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June 11, 2016

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

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

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

Dear Leah:

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

Timeline of response

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

Status of investigation and related classifications

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

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

Records requested

1. Chronological logs, complaint logs or service calls

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

2. Initial contact reports

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

3. After-incident reports

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

4. Photographs

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

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

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

5. Body camera footage

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

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

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

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

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

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

7. All other public records concerning the Incident

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

Appeal rights

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

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

Best regards,

/s

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

Ms. Leah Farrell
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Enclosures

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

David C. Reymann (dreymann@parrbrown.com)

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