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May 22, 2017

Nova Dubovik
State Records Committee
Utah State Archives Records and Service
346 S. Rio Grande St.
Salt Lake City, Utah

Ms. Dubovik,

This is a request for a hearing before the Records Committee on the Utah Transit Authority's denial on appeal of a Salt Lake Tribune request for conflict of interest disclosures filed by UTA board members.

UTA President and CEO Jerry Benson on May 8 denied The Tribune's appeal citing two main provisions of GRAMA.

First, 63G-2-302(2)(b), allowing a privacy classification of records describing an individual's finances. Second, 63G-2-302(2)(d), which allows privacy classification of information when its disclosure would constitute a clearly unwarranted invasion of privacy.

The Tribune would first like to address 63G-2-302(2)(d).

This GRAMA provision was central in the pro-public access ruling in *Deseret News v. Salt Lake County*. The Utah Supreme Court found that GRAMA "does not sanction denying access to a record merely because it invades personal privacy. To qualify for nonpublic classification a record must not only invade personal privacy, it must do so in a 'clearly unwarranted' manner."

The decision went on to say that this determination goes right to the heart of GRAMA's balancing of public access interests vs. privacy interests, and 63G-2-302(2)(d) "necessarily demands an expansive and searching evaluation of the interests that might make an invasion of personal privacy warranted."

Justices determined that the threshold for unwarranted invasion of privacy is particularly high when it involves public officials, because of the inherent public interest in being able to examine the propriety of their conduct.

The Utah justices cited other state records access statutes in helping interpret GRAMA and singled out a Wisconsin case (*Local 2489, AFSCME v. Rock County*), which they quoted in part: "When individuals become public employees, they necessarily give up certain privacy rights and are subject to a degree of public scrutiny."

Utah's high court also examined a pro-public access ruling in a Montana privacy case, concluding "Like Montana and Wisconsin, we believe that the public interest in governmental accountability will often prevail over the interest of insulating an official from unwanted intrusion." The circumstances in that case involved sexually related accusations and/or conduct, but The Tribune asserts that the principle also applies here.

Deseret News v. Salt Lake County established once and for all that courts must apply the standard contained in GRAMA's legislative intent that public-access interests prevail even when the countervailing privacy interests are of equal weight.

The Tribune believes it is clear that the release of the information requested here from UTA, whether an invasion of privacy or not, is clearly warranted. The disclosures requested, limited as they are, provide a window into top-level policy-making public officials' potential conflicts of interest and whether or how much those might influence, interfere with or complicate the officials' ability to faithfully perform their public duties.

Turning now to the first claim of privacy, 63G-2-302(2)(b) says that records are private, if properly classified, that "describe an individual's finances." Among the exemptions from this provision are records that must be disclosed in accord with another statute.

The Tribune would point the committee to **Title 67 Chapter 16**, the Utah Public Officers' and Employees' Ethics Act and its requirement that public officers must publicly disclose business interests, loans, compensation or involvement in any transaction with any entity that might be regulated by the public agency on which the public officer serves.

It prohibits public officers from having employment that might impair their independence of judgment in the performance of public duties or that might interfere with the ethical performance of their public duties. And it requires, upon threat of criminal violation, a public officer to disclose a gift, loan, or economic benefit if the public officer is, has been or may be involved in any government action directly affecting the gift-giver or lender. It requires disclosure of any compensation or any involvement in any transaction with any business in which the public officer may be an officer, director, employee or owner.

In all of these instances the disclosure is public and must be available for public inspection.

Elected officials and candidates for public office — either for a statewide elected office, the state Legislature or the state Board of Education — are all required to file financial disclosure forms which are public. These disclosures must contain much of the same information as UTA disclosures: all current and recent employers, businesses and the official's/candidate's position, ownership. Also required is disclosure of every person or business from which the officeholder/candidate received \$5,000 or more, or in each business in which the officeholder/candidate has an investment of \$5,000 or more.

The Legislature, in its ethics rules, states the reasoning behind and intent of such disclosure: "It is necessary to reconcile the functions of privately employed legislators who have their own private interests with the maintenance of high ethical standards and public confidence."

UTA in its own explanation of the disclosure requirement states that "the purpose of the report is to address and/or avoid involvement in any matter that may create a real or perceived conflict of interest in connection with or between your [the board member's] duties for UTA and your private financial matters."

The forms themselves indicate that the information reported is not intended to describe board members' individual finances.

It instructs — in all capital letters — that "It is important to note that you are not required to report the specific dollar amounts of your holdings. The purpose of this report is not to disclose your financial position, but to disclose and address potential conflicts of interest."

The Tribune takes at face value the UTA's labeling of these forms as not about disclosing a trustee's finances, but about potential conflicts of interest. In all of the other statutory and regulatory framework for averting/disclosing conflicts of interests — for any public employee, officer, or candidate or elected officeholder — public disclosure is mandatory.

The reason for this is articulated well in the Utah Public Officers' and Employees' Ethics Act (67-16-2): "In this manner the Legislature intends to promote the public interest and strengthen the faith and confidence of the people of Utah in the integrity of their government."

The Tribune contends that the goal of promoting faith and confidence of the people in their government necessitates openness and transparency, as represented in the public disclosure of such conflict of interest declarations.

This is the very goal UTA President and CEO Benson articulates in his appeal denial, stating that the organization is "dedicated to openness, transparency, and increasing opportunities for public engagement."

Nevertheless, Benson subsequently argues that "the public interest is served by protecting [board members'] privacy interests" to encourage full, candid disclosures.

The problem with this approach is that it turns on its head GRAMA's balancing construction favoring public access interests over privacy. It ignores Utah laws already requiring public disclosure of conflict of interest declarations and falsely believes that public confidence in government integrity can be maintained through a system of internal review that tells the public, in essence, "trust us."

Thank you for your service and time.

Respectfully,

Taylor W. Anderson
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