

Poplar Grove Neighborhood Alliance
Barrio Álamo Arboleda Alianza



31 July 2018

DELIVERED VIA ELECTRONIC MAIL

Utah State Records Committee (SRC)
% Ms. Proctor, SRC Executive Secretary
346 South Rio Grande
Salt Lake City, Utah 84101-1106

Subject: Street Closure Permits

Dear Records Committee,

On behalf of the Poplar Grove Neighborhood Alliance and in accordance with Utah Code § 63G-2-403 (GRAMA) we are appealing, Salt Lake City Mayor Biskupski's office, denial of our GRAMA appeal ¹. We submit this **Notice of Appeal**, pursuant to Utah Code §63G-2-203(6)(a) which stipulates the following:

A person who believes that there has been an unreasonable denial of a fee waiver...may appeal the denial in the same manner as a person appeals when inspection of a public record is denied...

We initially requested public records associated with two street closures that were initiated by separate City departments, in the Poplar Grove area. ² In this appeal, we will reveal the elements that constitute the Biskupski administration's:

...unreasonable denial of [our] fee waiver... ³

Moreover, it is our intent to set forth the GRAMA violations employed by the Biskupski administration in denying our appeal of a fee waiver. We will also unmask the multiple tactics deployed by the City bureaucracy, with the sole purpose of thwarting civic engagement of its westside residents. The Records Committee will also note that throughout the email exchanges disclosed in this appeal, we have asked for copies of the traffic permits that Ms. Oman ⁴ references throughout her emails with us. Consequently, we have been forced to invoke GRAMA because the current culture amongst the various departments within the Salt Lake City government is to ignore residents' questions with the hope that they will go away out of frustration. However, we cannot go away because of our belief that deliberative democracy insists on a meaningful role for citizens in public decisions. Yet, we prevented from having a meaningful role because those in the Biskupski administration will do all in their power to ensure that we are barred from obtaining all the information.

¹ See Mr. David Litvack (Deputy Chief of Staff, Salt Lake City Mayor's Office) Appeal Denial Letter 07/03/18

² See Poplar Grove Neighborhood Alliance -GRAMA Request 05/18/18 (City Records Request C047201-051818)

³ See Utah Code §63G-2-203(6)(a)

⁴ Ms. Oman is the Manager of Salt Lake City's Sewer Collections Department

PROCEDURAL HISTORY

On May 18, 2018 – We submitted a GRAMA request for copies of all Traffic Control Permits that the SLC Transportation Division has issued in reference to the 400 South Pipeline Project for the time period of January 18, 2018 to the present. Additionally, I am requesting emails for the time period of January 2018, to the present, generated by or sent to (including cc & bcc) in reference to the Paint the Pavement project on 300 S. between 1135 W and Emery St. that occurred on May 14th, 2018. This request is limited to the following Salt Lake City employees (four):

1. *Lewis Kogan of the Parks & Public Lands*
2. *Blaine Raby of the Department of Public Utilities*
3. *Jenni Oman of the Department of Public Utilities*
4. *Kevin Young of the Salt Lake City Transportation Division* ⁵

On May 29, 2018 – Salt Lake City Records send us a Fee Waiver Denial Letter:

Please be advised that your fee waiver request is denied. Salt Lake City charges a fee of \$11.00 per hour for the cost of staff time for search, retrieval and other direct administrative costs for complying with a request pursuant to Utah Code § 63G-2-203(2)(a)(ii). We estimate 4 hours of staff time to research and compile responsive records for your request. As a result, a prepayment of \$41.25 (first quarter hour of staff time is free) is required before the City will begin to process your records request. ⁶

On June 14, 2018 – Salt Lake City Records sends us the following message:

In regards to the City Records Request (GRAMA) received on 5/18/2018 requesting Correspondence records, the records have been waiting for payment for 10 business days. The Salt Lake City Corporation now considers this request closed...please be aware that if a requester has not paid fees from previous requests, the City could require payment of past fees before beginning to process a new or different request. If you would still like the records, please submit another City Records Request (GRAMA) ⁷

On June 18, 2018 – We filed a GRAMA Notice of Appeal to Salt Lake City's Chief Administrative Officer:

Please note, throughout this exchange we have asked for copies of the traffic permits that Ms. Oman consistently references throughout her emails. In response to that request, Ms. Oman sends us to the Transportation Division. We were told that we had to submit a GRAMA request for the information. The reply we received from that request, was that we needed to pay a fee for the information. We dutifully complied. The copy of the traffic control permit we received, was not the one that Ms. Oman referenced in her emails. As noted above, I asked Ms. Oman to send me a copy of the traffic control permits that she has referenced, she has now gone into the ignore mode, which is a common tactic among Salt Lake City employees ⁸

On July 3, 2018 – We received a letter from Mayor Biskupski's Deputy Chief of Staff advising us that he is upholding the fee waiver denial.

In this case you have failed to demonstrate that a fee waiver benefits the public generally...while the email correspondence might provide some insight into inter-departmental communication...production of other traffic permits would not significantly contribute to public understanding of the operations of the city...your appeal is denied ⁹

On July 31, 2018 – We submitted a Notice of Appeal to the Utah Records Committee. ¹⁰

⁵ See GRAMA Request 05/18/18 *opt cit.*

⁶ See Salt Lake City Records – Fee Waiver Denial Letter 05/29/18

⁷ See Salt Lake City Records – Closing GRAMA Request, Notice 06/14/18

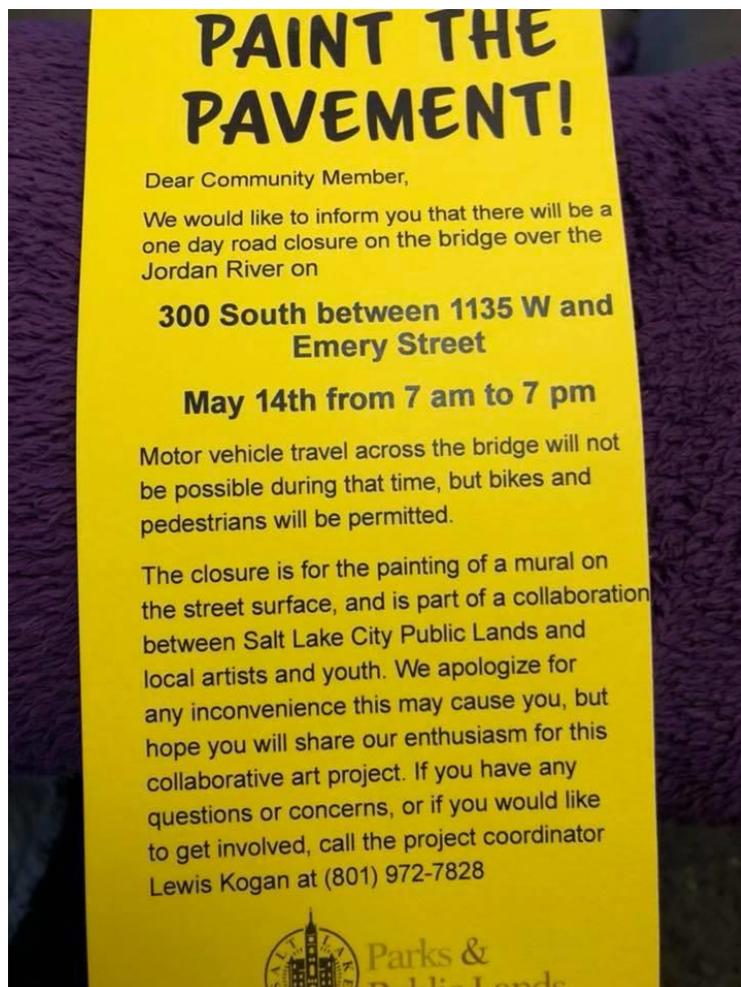
⁸ See Poplar Grove Neighborhood Alliance -GRAMA Notice of Appeal 06/18/18

⁹ See Litvack Denial Letter 07/03/18 *opt cit.*

¹⁰ See Poplar Grove Neighborhood Alliance -GRAMA Notice of Appeal to the State Records Committee 07/31/18

BACKGROUND

May 1, 2018: Residents living on 300 S. in the Poplar Grove area received a yellow flyer on their door, informing them that 300 S. was going to close on May 14th, for a pavement paint project. Residents contacted the number on the flyer wanting to know if this project was coordinated with the Utility department that has 400 S. completely closed from 900 W. to 100 W. and is diverting all traffic to 300 S.



May 2, 2018: In addition to residents calling the number on the yellow flyer, we sent emails to both the Utilities Department and the Public Lands Department. Additionally, we sent a copy of the emails to the Mayor's Public Engagement Director, explaining the following:

I have cc-ed both of you on this, looking for your assistance in getting a response from these two City departments. In the past, I have not received a response from the SLC Water Projects. It is important, that when City departments send out notices with contact information, they should respond to citizens that make inquiries. When they don't respond, and I seek other avenues to get answers, people get their feelings hurt and then go into retribution mode. It is easier for all involved for City employees to extend to citizens, the courtesy of a response in the first instance. ¹¹

May 3, 2018: We contacted the Public Utilities Department at their main number and they connected us to Blaine Raby who advised us that he was not aware of the 300 South closure and that 400 South would remain closed. This leaves very few options for the traffic and UTA bus to travel through without disrupting resident's ability to get to work on that day.

¹¹ See Michael Clara email to Ms. Jennifer Seelig, Director of Community Empowerment -Salt Lake City Mayor's Office – 300 South Closure 05/04/18

All attempts to contact Lewis Kogan resulted in negative a response. We tried the phone number on the yellow flyer, email, twitter, Facebook and going through the Mayor's office and the City Council Office with no response to date. We are trying to piece together why the Transportation Division would authorize the closing of two parallel street, giving about 13,000 vehicles very little options (including the UTA bus) to travel on that day:



The Salt Lake City Parks and Public Lands Department, notified residents (via a door hanger) that 300 S. would close on May 14th for an art project.

Resident have called the phone number on the flyer with no response. The SLC Utilities Department has closed 400 S. for a construction and diverted all traffic (including the UTA Bus) on to 300 S. that the Parks and Public Lands Department now wants to close. Now they will not return phone calls, emails, factbook or twitter. This is Shameful.

Tweet
 Michael Clara @donMiguelSLC
 Hey @SLCPPPL are you coordinating with @SLCPCU ? They have 400 S closed and are currently diverting traffic to 300 S. Will 400 S be open on May 14th? #utpol

PAINT THE PAVEMENT!
 Dear Community Members:
 We would like to inform you that there will be a one day road closure on the bridge over the Jordan River on
 300 South between 1135 W and Emery Street
 May 14th from 7 am to 7 pm
 Motor vehicle travel across the bridge will not be possible during that time, but bikes and pedestrians will be permitted.

May 4, 2018: We received an email from Jenni Oman from the Department of Public Utilities. Contrary to what we were told the previous day, she stated that the two projects were indeed coordinated:

...the detour uses 500 South and 300 South as alternatives for 400 South. On May 14th, 200 South will be supplemented for 300 South. While 500 South is a more narrow road than 400 South, the Transportation Division, who issues the traffic control permits, felt it was an acceptable alternate, and could handle the additional traffic...

She further stated:

...Our contractor for the pipeline project received a road closure permit form the Transportation Division. They were notified two months ago...

Later in the day, in response to a question that we posed, she sent the following clarification:

...I figured attaching a map would help clarify. I drew it, so I apologize that it doesn't have all the official traffic control measures listed. But it should give you a feel for how May 14th will go. Only the westbound traffic will be detoured on Goshen.

On May 14th, westbound will be open through the construction area from Goshen on. While Goshen is a smaller city road, the **Transportation Division is involved in all traffic control permits** and has deemed it okay for the use for this temporary detour. In my experience, Transportation is very good at making sure what the contractor suggests is going to work and is the least impactful choice for the detour. They have definitely always been an asset when I am trying to figure out detours, as that is their specialty, and mine is utilities. I hope the map helps. I figured that was a better way of presenting my answer than trying to explain it in type. Thank you again for following up. I always appreciate a citizen active in their community. That is part of why I love working for and living in SLC! ¹²



May 10, 2018: We received a Fee Waiver Request Notice of Denial from the City, in reference to a May 3rd GRAMA request that we filed. We paid the requested fee and the City provided us with a copy of the Traffic Control Permit. ¹³ However, it did not describe the detour routing that vehicles should follow incidental to the road closure:



Traffic Control Permit
 Salt Lake City Community and Neighborhoods
 Division of Transportation
 349 South 200 East #150
 Salt Lake City, Utah 84111
 Telephone (801) 535-6630
 E-Mail TechPermit@slcgov.com

Permit # TRN2018-00744

Organization Name: Salt Lake City Trails and Natural Lands Program
 Address: 1965 W 500 S SALT LAKE CITY, UT 84104
 Contact Person: LEWIS KOGAN Phone: 801-972-7828 Cell: [REDACTED]
 Barricade Company: Barricade Phone:

All work conducted in the public right of way shall conform to the current edition of the M.U.T.C.D. part 6. The Organization issued the Traffic Control Permit shall be responsible for all barricade placement and maintenance.

Project Name / Description: Specific Work Type: Barricade
 General Work Type: Block Party Public Way Permit #
 City Project # Block Party Permit #
 Special Event Permit #

Closure Type	On Street Name	From Number	To Number	Side of Street
Street	300 S	1115 W	1191 W	Both Sides

Start Date	End Date	Full Road Closure?	Barricade Manual Fig #	Special Requirements
05/14/2018	05/14/2018	Yes	TA-20	SHALL USE TA-20 FOR A LOCAL ROAD CLOSURE. SHALL MAINTAIN ACCESS TO ALL PROPERTIES. SHALL INFORM BUSINESSES & RESIDENTS OF PROJECT & DURATION. SHALL COORDINATE WITH BUSINESSES & RESIDENTS AFFECTED.

¹² See email from Jenni Oman, SLC Sewer Collections CIP Manager to Michael Clara – 300 South Closure 05/04/18

¹³ See Traffic Control Permit # TRN2018-00744 – City provided on 05/16/18 in response to GRAMA Request (City Request #C046522-050318) we filed on May 3, 2018. The City levied a \$11.00 fee for this information.

We then sent an email to Jenni Oman of the Department of Public Utilities we advised her that we had received a copy of the Traffic Control Permit and that:

*I am not seeing anything in this traffic control permit that outlines the detour you described in your email. Can you please send me a copy of the "road closure permit" you referenced in your email of May 14th?*¹⁴

May 11, 2018: Jenni Oman replied:

Page | 6 of 17

*Transportation is the division that coordinates between the traffic control permits, as they are the people that issue them. They would be your best resource for obtaining, reviewing, and comparing the two permits. Whitaker has been updating their TC permit with Transportation as work progresses...*¹⁵

This response from Ms. Oman is frustrating in that, based on the email we received from her the previous week, we submitted a GRAMA request¹⁶ to the Transportation Department, requesting a copy of the traffic control permit she referenced in her email.¹⁷ As you can see, upon receiving a copy of the traffic control permit, we sent Ms. Oman an email explaining that the permit we obtained does not have the information that she specified in her email to us. We then ask her again, if she could please send us a copy of the traffic control permit that she referenced in her email. Her response is to refer us back to the Transportation Division (and tell us there are now "two permits"). In that same email response, she cc Kevin Young, Deputy Director of Transportation Division, yet he never explains the discrepancy. This email response from Ms. Oman and the silence on the part of Mr. Young is yet another example of the how the department managers and directors obfuscate, avoid and patronize westside residents.

May 14, 2018: The 300 South road closure went into effect. The very thing that we were trying avoid, did indeed occur. 300 S. was closed at the Jordan River simultaneously, Goshen St. was also closed.¹⁸ We sent an email to Jenni Oman, Sewer Collections CIP Manager advising her that of the following:

*...it appears that those working out on the street did not get the memo on your idea of the new detour for today. I have attached a graphic that I created to illustrate what was going on when I took these pictures today at 4:00 p.m. The orange circles show what areas were closed because of the 400 S. project which as you know, designated 300 S. as the detour routing. The red circle shows the 300 S. closure that was closed today by Public Lands. The green arrows shows what you said would be the detour routing for westbound vehicles on 300 S., however, that was not possible because as you can see Goshen St. was closed to traffic. The detour sign at 300 S. at the Jordan River had an arrow on it directing cars to make a right turn on to 1135 W. As you can see by looking at the map once a vehicle makes a right turn it has to go snakes its way back out to 1000 W. then to 200 S. or 900 W. to 500 S. in order to continue its westward journey. This is the kind of stuff that is frustrating to residents and makes the roads unsafe for people. This is what those of us that called the City in response to the yellow flyer were wanting to avoid. What will it take for City employees to get their act together?*¹⁹

**SEE PHOTOS
ON NEXT PAGE**

¹⁴ See Michael Clara email to Jenni Oman – 300 South Closure 05/10/18

¹⁵ See Jenni Oman email to Michael Clara – 300 S. Closure 05/10/18

¹⁶ See City Request #C046522-050318 *opt cit.*

¹⁷ See Jenni Oman email *opt cit.* 05/04/18

¹⁸ According to Ms. Oman, Goshen St. was supposed to be open and utilized as the detour path for the 300 S. closure.

¹⁹ See Michael Clara email to Jenni Oman – 300 South Closure 05/14/18



This Photograph shows that 300 South is closed at the Jordan River AND the Goshen St. detour routing is also closed



According to Ms. Oman's email, a vehicle that is traveling west on 400 S. would be diverted to 300 S. and should have been able to travel west on 300 S. to Goshen St. and back on to 400 S.



Instead vehicles were diverted from the 400 S. road closure to 300 S. that was also closed, leaving vehicles to circle into a dead-end area of Poplar Grove.

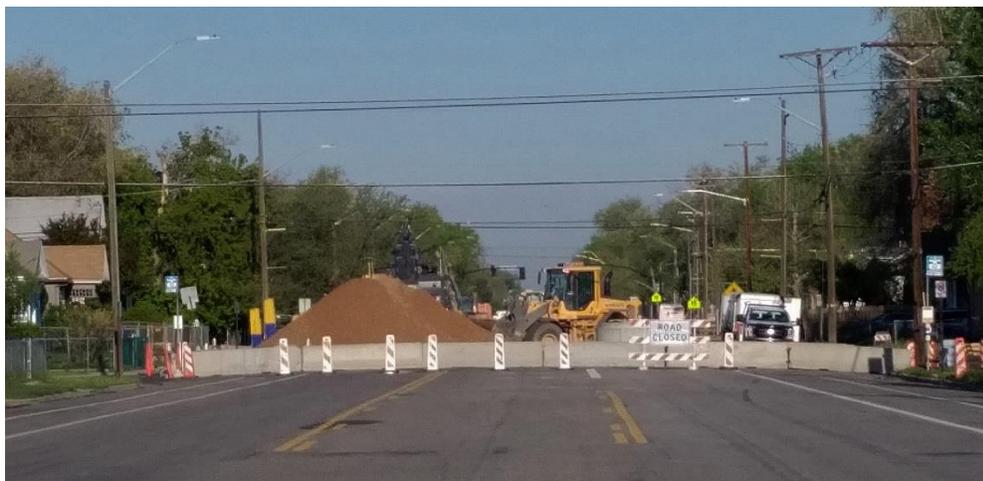
SLC Utilities closed 400 S. and diverted traffic to 300 S. Then SLC Public Lands closes 300 S. where all the traffic was being diverted to -May 14,2018



This is the map that we sent to Ms. Oman on 05/14/18

The green line on this map depicts what Ms. Oman described how traffic should flow on May 14th

The circled X locations are depicting where ROAD CLOSED Signs were located



This is a picture of the 400 S. Road Closure at 1000 West

May 16, 2018: Jenni Oman replied via email as follows:

I am sorry. In talking to my contractor, he reassured me that his detour was set-up properly. But your picture of Goshen tells a different story... I don't have an immediate solution or answer to give you. But I can assure you, both Park and Public Utilities are listening to your feedback, and will definitely work for improvement. ²⁰

On that same day, I replied to her email:

Page | 9 of 17

...My neighbors and I recognize the need for construction projects and understand that they are part of the process for improving infrastructure. Our frustration has to do with the City closing off 400 S. between 900 W and 1200 W., diverting traffic to 300 S, then closing 300 S. at 1200 W. for a separate project leaving drivers with few alternatives. Moreover, I believe the actions of City employees is what is creating the "difficult challenge" associated with road closures. When you state, "I can assure you, both Park and Public Utilities are listening to your feedback and will definitely work for improvement". I would ask that in addition to "listening to feedback", City employees also reply to inquires and requests of citizens in a timely manner.

As indicated in my email back on May 2, 2018, no one was responding to the phone number or email set up for the 400 South pipeline project (even prior to these two road closure conflicts). When the flyer went out about the 300 South closure, the yellow door hanger stated to call Lewis Kogan with questions and concerns, I left two phone messages and an email, to this day he has not returned the phone calls nor has he replied to the email. As a first order of improving, I would recommend that at the very least, City employees change the current culture and extend to citizens the common courtesy of returning a phone call and replying to emails. Responding to requests for information would go a long way in correcting misunderstandings.

In your May 4th email, at 1:50 p.m. you stated "Our contractor for the pipeline project received a road closure permit form the Transportation Division. They were notified two months ago..." In that same email, you also stated "...the Transportation Division, who issues the traffic control permits, felt it was an acceptable alternate..." Then in a 3:33 p.m. email, you stated "the Transportation Division is involved in all traffic control permits, and has deemed it okay ...".

The following week, in a May 10th email, I advised you that I received a copy of the Traffic Control Permit for the 300 S. closure and it did not have anything that outlined the detour you described in your previous email. In your reply to me, you stated:

"Transportation is the division that coordinates between the traffic control permit, as they are the people that issue them. They would be your best resource for obtaining, reviewing, and comparing the two permits..."

In this email, you even cc-ed Kevin Young in Transportation. I erroneously thought he would clear up the confusion by sending me a copy of the Traffic Control Permit that would outline the detour routing you described in previous emails.

*On May 14th, when I confirmed what residents were telling me, that the detour set up between the 400 S. and 300 S. were in conflict and causing drivers to travel in circles, I talked to the construction crew on 400 S. asking them to correct the situation. They stated that they were doing what they were told and that Goshen St. would remain closed and there was nothing else that they could do etc.... As already indicated, I did request a copy of the traffic control permit to which you referenced in previous emails and was given a copy of the 300 S. closure with no details as to the detour routing. In anticipation of a miscommunication it was my intent to have a traffic control permit in hand on May 14th, showing the agreed upon detour routing. If I had a permit on that day, I could show the permit to the construction crew out on the street, or I could have called the contact person that sign off on the permit. So instead of just taking my "feedback", can you listen to and respond to my request? **Can you send me a copy of traffic control permits that you have been referencing in your emails about the detour routing that was suppose to preclude the conflict that we warned you about?"** ²¹*

²⁰ See Jenni Oman email to Michael Clara – 300 S. Closure 05/16/18

²¹ See Michael Clara email to Jenni Oman – 300 South Closure 05/16/18

May 18, 2018: We submitted GRAMA request due to the fact that City employees have ignored multiple request for information associated with the May 14th – 300 South road closure in the Poplar Grove area. Moreover, we are trying to understand how it is that City employees allowed two parallel road closures to occur in spite of the fact that we warned them of the conflict they were creating.²²

ANALYSIS

As the Records Committee is aware, Utah Code §63g-2-203, encourages agencies to fulfill a records request without charge. Accordingly, we are appealing the denial of our fee waiver because we are of the belief that:

*...releasing the record primarily benefits the public.*²³

We submit the following pivotal points for your review and consideration:

- ▲ Impecuniosity
- ▲ Unreasonable Fee
- ▲ Procedural Violations
- ▲ Public Benefit

► IMPECUNIORITY

Utah Code §63g-2-203(4)(c) states in part:

...governmental entity may fulfill a record request without charge and is encouraged to do so if it determines that the requester's legal rights²⁴ are directly implicated by the information in the record, and the requester is impecunious...

As residents of Poplar Grove, we have the right to know what our government is doing²⁵ and the right to weigh in and influence how Salt Lake City coordinates projects on our neighborhood streets.²⁶ Members of the community recently co-created the latest version of the Westside Master Plan that constitutes the agreement between the City and its residents. In that document we agreed that residents would be involved in all aspects of community development projects:

- *Promote reinvestment and redevelopment in the Westside community through changes in land use, improved public infrastructure and community investment to spur development that meets the community's vision while maintaining the character of Westside's existing stable neighborhoods.*
- *Protect and encourage ongoing investment in existing, low-density residential neighborhoods while providing attractive, compatible and high density residential development where needed, appropriate or desired.*

²² See Clara email 05/04/18 *op. cit.*

²³ GRAMA *op. cit.*

²⁴ See Merriam Webster Dictionary: *...the interest in a claim which is recognized by and protected by sanctions of law imposed by a state, which enables one to possess property or to engage in some transaction or course of conduct or to compel some other person to so engage or to refrain from some course of conduct under certain circumstances, and for the infringement of which claim the state provides a remedy...*

²⁵ See Utah Code §63g-2-102: *"In enacting this act, the Legislature recognizes two constitutional rights: (a) the public's right of access to information concerning the conduct of the public's business...It is the intent of the Legislature to: (a) promote the public's right of easy and reasonable access to unrestricted public records;*

²⁶ See Utah Constitution Article I Section, 1 & 6 & 7 & 22 | Article XIII, Section 2

- Recognize, develop and foster opportunities for unique, mixed use neighborhood and community nodes in the Westside that reflect the diverse nature of the community and provide resources to allow for their growth.
- Recognize, develop and foster opportunities for regional nodes that strengthen the community's employment base while providing large-scale commercial retail and services for residents and employees of the Westside.²⁷

The Master Plan further states:

Partnerships

*It is often the case that partnerships are necessary to build great public spaces. **The community's residents and stakeholders should always be considered potential partners because they can offer insight into the community's goals.** Appropriate and smart public investment in infrastructure and facilities enhance the identity of a community. Done correctly, this investment can spur higher quality private investment. If the product is representative of the vision and goals of the community, as found in this plan, it is likely that members of the community will consider these spaces assets.*²⁸

Unfortunately, there is no one in our community group that can afford to pay the GRAMA access fee. We believe that Chief Deputy Litvack is aware of our inability to pay this fee which is why it was levied in the first place. Consider that in 2017, it is reported that Chief Deputy Litvack received an annual compensation of \$164,670.00 annual compensation.²⁹ In contrast, the income level in our community does not begin to even approach this level of wealth. In our community, 97% of the students attending Franklin Elementary School in Poplar Grove, are eligible for free or reduced lunch.³⁰ That means that for a family of four, their annual income is less than \$31,590.00 a year.³¹ That figure is consistent with the reported average Per Capita annual income for those of us in the 84104-zip code of Poplar Grove, which hovers at \$15,534.00.³² Bottom line, we are “*impecunious*” and simply cannot pay repeated GRAMA fees to participate in decisions on behalf of our community.

► **UNREASONABLE FEE**

Utah Code §63g-2-203 states in part:

A governmental entity may charge a reasonable fee to cover the governmental entity's actual cost of providing a record...

This fee is unreasonable in that we initially submitted a GRAMA request for the traffic control permit.³³ In response the City assessed a fee that we paid. The permit we received did not reflect the information that Ms. Oman had provided us via our email exchange. Ms. Oman refused to provide us copies upon request and advised us to submit yet another GRAMA request. This method of obtaining information so that we can participate in the decisions being made in our community is not cost effective and it is unreasonable.

► **PROCEDURAL VIOLATIONS**

On June 14, 2018, we received the following response the Public Records Center:

“In regards to the City Records Request (GRAMA) received on 5/18/2018 requesting Correspondence records, the records have been waiting for payment for 10 business days. The Salt Lake City Corporation now considers this request closed.

²⁷ See The Salt Lake City Westside Master Plan

²⁸ *Ibid*

²⁹ See Utah Transparency

³⁰ See Salt Lake City School District -Fall Low Income 2017 Chart

³¹ See Salt Lake City School District Free and Reduced Lunch, Eligibility Standards

³² See U.S. Census Bureau - The average, Per-Capita income for 84104 Zip Code

³³ See GRAMA Request (City Request #C046522-050318) May 3, 2018 *op. cit.*

Please be aware that if a requester has not paid fees from previous requests, the City could require payment of past fees before beginning to process a new or different request. If you would still like the records, please submit another City Records Request (GRAMA) or contact Staff to discuss payment arrangements.”

We can find no basis for Salt Lake City to prematurely close our GRAMA request. As of this writing, we still cannot access Salt Lake City Ordinance on GRAMA. This what we view when we follow the links Utah Record Committee page for this ordinance:



If we go to the Salt Lake City Records page and follow the links to the “code” this is what we view:



Based on the information above, it states that the Salt Lake City GRAMA Code was “updated by ordinance...passed May 1, 2018”. In viewing a copy of the Salt Lake City Council agenda and minutes for May 1, 2018 – we can find no evidence of such. In the absence of having access to Salt Lake City’s current GRAMA ordinance, we rely on the following state statute:

“A requester or interested party may appeal an access denial to the chief administrative officer of the governmental entity by filing a notice of appeal with the chief administrative officer within 30 days...”³⁴

Accordingly, we appealed the fee waiver “denial” on the following basis:

- Salt Lake City’s premature closing and withdrawal of our GRAM Request is a blatant violation of **Utah Code §63G-2-401** which provides a 30-day window for a response, not ten:

In regards to the City Records Request (GRAMA) received on 5/18/2018 requesting Correspondence records, the records have been waiting for payment for 10 business days. The Salt Lake City Corporation now considers this request closed.³⁵

³⁴ See Utah Code §63G-2-401

³⁵ See Salt Lake City Records 06/14/18 *op. cit.*

- The 05/29/18, response from the SLC Recorders Office states: “Once payment has been made we will begin processing your request”. No payment was made; therefore, our request should not have been processed, hence the City incurred no cost. Accordingly, there is no provision in GRAMA for Salt Lake City to “require” us to pay a fee and use our financial circumstance as the bases to deny future request:

*Please be aware that if a requester has not paid fees from previous requests, the City could require payment of past fees before beginning to process a new or different request.*³⁶

► **PUBLIC BENEFIT**

Utah Code §63g-2-203(4) states in part:

A governmental entity may fulfill a record request without charge and is encouraged to do so if it determines that:
(a) *releasing the record primarily benefits the public rather than a person;*

We challenge the Records Committee to take the reasons that Deputy Chief proffers for denying our appeal, and instead use his listed reasons as arguments in support of granting our appeal:³⁷

In this case, you have failed to demonstrate that a fee waiver benefits the public generally. Your request is for email correspondence from multiple City employees and for traffic control permits related to the current 400 South project for a nearly six-month period when the event at issue is a one-day community event and traffic diversion on 300 South. While email correspondence might provide some insight into inter-departmental communication related to a single-day, community event, some traffic control permits have already been provided, and production of more traffic control permits would not “significantly” contribute to public understanding of the operations of the City. Other methods of obtaining information of regarding the single-day event were available, and other traffic control permits have already been provided pursuant to your recent GRAMA request on the same topic. Considering the statutory factors and the City’s original determination under the City’s fee waiver procedure, and applying the same factors upon a de novo review, your appeal of the denial of your fee waiver request is denied.

P.O. BOX 145474
451 SOUTH STATE STREET, ROOM 306
SALT LAKE CITY, UT 84114-5474

WWW.SLCMAYOR.COM
TEL 801-535-7704

JACQUELINE M. BISKUPSKI
Mayor



OFFICE OF THE MAYOR

³⁶ *Ibid*

³⁷ See Litvack Appeal Denial Letter 07/03/18 *op. cit.*

The Deputy Mayor acknowledges the following:

*...the email correspondence might provide some insight into inter-departmental communication...*³⁸

That is one of the reasons we submitted the GRAMA request which is the very essence and purpose of GRAMA:

*"...the public's right of access to information concerning the conduct of the public's business...it is the intent of the Legislature to: promote the public's right of easy and reasonable access to unrestricted public records"*³⁹

Page | 14 of 17

As citizens who are committed to the civic engagement process, we recognize that information by itself is not power, but it is an essential first step in the exercise of political and economic power. As already noted, GRAMA states:

*"...in response to a request, a governmental entity is not required to: fill a person's records request if: (A) the record requested is accessible in the identical physical form and content in a public publication or product produced by the governmental entity receiving the request; (B) the governmental entity provides the person requesting the record with the public publication or product; and (C) the governmental entity specifies where the record can be found in the public publication or product."*⁴⁰

Within that context, we ask the Records Committee to consider that in denying our fee waiver request, the Deputy Mayor informs us:

*Other methods of obtaining information regarding the single-day event were available...*⁴¹

Yet, he does not *"specify where the record can be found in the public publication"*.⁴² Hence, if he is going to deny our fee waiver request because the information is available by *"other methods"* then he should be required to follow GRAMA which has the intent of the citizen obtaining the record. Finally, it is no wonder that in an effort to preserve the persistent culture of secrecy within the Biskupski administration, the Deputy Mayor makes the following determination:

*...production of other traffic permits would not significantly contribute to public understanding of the operations of the city...your appeal is denied*⁴³

Consequently, we ask members of the Records Committee to recognize that we are only, able to truly participate in the democratic process when we have information about the activities and policies of our local government and when we can see what benefits and services we are entitled to and whether we are receiving what should be expected. Hence, knowledge of how the divisions within public utilities department interact with each other is fundamental to our ability and obligation to hold them to account and improve the way in which they work.

You will recall, that when we asked Ms. Oman for an explanation as to why the two conflicting detours went into effect in spite of our warning, she replied:

*... I don't have an immediate solution or answer to give you.*⁴⁴

³⁸ *Ibid*

³⁹ See Utah Code § 63G-2-102

⁴⁰ See Utah Code § 63G-2-20 (8)

⁴¹ See Litvack Appeal Denial Letter 07/03/18 *op. cit.*

⁴² See Utah Code § 63G-2-20 (8)

⁴³ *Ibid*

⁴⁴ See Jenni Oman email 05/16/18 *op. cit.*

The Deputy Mayor should not hold Poplar Grove residents to the same standards he has for city employees. In other words, the fact that city employees, who have in their possession all the information, can't figure out what went wrong, does not mean that residents would be as dumbfounded, given access to the same information. Moreover, in the absence of, or inaccessibility to requested information, creates a sense of disempowerment, mistrust and frustration for us towards Mayor Biskupski and those in her administration. Clearly, the Deputy Mayor is intent on perpetuating the mistrust by declaring:

*In this case you have failed to demonstrate that a fee waiver benefits the public generally...*⁴⁵

We have no doubt, that the Deputy Mayor does not see how granting our request will “*benefits the public*”. It has been our experience, that only those committed to government openness and accountability would have eyes to see the “*public benefit*” in disclosing the requested records. Clearly, those in the Biskupski administration have failed to see that access to relevant, up-to-date information on how detours in our community are implemented, could have created the basis for a natural exchange between their administration and Poplar Grove residents.

Sadly, it appears that they are blind to the fact that transparency is inextricably linked to good governance. It is however, clear to us, that they have rejected the concept that transparency is an important principle of good governance. In rejecting that principle, we would not expect them to appreciate the degree of clarity and openness about how decisions are made, can help to build capacity in “*poor*”⁴⁶ and marginalized communities. Especially a community like Poplar Grove who have a deep and abiding desire to:

- Play a role in policy formulation and implementation.
- To influence decisions that affect our lives.
- To encourage policy-makers to exercise their power for the greater good.

CONCLUSION

As residents of Salt Lake City, we deserve a government that is effective and acts justly with its citizens. Routine disclosure of what, exactly, those agencies are doing is part and parcel of ensuring effectiveness. Neighborhood based, Community Organizing is a process in which local residents, united by concern for renewing our own Poplar Grove neighborhood, plan and act together from an organizational base. It is our intent to muster the strength to slow, or even stop, the decline of the space that we all share and bring a renewed state of stability and viability to our community. Fully participating in this Opportunity Zone program is one way we act as co-creators in revitalizing our community even when we are rebuffed by the very people we elected to represent our interests.

As of late, we have been focused on improving the relationship between our community and elected officials by maintaining that those in government not sacrifice honesty for transparency when working with us. We also have learned to reject all forms of bureaucratic obfuscating, by insisting that those in government act as honest brokers with us. We want to be co-creators of what comes into our community, and not just consumers. As co-creators we recognize that governmental transparency promotes accountability within the citizen /government relationship. We also believe that the practice of transparency means that elected officials will not conceal information from us by declaring:

*In this case you have failed to demonstrate that a fee waiver benefits the public generally...*⁴⁷

⁴⁵ *Ibid*

⁴⁶ See Deseret News: Utah Leaders Hope to Use New Tax Law to Create “Opportunity Zones” in Poor Areas – 04/02/18

⁴⁷ See Litvack Appeal Denial Letter 07/03/18 *op. cit.*

As residents of Poplar Grove, we reject such declarations because we believe that within the very definition of TRANSPARENCY, is the right of citizens to know by virtue of their ability to access information.⁴⁸ In the broadest sense, transparency is about:

- How much access to internally-held information citizens are entitled to.
- The scope, accuracy and timeliness of the information.
- What citizens can do if government entities are not sufficiently forthcoming in providing such access.

In the GRAMA statute, the legislature intended to preserve:

*“...the public’s right of access to information concerning the conduct of the public’s business...”*⁴⁹

The legislature also wanted to:

*“...promote the public’s right of easy and reasonable access to unrestricted public records...”*⁵⁰

As already indicated, the opposite has occurred in this case. The Biskupski administration fails to see that greater transparency has the “*public benefit*” of bringing greater efficiency to Salt Lake City government. It has been our experience that where information flows freely in both directions:

- The knowledge that decisions and processes are open to public scrutiny can make government bodies work better, by imposing on them some form of discipline.
- Government effectiveness is improved when they are accepting of citizen feedback on how policies are working in practice.
- Efficiency in the allocation of resources is also improved because in working together, we ensure that resources are redistributed and not captured by the more affluent within Salt Lake County.
- Transparency results in substantial efficiency in the allocation of public resources which results in improved socioeconomic status of the community that works in partnership with public officials.

Deliberative democracy insists on a meaningful role for citizens in public decisions. Yet, in this scenario, we cannot have a meaningful role because we do not have all the information, nor has it been provided upon request. Yet, we are told to be satisfied with such patronizing bureaucratic explanations as this:

*I don’t have an immediate solution or answer to give you. But I can assure you, both Park and Public Utilities are listening to your feedback and will definitely work for improvement.*⁵¹

The result is a situation where a City bureaucracy can administer failure again and again, not feeling like failures because they are protected both by the Mayor’s office and the ideologies of professionalism. In this case, they use “*professionalism*” as a tool to deflect criticism.

⁴⁸ The Utah legislature has provided GRAMA as the citizen’s vehicle to transparency

⁴⁹ See: Utah Code §63G-2-102

⁵⁰ *Ibid*

⁵¹ See Jenni Oman email to Michael Clara 05/16/18 *opt. cit.*

In other words, under the Biskupski administration the City bureaucracy thrives in a culture of:

- No matter what citizens say, the response is always, we are the professionals we know.
 - They Don't.
- We have credentials.
 - They Don't.
- Autonomy on some specialized knowledge.
 - End of Discussion

Accordingly, we ask that the Utah Records Committee to rule in our favor, grant our appeal:

*"...favor public access when, in the application of this act, countervailing interests are of equal weight..."*⁵²

Shalom,

J. Michael Clara
Community Organizer



cc: Salt Lake City Councilman Andrew Johnston - District 2
Poplar Grove Neighborhood Alliance Co-Chair Cathi Hernandez
Poplar Grove Neighborhood Alliance Co-Chair Mike Harman
Mr. David Litvack, Deputy Mayor – Salt Lake City
Ms. Jennifer Seelig, Director of Community Empowerment – Salt Lake City
Ms. Elizabeth Buehler, Civic Engagement Manager – Salt Lake City
Salt Lake City Records Office

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