. I just don't want any confusion or 17 objections about that. If I'm calling it a record, 18 I just want you to think in your head of a document 19 or any other electronically stored information. 20 A. I understand. 21 (Exhibit No. 1 was marked.) 22 Q. One other term I want to be clear on from 23 the beginning is what I mean by "Utah Jail 24 Standards." I want to start by marking Exhibit 1. 25 Do you recognize the document?</p>
<p style="text-align: right;">11</p> <p>1 understand. 2 A. Sure. So we have line deputies and we 3 also have civilians we call jail operation 4 specialists that are charged with the day-to-day 5 running and operation of the housing units. They 6 report to a corporal. We have two corporals usually 7 per crew. Ideally they'd have two corporals on duty 8 at a time. They report to one sergeant. And that 9 sergeant is the shift commander for that particular 10 crew. That sergeant has a lieutenant that they 11 report to. The lieutenant reports to the captain. 12 The captain reports to me. 13 Q. And then you said you report to the 14 sheriff. 15 A. I report to the sheriff, yes. 16 Q. Thank you. That's very helpful. What did 17 you do to prepare for today's deposition? 18 A. So I met with my attorney Mike Kendall and 19 was provided a lot of documentation. And we 20 reviewed the allegations and the questions and 21 everything. 22 Q. Did you meet with anyone besides your 23 attorney? 24 A. No. 25 Q. So on topics where you have no personal</p>	<p style="text-align: right;">13</p> <p>1 A. It looks very familiar, yes. 2 Q. So if you could just identify for the 3 record this document is entitled Petitioners' Second 4 Amended Rule 30(b)(6) Deposition Notice of 5 Respondent Davis County. 6 A. Yes. 7 Q. And you've reviewed this document before? 8 A. With my attorney, yes. 9 Q. If you could turn to page 3 of this 10 document. Look at number 13. It says, "The term 11 'Utah Jail Standards' shall refer to those standards 12 promulgated by Gary DeLand and/or the Utah Sheriffs' 13 Association and used, accessed, and/or viewed in any 14 way by Davis County in the administration and 15 operation of the Davis County Jail." 16 A. Okay. 17 Q. So based on that definition, are you clear 18 what I mean by if I use the term "Utah Jail 19 Standards" or "the Jail Standards"? 20 A. Yes. With kind of, I guess, one little 21 clarification. When you say "produced by 22 Gary DeLand" and then it says "the Utah Sheriffs' 23 Association," I'm not aware of any standards 24 produced by the Sheriffs' Association. 25 (Exhibit No. 2 was marked.)</p>

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<p style="text-align: right;">14</p> <p>1 Q. I also want to draw one finer point of 2 distinction, so let's mark Exhibit 2 so we can be on 3 the same page. Do you recognize this document that 4 I've put in front of you? 5 A. Yes, I do. 6 Q. Can you explain to me what this document 7 is. 8 A. To my understanding, this is what 9 Gary DeLand had agreed to release to the public. 10 This is part of the Jail Standards. 11 Q. What you just mentioned is this is part of 12 the Jail Standards. So I just want to be clear on 13 the record that this document, Exhibit 2 here, is 14 not a complete Utah Jail Standards. When you do 15 your work for the county and you use the Utah Jail 16 Standards, are you referring to this Exhibit No. 2, 17 this publicly available version? 18 A. That's not what I referred to, no. 19 Q. So when I refer to "the Utah Jail 20 Standards," I'll be referring to those ones that you 21 use in your work rather than this Exhibit 2, unless 22 I specify otherwise. 23 A. I understand. 24 Q. If you'll turn back to Exhibit 1 and go to 25 page number 4. I'd like to start with topic number</p>	<p style="text-align: right;">16</p> <p>1 A. The initial, no. 2 Q. You were not involved at this stage 3 personally? 4 A. No. 5 (Exhibit No. 5 was marked.) 6 Q. Shelly has just handed you what's been 7 marked as Exhibit 5. Could you review that document 8 and identify it for me, please. 9 A. So it appears as though this is a notice 10 from Davis County Commissioner, particularly 11 James Smith, who was the chair at that time, notice 12 of decision regarding GRAMA appeal. 13 Q. So you see here in the first paragraph of 14 the letter it refers to an appeal of GRAMA denial. 15 So a GRAMA appeal that was submitted to Davis 16 County. Is it your understanding that this was 17 responding to a GRAMA appeal from that earlier 18 denial that we just reviewed? 19 A. Yes. 20 Q. And were you involved in the formation of 21 this letter, Exhibit 5? Had you been consulted yet? 22 A. Not directly as far as formation of the 23 letter. 24 Q. As far as the background information in 25 here, had you consulted with anyone that was</p>
<p style="text-align: right;">15</p> <p>1 1 and ask you about, "Davis County's responses to 2 the GRAMA Request and subsequent appeals, including 3 the bases for positions taken by Davis County in the 4 GRAMA Denial, the CAO Denial, the Records Committee 5 Appeal, and the Answer." So are you familiar with 6 what is mentioned here as "the GRAMA request"? 7 A. I've reviewed that, yes. 8 (Exhibit No. 3 was marked.) 9 Q. Do you recognize the document that I've 10 handed you? 11 A. Yes. This looks familiar, yes. 12 Q. Does that appear to be the GRAMA request 13 that's mentioned here in topic number 1? 14 A. I believe it is, yes. 15 (Exhibit No. 4 was marked.) 16 Q. So if you'll look at Exhibit No. 4 in 17 front of you. Can you identify this document for 18 me? 19 A. It appears this is a document produced by 20 Rebecca Abbott that was a notice of partial denial 21 of the GRAMA request for records. 22 Q. I'll call this "the GRAMA denial" for 23 purposes of the record. At the time of this GRAMA 24 denial, were you involved in the formation of this 25 letter?</p>	<p style="text-align: right;">17</p> <p>1 preparing this letter in connection with it? 2 A. I had a brief meeting with Jim Smith and 3 Mr. Kendall. 4 Q. And can you tell me, generally, what was 5 discussed during that meeting? 6 A. At that point I don't know all the 7 background, but it was basically that Mr. Smith was 8 notifying that he was going to submit this denial 9 letter. 10 Q. So he was providing notice to you. He 11 wasn't asking or consulting with you. Would you say 12 it was a discussion, or would you characterize it 13 more as he was giving you notice of what he had 14 already decided? 15 A. There was a little bit of discussion, but 16 more it was the notice that he was going to go ahead 17 and move forward with the denial. 18 (Exhibit No. 6 was marked.) 19 Q. If you need more time to review, let me 20 know. Now that you've had a few minutes to look at 21 it, do you recognize Exhibit 6? 22 A. Yeah. It looks a little familiar to me. 23 Q. Can you describe for me what this document 24 is. 25 A. It appears as though it is an e-mail trail</p>

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18	<p>1 that is between Mr. Kendall and Utah GRAMA.</p> <p>2 Q. And so you'll see here it says, "Dear</p> <p>3 State Records Committee and State Records Executive</p> <p>4 Secretary." So is it your understanding that this</p> <p>5 was Davis County's submission to the State Records</p> <p>6 Committee?</p> <p>7 A. I don't know if I could say that's what my</p> <p>8 understanding of it is.</p> <p>9 Q. You are aware that Davis County</p> <p>10 participated in an appeal to the State Records</p> <p>11 Committee, correct?</p> <p>12 A. Yes, I am.</p> <p>13 Q. Do you have any knowledge of what Davis</p> <p>14 County submitted to the State Records Committee,</p> <p>15 other than what I've put in front of you? Are you</p> <p>16 aware of anything else besides this?</p> <p>17 A. I'm aware of what was released under</p> <p>18 GRAMA, if that's the question you're asking. I know</p> <p>19 there was 700-something pages.</p> <p>20 Q. Sorry, I guess my question is not clear.</p> <p>21 What I mean is, to the body that was going to be</p> <p>22 deciding the GRAMA appeal, so after Davis County's</p> <p>23 Chief Administrative Officer's denial that we just</p> <p>24 looked at, then there was the Records Committee</p> <p>25 proceeding. I'll represent to you this is what we</p>	20	<p>1 development of the Jail Standards. When Davis</p> <p>2 County actually started utilizing those, I can't say</p> <p>3 specifically.</p> <p>4 Q. So can you tell me a little bit about that</p> <p>5 history that you do know, then, about the Jail</p> <p>6 Standards.</p> <p>7 A. I do know in the early '90s there was some</p> <p>8 engagement between the counties and Mr. DeLand about</p> <p>9 producing a set of standards. And Mr. DeLand had</p> <p>10 been the director of the Department of Corrections</p> <p>11 and had actually been deemed to be an expert in</p> <p>12 these areas. And so I know that he engaged in these</p> <p>13 areas. So I know that he engaged in writing some.</p> <p>14 I do know that there was actually like a committee</p> <p>15 that was formed. There was a time frame. They</p> <p>16 hoped to have it out in a very short time frame, and</p> <p>17 it turned out that was more labor intensive than he</p> <p>18 even envisioned. And it took them a little longer</p> <p>19 to get that out.</p> <p>20 Q. How often would you say you're referring</p> <p>21 to them? Is it once a day? Is it once a week?</p> <p>22 Once a month?</p> <p>23 A. Me, personally, I'm probably more on a</p> <p>24 monthly basis, about once a month.</p> <p>25 Q. Do you know much about other individuals</p>
19	<p>1 have as an e-mail that was submitted to</p> <p>2 grama@utah.gov was to the State Records Committee.</p> <p>3 All I'm asking is, are you aware of anything besides</p> <p>4 this e-mail here that was also submitted to the</p> <p>5 State Records Committee?</p> <p>6 A. No, I'm not.</p> <p>7 Q. Thank you. Can you tell me what use the</p> <p>8 Davis County Sheriff's Office or Davis County</p> <p>9 generally currently makes of the Utah Jail</p> <p>10 Standards.</p> <p>11 A. I use them a lot. I kind of refer to them</p> <p>12 as my CliffsNotes. If I have questions or concerns,</p> <p>13 things that I want to review and research, I will</p> <p>14 pull them up and use them as reference points.</p> <p>15 There's case law that is cited and steers me towards</p> <p>16 reading more up on case law that might be related to</p> <p>17 what it is I'm looking at.</p> <p>18 We continually do self-inspections. And</p> <p>19 it's an annual, ongoing, continual basis. And some</p> <p>20 of those inspections are based off of guides that we</p> <p>21 get through the Jail Standards.</p> <p>22 Q. Can you tell me when Davis County first</p> <p>23 began being involved with the Utah Jail Standards?</p> <p>24 A. Specifically Davis County, I don't know.</p> <p>25 I mean, I do know a little bit of the history, the</p>	21	<p>1 in the Davis County Sheriff's Office, how often</p> <p>2 they're using or accessing or looking at the Jail</p> <p>3 Standards?</p> <p>4 A. So I do have a lieutenant that part of his</p> <p>5 job as a lieutenant is to review policy. And that</p> <p>6 also includes utilizing the Jail Standards. When we</p> <p>7 do our self-inspections and when we do have the</p> <p>8 Sheriffs' Association come out and assist with that,</p> <p>9 he is our point guy that meets primarily with</p> <p>10 whoever is sent out.</p> <p>11 Q. What's the name of that individual</p> <p>12 currently?</p> <p>13 A. Cole Meldrum.</p> <p>14 Q. And how often would you say Mr. Meldrum is</p> <p>15 using the Jail Standards? Do you have any sense of</p> <p>16 that?</p> <p>17 A. I don't have a full sense, but I would</p> <p>18 estimate probably weekly.</p> <p>19 Q. And can you describe sort of physically</p> <p>20 how you use them. How do you access them?</p> <p>21 A. There's a website that you access. And</p> <p>22 you have to have a specific log-on and a password in</p> <p>23 order to access them.</p> <p>24 Q. Are you aware of whether you have the</p> <p>25 ability to export or print out information that</p>

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22

1 you're accessing?
 2 A. It's my understanding that you do have the
 3 ability to export them to a file or to copy, paste,
 4 print them out.
 5 Q. Like let's say, for example,
 6 hypothetically you want to have a meeting, say, with
 7 Mr. Meldrum, yourself, and maybe some other
 8 individuals and you wanted to be able to talk about
 9 some of the Jail Standards, for example. Would it
 10 be possible for you to print out copies of the Jail
 11 Standards at issue and then bring those to the
 12 meeting so everyone can look at them in front of
 13 them?
 14 A. It's possible, yes.
 15 Q. Has Davis County promised or otherwise
 16 committed to be bound by the Utah Jail Standards in
 17 its operation of the jail?
 18 A. So to a degree, I would say yes. There
 19 are two things, to my knowledge.
 20 Q. Could you elaborate on those.
 21 A. Sure. There is our mission statement, the
 22 current mission statement, that has been in place
 23 under the previous administration that mentions
 24 under the jail's mission statement that it would
 25 abide -- I don't remember the exact wording, but it

23

1 would abide by the Utah Jail Standards.
 2 Q. And then the second?
 3 A. There was a contract that I became aware
 4 of that was, I believe, in 2012. I don't have full
 5 knowledge of what it was about, what the intent was.
 6 I can only surmise. I know that that contract was
 7 never really followed through with.
 8 (Exhibit No. 7 was marked.)
 9 Q. Shelly is marking what's Exhibit 7. If
 10 you could review this document. Are you familiar
 11 with this document?
 12 A. Yes, I am.
 13 Q. Is this the contract you were just
 14 referring to a moment ago or is this a different
 15 contract?
 16 A. This is the contract I was referring to.
 17 Q. Could you turn to the last page.
 18 A. Yes, I can.
 19 Q. And then you see there at the top where it
 20 says, "Consent to be bound: The Agency has read the
 21 following documents and agrees to be bound by the
 22 terms and conditions of them, as amended from time
 23 to time, during the term of this Agreement: (a) Utah
 24 Jail Standards (b) Utah Accreditation Standards."
 25 A. Yes, sir.

24

1 Q. So this is what you were referring to when
 2 you were saying that maybe there's a contract that
 3 they would be bound.
 4 A. Yes.
 5 Q. Are you familiar with the acronym IPP?
 6 A. Yes, I am.
 7 Q. Can you tell me what that stands for.
 8 A. Inmate Placement Program.
 9 Q. Can you tell me what the Inmate Placement
 10 Program is.
 11 A. So the Department of Corrections for the
 12 State of Utah places inmates throughout the state
 13 with jails that they contract with for housing
 14 purposes. IPP or Inmate Placement Program is the
 15 program that that is administrated through.
 16 Q. Davis County, are they part of the IPP
 17 program?
 18 A. Yes, we are.
 19 Q. Are you aware of any special requirements
 20 regarding the Jail Standards that involves the IPP?
 21 A. Yes, I am.
 22 Q. And can you describe what those are.
 23 A. So there is what has been identified as
 24 they call it the core standards. Part of your
 25 contract you had with the Department of Corrections

25

1 is that you would abide by core standards.
 2 Q. And the core standards, help me
 3 understand, are they a subset of the Utah Jail
 4 Standards like we've been talking about? If the
 5 Jail Standards were 1 through 600, they might be 100
 6 of those 600?
 7 A. It's my understanding, yes.
 8 Q. Do you know approximately how many of the
 9 Jail Standards are core standards?
 10 A. Off the top of my head, I don't.
 11 (Exhibit No. 8 was marked.)
 12 Q. Can you identify this document that's now
 13 been marked as Exhibit 8?
 14 A. It appears to be an e-mail that was from
 15 Gary DeLand and it was sent to an e-mail of all
 16 sheriffs.
 17 Q. And is that how Davis County would have
 18 had this e-mail? Are they part of that distribution
 19 chain? When an e-mail is sent to the "all sheriffs"
 20 e-mail address, are you aware of that?
 21 A. Sheriff Richardson is a part of that, yes,
 22 or was a part of that.
 23 Q. If I can direct your attention up to the
 24 number that's handwritten in the top right corner.
 25 It's the number 14 with a circle around it.

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<p style="text-align: right;">26</p> <p>1 A. Yes.</p> <p>2 Q. Are you aware of when that was written and</p> <p>3 why that was written?</p> <p>4 A. I have no idea.</p> <p>5 Q. If I were to represent to you that this</p> <p>6 document was produced to us under the GRAMA request</p> <p>7 and that there was a spreadsheet with numbers on the</p> <p>8 side corresponding, were you involved with that</p> <p>9 process at all?</p> <p>10 A. No, I was not.</p> <p>11 Q. And then you'll see that what's attached</p> <p>12 here is a letter that starts on page Bates number</p> <p>13 93, "During this last Jail Commander meeting an</p> <p>14 issue was discussed." And then it appears that the</p> <p>15 rest is redacted. Can you explain the basis for</p> <p>16 those redactions? Are you familiar with why this</p> <p>17 document was redacted?</p> <p>18 A. No, I am not.</p> <p>19 Q. So number 1 at the top, it says, "Those</p> <p>20 counties handling IPP inmates from the USP must meet</p> <p>21 the core standards." It's your understanding, then,</p> <p>22 that Mr. DeLand is referring to the same thing that</p> <p>23 you just referred to as the core standards of the</p> <p>24 Utah Jail Standards?</p> <p>25 A. Yeah. That's my understanding.</p>	<p style="text-align: right;">28</p> <p>1 for the Davis County Correctional Facility.</p> <p>2 Q. And I want to direct your attention to</p> <p>3 even on the first page after Mission Statement,</p> <p>4 Purpose of the Manual, after certain headings like</p> <p>5 that there's UJS B 01.01.04, UJS B 01.01.01. Do you</p> <p>6 see those references?</p> <p>7 A. Yes, I do.</p> <p>8 Q. Can you explain to me what those mean?</p> <p>9 A. My understanding, those are references to</p> <p>10 the Utah Jail Standards.</p> <p>11 Q. So it's your understanding, then, that</p> <p>12 when a citation is referencing the Utah Jail</p> <p>13 Standards that that portion of the Utah Jail</p> <p>14 Standards has had some influence on or has some</p> <p>15 relationship to that part of Davis County's policy</p> <p>16 and procedures manual?</p> <p>17 A. It has a relationship, yes.</p> <p>18 Q. I'm curious if you could help me</p> <p>19 understand, then, the difference between the Utah</p> <p>20 Jail Standards themselves and then what ends up here</p> <p>21 in Davis County's policy and procedures manual. I</p> <p>22 think we can both agree it's not a copy and paste</p> <p>23 verbatim from the Utah Jail Standards. That's fair?</p> <p>24 A. Yes.</p> <p>25 Q. We just said there's a relationship</p>
<p style="text-align: right;">27</p> <p>1 Q. How influential or, I guess, what</p> <p>2 influence would you say the Utah Jail Standards have</p> <p>3 had on Davis County Jail's own policy and procedures</p> <p>4 manual?</p> <p>5 A. I would say they play a part, but it's not</p> <p>6 what is the final. We refer more so to federal</p> <p>7 laws, state laws, and everything. And then our</p> <p>8 policies are referred to our county attorneys for</p> <p>9 final approval.</p> <p>10 Q. So you said earlier you use it sort of as</p> <p>11 a reference point.</p> <p>12 A. Uh-huh.</p> <p>13 Q. Is that a fair characterization of how you</p> <p>14 use the Utah Jail Standards?</p> <p>15 A. Yes. My personal use of them.</p> <p>16 Q. And Mr. Meldrum's use?</p> <p>17 A. As a reference point and also as a guide</p> <p>18 for the self-inspections.</p> <p>19 (Exhibit No. 9 was marked.)</p> <p>20 Q. Are you familiar with what's in front of</p> <p>21 you as Exhibit 9?</p> <p>22 A. Yes, I am.</p> <p>23 Q. Can you explain to me what this document</p> <p>24 is?</p> <p>25 A. This is the policy and procedure manual</p>	<p style="text-align: right;">29</p> <p>1 between the Utah Jail Standards and this policy</p> <p>2 manual. Is there anything else you can do to help</p> <p>3 me understand what that relationship is?</p> <p>4 A. So when they do the self-inspections, part</p> <p>5 of the self-inspection is providing a proof for that</p> <p>6 particular standard. And so these help correlate</p> <p>7 that particular standard that they might be</p> <p>8 referring to and what our policy proof was to make</p> <p>9 it a simpler, okay, this is what does relate to that</p> <p>10 as far as doing our self-inspection.</p> <p>11 Q. Thank you. So the next thing I want to</p> <p>12 ask you some more about is what you've just referred</p> <p>13 to as "the self-inspections." You've mentioned</p> <p>14 today that the Davis County Jail is inspected or</p> <p>15 evaluated for compliance with the Utah Jail</p> <p>16 Standards; is that correct?</p> <p>17 A. Yes.</p> <p>18 (Exhibit No. 10 was marked.)</p> <p>19 Q. Do you recognize this document?</p> <p>20 A. I'm familiar with it, yes.</p> <p>21 Q. And can you explain to me what this</p> <p>22 document is?</p> <p>23 A. So this would be an e-mail that is from</p> <p>24 Darin Durfey that is sent out to various people</p> <p>25 throughout the state and county jails that is in</p>

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<p style="text-align: right;">30</p> <p>1 reference to getting your self-audits up to date. 2 Q. Thank you. So you've keyed in on the key 3 term that I want to look at in this document, which 4 the center of this e-mail uses the word "self audit" 5 to describe what's going on. And you've used the 6 term today "evaluation" or "inspection." I just 7 want to make sure, is there any difference? Are 8 those terms completely synonymous, in your mind, or 9 is there a difference between an audit and, say, a 10 self-evaluation or self-inspection? 11 A. In my mind, they can be used synonymous 12 and they can have independent meanings. 13 Q. If there's a difference in meaning that's 14 possible, could you explain the difference for me. 15 A. Well, audits could refer, like, if you 16 were accredited. Then that might be specific to 17 your accreditation. I think that when my core 18 auditor's office comes in and does something very 19 specific, there's something that goes with the 20 enforcement behind that as an independent. 21 Q. So maybe there's something more formal 22 about it? 23 A. Sure. 24 Q. That's where the difference might be, in 25 your mind, is if it's internal, there's no outside</p>	<p style="text-align: right;">32</p> <p>1 internal transportation unit. We don't have an 2 external. They will look at things that might be 3 related to their areas. 4 Q. I mean, it may vary by those different 5 areas, but if you can give a general answer, how 6 often are these internal audits or self-evaluations 7 performed? 8 A. They're ongoing continually throughout the 9 year. 10 Q. I mean, do you block out, you know, "We're 11 going to look for compliance with a certain number 12 of standards at this part of the year"? Is there 13 any more control than just it's everything all the 14 time? Is there any way to sort of subdivide it? 15 A. Well, they do set up times where the 16 representative from the Sheriffs' Association does 17 come out. And that's the time when they're all 18 supposed to be completed. Ours, the way we do it, 19 is just ongoing as you can show those compliance in 20 those areas. It's just part of the thing you work 21 through as your schedule permits. 22 Q. And then can you explain what kind of work 23 product or documents or what is generated as a 24 result of those internal audits. For example, you 25 know that someone has done something. Do they send</p>
<p style="text-align: right;">31</p> <p>1 party conducting it and, therefore, maybe it's not 2 an audit? 3 A. I would say the formality is what more, to 4 me, triggers there's a separation there. 5 Q. And then can you help me understand who 6 conducts those. Let's talk first about internal 7 audits. 8 A. Okay. 9 Q. Who conducts the internal audits at the 10 Davis County Jail? 11 A. So there are several people that are 12 involved. That's one of the things that 13 Lieutenant Cole Meldrum helps to oversee. The 14 medical, the director of nursing, will do things 15 related to the medical section. 16 Q. Can you give me that person's name. 17 A. James Ondricek. 18 Q. Besides Mr. Meldrum and Nurse Ondricek, is 19 there anyone else who is involved in conducting the 20 internal audit process? 21 A. Yes, there are. It would depend on their 22 various assignments at the time. That can change 23 depending on what people's assignments are. 24 Classification will look at things related to the 25 classification section. Transportation, we have an</p>	<p style="text-align: right;">33</p> <p>1 an e-mail reporting that they audited on a certain 2 aspect? Do they file memos to a file? 3 MR. KENDALL: I'm just going to object. 4 You had some discussion as far as questions related 5 to audit inspection. I'm just objecting to your 6 characterization that these are internal audits. 7 A. So, typically, the way that it's reported 8 and the way that it's tracked and all that's done is 9 through the AARMS system, which is what these people 10 log into. As they complete that, they fill out the 11 information that's applicable in the AARMS system. 12 And then Lieutenant Meldrum and others have the 13 ability to see that and see where they're at with 14 those. 15 Q. Thank you. Just so we have a clear 16 record, when I use the word "audit," I don't 17 necessarily mean to characterize it a certain way. 18 I'm just talking about your self-evaluative process 19 and what you do. 20 Does the internal evaluation process have 21 an end result, then, other than what you've just 22 described as checking a box in the AARMS system? Is 23 there a point at which the internal audit reaches 24 some sort of finality? 25 A. Yeah. That is when the representative</p>

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<p style="text-align: right;">34</p> <p>1 from the Utah Sheriffs' Association comes. 2 (Exhibit No. 11 was marked.) 3 Q. So you have now Exhibit 11 in front of 4 you. Can you identify this document for me. 5 A. This appears to be an e-mail that was sent 6 from Darin Durfey again to a vast group of people 7 that I recognize being associated with jails 8 throughout the state. It appears to be in reference 9 to PDF files. 10 Q. Yes. That's mostly what I want to ask you 11 about on this document. You see in the first 12 sentence of the e-mail, it says, "In our meeting we 13 discussed attaching documents in a PDF format for 14 self audits." When I was talking a moment ago about 15 the sort of work product that gets generated and you 16 were saying they check boxes in the AARMS system, is 17 it true that they also upload into the AARMS system 18 a PDF document? 19 A. My understanding, yes. 20 Q. They do that as well. 21 A. Yes. That's proof that they upload. 22 Q. Could you explain what these PDFs are, I 23 guess, to help me better understand. 24 A. A proof could possibly be, like, a policy 25 that shows that, yeah, that's something that we do</p>	<p style="text-align: right;">36</p> <p>1 have seen some worksheets that they have utilized 2 during their inspections. And I've seen a letter 3 that we had received from them. 4 Q. And so do those external evaluations reach 5 a point of finality when they've completed it? Is 6 it on a yearly basis? 7 A. It's a yearly basis, yes. 8 Q. And at the end of that yearly evaluation, 9 is there a certain document that's generated that is 10 sort of the summary of the evaluation? 11 A. It's not a document that's generated. 12 It's in part of the AARMS system. You access it 13 through the AARMS system. 14 (Exhibit No. 12 was marked.) 15 Q. If you need more time, please let me know. 16 Are you familiar now with what's been marked as 17 Exhibit 12? 18 A. I've seen this before, yes. 19 Q. Can you identify for me what this is? 20 A. This is an e-mail from Darin Durfey. It 21 is sent specifically to then Captain Jaquez and 22 Chief Deputy Kevin Fielding. It's an e-mail that 23 references his site inspection that was done in 24 2016. 25 Q. And so what's your understanding of the</p>
<p style="text-align: right;">35</p> <p>1 for that particular standard. It could be a picture 2 that shows that, yes, we do that or we have a 3 certain thing that shows that you're abiding or 4 you're following recommendations of those standards. 5 Q. And then you mentioned a moment ago that 6 this is all in getting ready for an external 7 evaluator. Is it fair to characterize that external 8 evaluator as an auditor? 9 A. I wouldn't say an auditor. 10 Q. How would you characterize or describe the 11 outside parties who evaluate the Davis County Jail? 12 A. The way I characterize them is it's 13 somebody from another sheriff's office or somebody 14 who's associated with the Sheriffs' Association that 15 has received some instruction, some training to come 16 in and say, "Let me help you take a look at this and 17 see how you're doing," and have outside eyes and 18 inspection. In that case when you talk auditor, 19 that to me goes more to that formal process that 20 there's an accreditation, there's some kind of 21 sanction for noncompliance or reward for compliance. 22 Q. Are you aware of what work product is 23 generated by these external evaluators? 24 A. Not fully. I don't know how they report 25 necessarily to the Sheriffs' Association. I know I</p>	<p style="text-align: right;">37</p> <p>1 status of the evaluation at the time that this 2 e-mail was sent? Was the evaluation for the year 3 complete at the time this e-mail was sent? Are you 4 aware of that? Can you tell? 5 A. I don't believe it was fully complete. If 6 I remember correctly, without diving into it, there 7 was some kind of reference that there was a few more 8 things – if this is the one I'm thinking of – that 9 Lieutenant Callister was going to complete. 10 Q. So you can see attached to the e-mail are 11 two attachments. The first one begins with a 12 letter. And then further on there is sort of a 13 checklist, I think it starts on page 175, with some 14 notations. Can you describe for me what these 15 attachments are? 16 A. So the letter would have been a 17 summarization that was sent by Darin Durfey of his 18 site visit in 2016. And then the attachment, 19 Attachment #2, I believe this is the check sheet 20 that he would have used when he did that site visit. 21 It's kind of like his worksheet. 22 Q. And then your understanding, then, is this 23 information is also input or uploaded or somehow 24 then reflected in the AARMS system after an 25 evaluation like this is completed?</p>

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<p style="text-align: right;">38</p> <p>1 A. I don't know if these particular documents 2 are loaded anywhere, but there is a finality of it, 3 yes. 4 MR. BRODIS: I think this is a good point 5 to take a break. 6 (Recess.) 7 Q. I'd like to next walk through the various 8 bases that Davis County is relying on or has relied 9 on in denying the GRAMA request that we discussed 10 earlier. Can you please tell me what those bases 11 are. 12 A. Well, it's been represented in the 13 documents presented. Without reading them, I can't 14 tell you all of them specifically. 15 Q. Do you want to just take an attempt to 16 sort of summarize your understanding of the bases? 17 A. Sure. One of the big parts is that the 18 AARMS system and the Jail Standards particularly are 19 owned by Gary DeLand and DeLand & Associates and 20 people that are affiliated with his company. When 21 you access them, there's an end user or licensed 22 user agreement that you have to agree to copyrights 23 that are put out there before you. He's made it 24 very clear in trainings that I've attended and 25 conferences I've been to where he's been there that</p>	<p style="text-align: right;">40</p> <p>1 Q. Let's go to Exhibit 14 first and turn to 2 page number 4. You can see Interrogatory No. 1 3 says, "Explain with particularity all of the reasons 4 on which you are relying in this action for refusing 5 to release the Withheld Records." It says, 6 "Responding Party incorporates herein by reference 7 all of the facts, arguments, and responses set forth 8 herein, set forth here in Davis County's filings 9 with the Court," and then set forth in any of the 10 documents provided. 11 Other than the bases that are set forth 12 here in this response to Interrogatory No. 1, are 13 there any bases on which Davis County is relying in 14 refusing to turn over the records? 15 A. I would say, yes, there are. This doesn't 16 list all of the reasons that we've talked about. 17 Q. So your testimony today and response to 18 Interrogatory No. 1, those two things. 19 A. Yes. 20 Q. Are there other things as well? 21 A. In Interrogatory No. 1 it talks about 22 specifically some certain things. It doesn't 23 mention the copyrights. It doesn't mention the 24 intellectual acts. 25 Q. So if you look at sub A, then there's sub</p>
<p style="text-align: right;">39</p> <p>1 these are his intellectual work product and that 2 they are copyrighted, they are protected, and 3 they're not subject to be released. 4 In addition, there's safety/security 5 concerns if documents or other things be released. 6 An example is our jail policy. There's obviously 7 redactions in there that have to do with 8 safety/security concerns that could potentially 9 undermine the operation of a correctional facility. 10 Q. Anything else to add to those? 11 A. Not off the top of my head, no. 12 (Exhibit No. 13 was marked.) 13 (Exhibit No. 14 was marked.) 14 Q. You've now got Exhibits 13 and 14 in front 15 of you. Can you identify document number 13? 16 A. So number 13 is the Amended Response to 17 Petitioners' Clarified First Set of Discovery 18 Requests to Respondent Davis County. 19 Q. And then you've also got Exhibit 14 in 20 front of you. 21 A. Yes. 22 Q. Can you identify that document for me. 23 A. So that is a Supplemental Response to 24 Petitioners' Clarified First Set of Discovery 25 Requests to Respondent Davis County.</p>	<p style="text-align: right;">41</p> <p>1 B. And if you go to sub D, I guess, you can see, 2 "DeLand would retain his copyright." 3 A. There I see it, yes. 4 MR. KENDALL: Maybe a point of 5 clarification. I'm not sure he understands what the 6 question is. 7 Q. I just want to be clear. So if you go all 8 the way to page 7, I guess is when this answer ends 9 to the interrogatory. 10 A. Yes. 11 Q. I just want to make sure that we're clear 12 on the record that Davis County's position is 13 articulated in this interrogatory response answer 14 and that there are not other bases, other than 15 you've done in response to our discovery requests. 16 A. Well, the amendment that was submitted. 17 Q. I think this is the amendment. That's 18 what I want to be clear on. 19 A. 2014 is not the amendment. 13 is the 20 amendment, if I'm not mistaken. 21 MR. BRODIS: Let's be clear on that, then. 22 Can we go off the record for a second. 23 (Off the record.) 24 MR. KENDALL: When you're referencing the 25 response to Interrogatory No. 1, you're including</p>

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<p style="text-align: right;">42</p> <p>1 everything that's been identified in the answer, the 2 response, the GRAMA record, all of these things that 3 we've preserved in addition to the specific 4 responses from A through N. Is that correct? 5 Q. I think my question is more narrow than 6 that. I'm trying to clarify the list of A through 7 N, things that are in the supplemental response. Is 8 there anything besides A through N that you're 9 relying on? I'd like to discuss that. That is my 10 question. 11 MR. KENDALL: And I guess I would object 12 to that. The document speaks for itself. And it's 13 clearly identifying and incorporating other 14 responses that are from a plain reading of the 15 response. It's not just A through N. If there are 16 any other responses that are set forth in there, 17 that's what the document is saying and it speaks for 18 itself. 19 Q. I guess my question is for you, 20 Mr. Butcher, if you're personally aware of anything 21 else that's not listed in A through N? Not just in 22 this response. I'm asking for your personal 23 knowledge of any other reasons. 24 A. Personal knowledge, no. 25 Q. If you'd turn to page 7 of that first</p>	<p style="text-align: right;">44</p> <p>1 Q. How could it do so? 2 A. In doing the self-inspections, those 3 inspectors that come out have specific things that 4 they reference to ensure that those things are 5 addressed. 6 Q. Would you agree that the findings of the 7 audit are not techniques? 8 A. Again, I guess into semantics of what 9 techniques really are. Maybe I'm not understanding 10 what you're looking for. 11 Q. Let's maybe turn for a minute instead to 12 the safety and security concerns issue that you 13 mentioned a moment ago. Can you please help me 14 understand how, to the extent you can, the release 15 of the Jail Standards would implicate safety and 16 security concerns. 17 A. Sure. So the Jail Standards, you've 18 already put out there in Exhibit No. 1, I believe it 19 was. Exhibit 2, excuse me. What has been released 20 to the public. So that in and of itself, as we've 21 identified, is not the full context of the Jail 22 Standards. What the Jail Standards and my 23 understanding of them is that this is what is 24 recommended, things that should be done. 25 Then there's a rationale statement that</p>
<p style="text-align: right;">43</p> <p>1 supplement. I'd like to look at Item N that says, 2 "The Utah Jail Standards and the Reports, if found 3 to be records under GRAMA and subject to GRAMA, are 4 protected records pursuant to . . ." And then 5 there's a citation to 63G-2-305(1), (2), (10), (11), 6 (13), and/or (22). 7 A. Yes. 8 MR. BRODIS: Can we go off the record for 9 just one second? 10 (Off the record.) 11 Q. Let me ask these questions, then, in a 12 slightly different way. Is Davis County's position 13 that turning over the Utah Jail Standards would 14 reveal audit techniques? 15 A. I don't know specifically if it would 16 reveal techniques. I guess I'm not understanding 17 what you'd define as audit techniques. 18 Q. What's your understanding of what an audit 19 technique would be? 20 A. Well, the method in which the audit is 21 conducted. 22 Q. Right. Would the Jail Standards reveal 23 the method in which the audit is conducted? 24 A. It could reveal the method in which an 25 inspection is conducted, yes.</p>	<p style="text-align: right;">45</p> <p>1 goes along with it that says why. And then there's 2 also a how to accomplish this. And then there's 3 intellectual work that's gone into referencing case 4 law that supports all of those that I mentioned 5 above. So if you release the why you do things and 6 the how you do things, then that's what can give an 7 edge to somebody who is in a correctional facility, 8 somebody who is maybe looking to do some kind of 9 thing that would undermine the safety/security of a 10 correctional facility, whether they be in there or 11 somebody even on the outside trying to find ways of 12 getting contraband inside the facility. That would 13 release certain trade secrets such as that. 14 Q. So you mentioned the rationale and then 15 sort of the how. Could you explain what you mean by 16 "the rationale." 17 MR. KENDALL: I'm going to object to that 18 and instruct my client not to answer. This is part 19 of the documents that are withheld. I've been fine 20 with you discussing so far the items that have been 21 disclosed in the documents. But I'm not going to 22 allow my client to discuss any details related to 23 the records that are already withheld and that are 24 the subject of this appeal. 25 MR. REYMANN: Can we go off the record for</p>

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1 just a second?
 2 (Off the record.)
 3 **Q. Can we go, then, to Exhibit No. 13. This**
 4 **was the amended response. And if you'll turn to**
 5 **page 7. Interrogatory No. 3 asks, "Identify any**
 6 **supposed safety and security interests that you**
 7 **claim support classification of the Utah Jail**
 8 **Standards and Audit Reports as protected, which**
 9 **parts or sections of the Utah Jail Standards and/or**
 10 **Audit Reports are implicated by those safety and**
 11 **security interests, and how those safety and**
 12 **security interests would be jeopardized by**
 13 **disclosure of the Utah Jail Standards and/or Audit**
 14 **Reports."**
 15 And I'd like to turn, then, to page 9 and
 16 look at number 6 at the bottom of that page. It
 17 references, "Utah Jail Standards, Section G: Inmate
 18 Services, Including, but not limited to, Subsection
 19 "Written Food Services Policies and Procedures."
 20 I'd like to ask, can you help me understand how
 21 standards relating to food service policies could
 22 implicate safety and security concerns?
 23 A. Well, food services talks about how we
 24 deliver meals and the manner in which meals are
 25 delivered. Contraband is a huge problem in the

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1 jail. There's a couple of central points for
 2 distribution. Food services could be a potential
 3 for one of those.
 4 **Q. If you'd turn to number 7, the next page**
 5 **of the exhibit. It says, "Utah Jail Standards,**
 6 **Section H: Inmate Health Care, including, but not**
 7 **limited to, "Written Health Care Policies and**
 8 **Procedures." Could you help me understand how**
 9 **health care policies and procedures could implicate**
 10 **safety and security concerns?**
 11 A. Again, the way that we go about
 12 implementation of that, drugs is a huge problem
 13 within the jail. How we control those drugs, how we
 14 set them up, how we distribute them could be
 15 something that could.
 16 **Q. Besides drugs, are there other aspects of**
 17 **health care that have safety and security concerns?**
 18 **Let me phrase it differently. Are there aspects of**
 19 **the health care policies that are unrelated to**
 20 **drugs?**
 21 A. Sure. There's staffing levels when
 22 medical staff is available.
 23 **Q. Do those implicate safety and security**
 24 **interests?**
 25 A. Sure.

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1 **Q. Can you help me understand how those ones**
 2 **do?**
 3 A. An example might be that if you were
 4 looking at doing something within the confines of
 5 the medical unit or if you wanted to impose harm to
 6 people and you want that to really mean something,
 7 what help is available to them at that time? And
 8 that's where staffing levels might have an
 9 implication.
 10 MR. KENDALL: Are you done with that
 11 question?
 12 MR. BRODIS: I think so.
 13 MR. KENDALL: Can we take a quick break?
 14 MR. REYMANN: Sure.
 15 (Recess.)
 16 **Q. I'd like to keep going and look at number**
 17 **8, which says, "Written Inmate Hygiene Policies and**
 18 **Procedures," "Written Sanitation Policies and**
 19 **Procedures." I'd like to ask you to explain how**
 20 **hygiene or sanitation can relate to safety and**
 21 **security.**
 22 A. Well, again, it outlines things that might
 23 talk about clothing exchange and when is that done.
 24 Again, that can be a hub for contraband. It talks
 25 about razor disposals. Obviously, those are big

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1 concerns within a correctional facility. Even just
 2 how you dispose of various different things that
 3 could be subject to somebody who wanted to undermine
 4 the safety and security.
 5 **Q. If you'll turn to page number 11. At the**
 6 **very top of the page, "Written Living Environment**
 7 **Policies and Procedures" and "Written Living Area**
 8 **Furnishings Policies and Procedures." I'd just like**
 9 **to ask you also, how do those relate to safety and**
 10 **security concerns?**
 11 A. Again, if you read further -- I'm sorry,
 12 but I'm just reading a little bit further than you
 13 did -- it tells you, you know, your floor security
 14 staff, the building and grounds security checks,
 15 head count, post orders, what equipment they should
 16 have and shouldn't have, key security, how we do the
 17 key security, the searching of male and female
 18 inmates, shakedowns and our procedures for that.
 19 **Q. Are you saying that basically if the**
 20 **standard would reveal something about how the jail**
 21 **operates, that could be used to create mischief,**
 22 **that's a safety and security concern?**
 23 A. Absolutely.
 24 **Q. By your definition, doesn't that apply to**
 25 **just about any of the policies, though? For sure,**

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1 the vast majority of them?
 2 A. A good portion. And that's why you see
 3 the heavy redaction when you look through our
 4 policies.
 5 Q. I want to switch gears a little bit,
 6 Mr. Butcher, and ask you questions about the AARMS
 7 system we were discussing earlier. Before you look
 8 at the exhibit, if I could just ask you, do you know
 9 how many individuals at Davis County have a log-in
 10 to the AARMS system?
 11 A. Currently, 10.
 12 Q. And are you aware of any limitation on how
 13 many users can be created?
 14 A. My understanding is that there's not a
 15 limitation that's set necessarily by AARMS.
 16 (Exhibit No. 15 was marked.)
 17 Q. If you could then look at Exhibit 15. Can
 18 you identify this document?
 19 A. So it's a little faded at the very top,
 20 but obviously it's an e-mail trail.
 21 Q. That didn't print out very well.
 22 A. It obviously involves Lieutenant Wayne
 23 Callister, retired. And I believe it's to somebody
 24 with the AARMS system, either Tate McCotter or . . .
 25 Q. I apologize for the quality on that. I

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1 didn't realize it didn't print out well. If you'll
 2 look at the middle of the page, that's the main part
 3 I want to identify. There's an e-mail. You can see
 4 it says, "Tate McCotter wrote:" And then you can
 5 see he says, "FYI you can have as many users as you
 6 want. There is no user limit within AARMS." So
 7 that accords with your understanding, then, of how
 8 many users Davis County is permitted to have in the
 9 AARMS system?
 10 A. Yes.
 11 Q. And that is unlimited.
 12 A. Yes.
 13 Q. Help me better understand the AARMS
 14 system. If you weren't able to use the AARMS
 15 system -- if you'll engage me in this hypothetical
 16 for a minute.
 17 A. Okay.
 18 Q. If the AARMS system was unavailable for
 19 some reason, is it true that they could provide you
 20 with, say, a three-ring binder that had the Jail
 21 Standards printed in them?
 22 A. That's feasible, sure.
 23 Q. And then instead of feeding information
 24 into the AARMS system, they could send you a letter
 25 or PDF with the same information contained and you

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1 could put it in a filing cabinet at the Davis County
 2 Jail.
 3 A. That's feasible, yes.
 4 Q. Do you see any difference between that
 5 system and what's going on in terms of the substance
 6 of the work you do with the standards?
 7 A. Yes.
 8 Q. What's the difference, if you can explain
 9 it?
 10 A. Well, because it's a paper that is
 11 reproduced and put out there, the AARMS system is
 12 controlled. Even though it does say in Exhibit 15
 13 we talk about, yeah, it is unlimited. Meaning that
 14 AARMS is not putting a limit on us. But we choose
 15 the number of people that we're going to have. And,
 16 again, it's an access that's controlled. Where a
 17 three-ring binder, what is your control over a
 18 three-ring binder necessarily? Especially to be
 19 able to document. I mean, you could show . . .
 20 Q. I guess my question is directed to the
 21 substance of what is being conveyed. You'd agree
 22 that it's just a format choice that was made at some
 23 point. The material could be presented in a
 24 different format without any loss of the substance
 25 of what's being communicated.

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1 A. Sure. That's possible, yes.
 2 Q. Would you agree with the analogy that it's
 3 an online filing cabinet?
 4 A. No. I don't agree with that.
 5 Q. Okay. Have you personally had any
 6 communications with Gary DeLand or one of his
 7 representatives or affiliates about this lawsuit?
 8 A. Not about this lawsuit, no.
 9 Q. What about the underlying GRAMA requests
 10 that led to the lawsuit?
 11 A. Sorry, I'm trying to remember his name.
 12 The attorney we were just talking about this
 13 morning.
 14 MR. KENDALL: Can we go off the record?
 15 (Off the record.)
 16 MR. REYMANN: I don't have a problem with
 17 you guys talking while there's a pending question,
 18 but I'd like to hear it.
 19 MR. KENDALL: He's just trying to find --
 20 MR. REYMANN: Yeah, I figured.
 21 MR. KENDALL: Forget about it.
 22 Q. Are you aware of Gary DeLand's
 23 communications with Davis County about this lawsuit?
 24 A. I mean, when I reviewed documents, and I
 25 think we covered some of those e-mails where he just

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<p style="text-align: right;">54</p> <p>1 reaffirmed that either through the Sheriffs' 2 Association or people at Davis County that their 3 position is neither him nor Tate McCotter would 4 release their products. 5 (Exhibit No. 16 was marked.) 6 Q. So you've just been handed Exhibit 16. 7 Can you identify this document for me? 8 A. This is an e-mail from Gary DeLand to 9 Todd Richardson, the retired sheriff of Davis 10 County. 11 Q. Are you familiar with why this e-mail was 12 sent? 13 A. I believe I remember seeing this in 14 review. There was a request for the copyright that 15 Mr. DeLand had on his product, and he was providing 16 this. 17 Q. Are you aware of whether it was related to 18 this GRAMA request that forms the basis for this 19 lawsuit? 20 A. I can't say if I know that or not. 21 (Exhibit No. 17 was marked.) 22 Q. You now have Exhibit 17 in front of you. 23 Could you identify this document for me. 24 A. This is an e-mail from Mr. Gary DeLand to 25 Mr. Michael Kendall. And it's in reference to GRAMA</p>	<p style="text-align: right;">56</p> <p>1 the ACLU. 2 Q. And when was that? 3 A. It was at a training that we were at. I 4 don't remember the specific date of that. 5 Q. Any ballpark? Was it fall? Summer? 6 A. It would have been fall or winter of this 7 last year. 8 (Exhibit No. 19 was marked.) 9 Q. Could you identify Exhibit 19 for me? 10 A. This is an e-mail from Mr. Kendall to 11 Mr. Gary DeLand; Randy Elliott, commissioner, Davis 12 County; Bret Millburn, commissioner, Davis County; 13 Jim Smith, commissioner, Davis County; Curtis Koch, 14 clerk/auditor, Davis County. And Troy Rawlings as 15 well as Neal Geddes are the Davis County Attorney's 16 Office. Again, the subject in the lawsuit by ACLU 17 of Utah and DLC against Davis County. 18 Q. And I'll ask you again, are you aware of 19 any communications with Mr. DeLand that followed? 20 A. My personal knowledge, no. 21 Q. Have you been informed that Davis County 22 has had additional communications with Mr. DeLand? 23 A. It's my understanding they have talked to 24 him, yes. I'm not sure of the time frames. 25 Q. I want to go back with what we talked</p>
<p style="text-align: right;">55</p> <p>1 appeal for the Utah State Records Committee. 2 Q. Were you involved in any follow-up 3 communications in response to this e-mail? 4 A. No, I was not. 5 Q. Were you informed of any communications 6 that did occur between Mr. DeLand and anyone else at 7 Davis County following this e-mail? 8 A. Not that I can recall specifically. 9 (Exhibit No. 18 was marked.) 10 Q. You've now been handed Exhibit 18. Could 11 you identify this document. 12 A. This is an e-mail from Mr. Kendall to 13 Mr. Blake Hamilton and copied to Troy Rawlings. 14 Again, the subject is "District Court Suit by ACLU 15 of Utah and Utah Disability Law Center against Davis 16 County." 17 Q. You mentioned an attorney a moment ago. 18 Is Mr. Blake Hamilton that attorney, or was it a 19 different attorney whose name you were trying to 20 think of a moment ago? 21 A. I think it was Blake. 22 Q. Have you had any communications with 23 Blake? 24 A. What I was going to say before is I asked 25 him if he was aware that we had a pending suit with</p>	<p style="text-align: right;">57</p> <p>1 about earlier with Mr. DeLand's creation of the Utah 2 Jall Standards in sort of the early '90s time 3 period. 4 A. Right. 5 Q. And then at some point after that Davis 6 County began using the Utah Jall Standards in some 7 capacity. 8 A. Yes. 9 Q. And your testimony was that you weren't 10 aware of exactly when that occurred. 11 A. Right. 12 Q. But with that point of time in mind, can 13 you identify any written claim of business 14 confidentiality that Mr. DeLand made at that time 15 regarding the Utah Jall Standards? 16 A. Specifically can I identify? I don't know 17 if I could say specifically. My understanding is 18 that when he did produce those, it was with the 19 ability that he could retain his copyrights of 20 those. 21 Q. His copyright, I understand. But with 22 respect to confidentiality, was there a 23 nondisclosure agreement that was signed? 24 A. I can't say if I'm aware of a 25 nondisclosure that was signed at that time or not.</p>

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1 Q. Anything else that you're aware of
2 relating to Mr. DeLand's attempts to keep these
3 confidential at the time?
4 A. Well, I do know if you read through them
5 what is the preface and the forward, that
6 specifically talks about those particular issues and
7 that it is a business thing and it is his
8 intellectual product.
9 (Exhibit No. 20 was marked.)
10 Q. You've now been handed Exhibit 20. Can
11 you state what this document is?
12 A. It appears to be an End User License
13 Agreement. I see that it references NIJO, which is
14 National Institute for Jail Operations, as well as
15 AARMS system.
16 Q. Earlier in your testimony you referenced
17 an End User License Agreement as being a basis for
18 Davis County's position in this lawsuit. Is this
19 the End User License Agreement that you were
20 referring to earlier?
21 A. To my understanding, yes, it is.
22 Q. So that we're clear on the record, this
23 document is one of the bases on which Davis County
24 is refusing to produce.
25 A. One of them, yes.

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1 Q. Can you identify any particular provisions
2 or language? You can take your time to review the
3 agreement, if you need to.
4 A. Okay.
5 Q. But I'd like you to identify any
6 particular provisions of the agreement that are
7 relevant, that you believe are relevant, to your
8 basis for withholding.
9 MR. KENDALL: I'm going to object to the
10 question to the extent it calls for a legal
11 conclusion.
12 Q. Just your understanding.
13 A. In number one it talks about, "NIJO grants
14 you the following rights provided that you comply
15 with all terms and conditions of this End User
16 License Agreement." It talks about how you access
17 it and it requires a user name and password. That,
18 to me, would give an indication that this is
19 protected, not to be shared with any organization
20 under no circumstances. It prevents dual log-ins,
21 sharing of user names and passwords. It talks about
22 the right of NIJO to fully prosecute to the fullest
23 extent of the law and remove access. It's designed
24 to prevent unlicensed use of software. Must be
25 permitted by NIJO. Again, it talks about not being

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1 able to share user name and password. Section 2
2 talks about secure content and intellectual
3 properties including copyrights. Number 3 is
4 specific about reservation of rights and ownership.
5 I mean, to me, this whole document is that this is a
6 protected product.
7 MR. BRODIS: I think I'd like to take
8 another break, if we can at this point. I think
9 we're getting pretty close.
10 (Recess.)
11 Q. I'd like to take you back to the internal
12 self-evaluations that are performed at the Davis
13 County Jail. I want to talk a little bit about the
14 work product that's produced. Can you clarify for
15 me, so that we have a clear record, about what work
16 product is generated as a result of those internal
17 self-evaluations.
18 A. From Davis County?
19 Q. Yes.
20 A. It's all in the AARMS system. Like I will
21 log on and I can see our progress. I can look at
22 the different standards and I can see whether or not
23 we've gone through and shown our due diligence to be
24 in compliance with that particular standard.
25 Q. So all of the progress is tracked just

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1 through the AARMS system, then.
2 A. Yes.
3 (Exhibit No. 21 was marked.)
4 Q. Can you identify Exhibit 21?
5 A. So this is an e-mail from Darin Durfey to,
6 again, various people throughout the state
7 associated with jails. The subject is the Utah
8 Sheriffs' Association Facility Status Report 2016.
9 (Exhibit No. 22 was marked.)
10 Q. I'll ask you to identify Exhibit 22, if
11 you could.
12 A. This is an e-mail from Darin Durfey again
13 to various members throughout the state associated
14 with jails. Self-audits and jail inspection is the
15 topic.
16 (Exhibit No. 23 was marked.)
17 Q. And then on Exhibit 23 I'll ask you the
18 same question. If you could please identify what
19 this document is.
20 A. This is an e-mail from Mike Kendall to
21 Mr. Blake Hamilton. And it is reference to the ACLU
22 versus Davis County motion to intervene.
23 MR. BRODIS: We have no further questions.
24 Would you like to read and sign?
25 MR. KENDALL: Yes, please.

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1 (Signature requested.)
 2 (Whereupon the taking of this deposition was
 3 concluded at 11:20 a.m.)
 4 * * *
 5 Original transcript filed with Mr. Brodis.
 6 Reading copy submitted to Mr. Kendall.
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1 C E R T I F I C A T E
 2 STATE OF UTAH)
 3 COUNTY OF SALT LAKE)
 4 THIS IS TO CERTIFY that the deposition of ARNOLD
 5 BUTCHER was taken before me, Shelly Wadsworth, a
 6 Registered Professional Reporter in and for the State of
 7 Utah.
 8 That the said witness was by me, before
 9 examination, duly sworn to testify the truth, the whole
 10 truth, and nothing but the truth in said cause.
 11 That the testimony was reported by me in Stenotype,
 12 and thereafter transcribed by computer under my
 13 supervision, and that a full, true, and correct
 14 transcription is set forth in the foregoing pages,
 15 numbered 5 through 62 inclusive.
 16 I further certify that I am not of kin or otherwise
 17 associated with any of the parties to said cause of
 18 action and that I am not interested in the event thereof.
 19 WITNESS MY HAND this 24th day of January, 2019.
 20
 21 
 22 _____
 Shelly Wadsworth, RPR, CRR
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1 C E R T I F I C A T E
 2 STATE OF UTAH)
 3 COUNTY OF _____)
 4 I HEREBY CERTIFY that I have read the foregoing
 5 testimony consisting of 58 pages, numbered
 6 from 5 through 62 inclusive, and the same is a true
 7 and correct transcription of said testimony except as
 8 I have indicated said changes on enclosed errata sheet.
 9
 10
 11
 12 _____
 ARNOLD BUTCHER
 13
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 15
 16 Subscribed and sworn to at _____
 17 this _____ day of _____ 2019.
 18
 19
 20
 21
 22 _____
 Notary Public
 23
 24 My commission expires:
 25 * * *

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