

GRAMA Notice of Appeal to State Records Committee

Note: Utah Code § 63G-2-403 (GRAMA) provides that any person may further appeal the chief administrative officer's denial of an appeal by filing a notice of appeal with the State Records Committee. This notice must be filed within 30 days of the response from a governmental entity's chief administrative officer or no later than 45 days after the records request was made if the following occur: the governmental entity claims extraordinary circumstances, and the chief administrative officer failed to make a determination.

Requester's information

Name: Kimball Bennion Date: 7-19-2019

Address: 299 S. Main St., Suite 150, Salt Lake City, UT 84111 City/State/Zip:

Daytime telephone number: 801-839-1333

Make request to

SRC Executive Secretary
346 South Rio Grande Street
Salt Lake City, Utah 84101
gproctor@utah.gov

Explanation of Relief Sought

Note: Relief can relate to conflicts over denial of access to records (Utah Code § 63G-2-402) as well as disputes over fees (Utah Code § 63G-2-203(6)) or extraordinary circumstances (Utah Code § 63G-2-402).

The State Records Committee can also use the weighing provision to order the release of records that are properly restricted if it determines that the interests favoring access are greater than or equal to the interests favoring restriction (Utah Code § 63G-2-203(11))

On behalf of KUTV 2 News, I appeal the denial of my request made to Brigham Young University Police seeking the recording or recordings of any interview conducted in December 2017 with Joseph L. Bishop as part of a police investigation into case #17BY05023.

My request was initially denied by Lt. Steven Messick on May 29, 2019, under the claim that releasing the record "constitutes a clearly unwarranted invasion of personal privacy" [63G-2-302(2)(d) and (g)]. That decision was upheld by Chief Chris Autry on June 20.

In his denial, Chief Autry wrote that despite what has already been made known in media reports, "there are privacy interests in the remaining portions, and those privacy interests were an important part of Lt. Messick's original designations regarding the records."

While BYU Police has not specified what those exact concerns are, I believe the public's right to know outweighs whatever rights to privacy might yet exist in this case, regardless of how much is already known in the public realm [63G-2-403(11)(b)]. We know already the identity of Bishop's accuser, who has gone public with those allegations and has filed suit against Bishop in federal court. Additionally, it seems that at least a portion of the recordings I am seeking was publicized by the Salt Lake Tribune in June.

As that report makes clear, there are still lingering questions about how this case was investigated, how Bishop described to police his side of the allegations against him and when his employers became aware of those allegations. All of those concerns are of immense public interest, and I do not believe they carry any substantial privacy interests that would outweigh it.

Despite what we already know, I believe there are lingering questions that necessitate a full public accounting of this case.

As this committee is aware, I and others sought relief for a finding that would make these same records public in May 2018. While the committee found in our favor, that finding was ultimately made contingent on whether BYU Police would be recognized by the state as a public agency subject to open records law.

That question has been firmly answered after the Utah Legislature passed Senate Bill 197, which makes agencies like BYU Police subject to open records statutes. That law went into effect on May 14. This recent change in the law is the reason why I submitted this separate request. I acknowledge that my previous request is still being litigated in the courts. I do not view this present appeal as duplicative because of the profound change in circumstances between last year and today. Since BYU Police still retains these records, and since it is now considered a public agency subject to GRAMA, I believe this request deserves a new hearing under these new circumstances.

Inclusions for notice of appeal

The State Records Committee requires documentation and has specific appeals procedures which are outlined in Administrative Rule: Title R35. Administrative Services, Records Committee, and should be reviewed by a petitioner.

This petition to appeal to the State Records Committee requires the following attachments or inclusions:

- Statement of facts, reasons, and legal authority in support of this appeal
(see Utah Code § 63G-2-403(3)(b)).
- Original GRAMA request
- Notice of denial from the governmental agency's records officer
- Notice of appeal to the governmental entity's chief administrative officer (Optional)
- Notice of decision from the governmental entity's chief administrative officer

This notice of appeal must, **on the same day**, also be forwarded to the governmental entity to which the records request was made (Utah Code § 63G-2-403(3)).

- Notice of appeal sent to agency

Request assistance

A petitioner may request assistance from the government records ombudsman. The ombudsman's responsibility is to serve as a resource for a person who is filing an appeal relating to a records request. The ombudsman may also attempt to mediate disputes between requesters and responders (Utah Code § 63A-12-111(2)).

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