



Dylan Mace &lt;dylanmace@utah.gov&gt;

**Fwd: [CAUTION] State Records Committee Official GRAMA Appeal**

2 messages

**Rosemary Cundiff** <rcundiff@utah.gov>  
To: Dylan Mace <dylanmace@utah.gov>

Mon, Apr 16, 2018 at 4:38 PM

Dylan,

I am forwarding this in case you do not already have it.

**Rosemary Cundiff**

Government Records Ombudsman  
Utah State Archives  
(801) 531-3858

----- Forwarded message -----

From: **Ben Empey** [REDACTED]  
Date: Sun, Apr 15, 2018 at 6:23 AM  
Subject: [CAUTION] State Records Committee Official GRAMA Appeal  
To: Nova Dubovik <ndubovik@utah.gov>  
Cc: Rosemary Cundiff <rcundiff@utah.gov>, ssummers@boxeldercounty.org, Stephen Hadfield <SHadfield@boxeldercounty.org>, Marla Young <MYoung@boxeldercounty.org>

Dear State Records Committee Executive Secretary Dubovik,

This is an official appeal to the State Records Committee for relief regarding Requester's records request denial approvals by Box Elder County.

On March 20th, 2018, Requester submitted two separate records requests under Utah Code Ann. 63G-2 to Box Elder County Clerk Marla Young, chief records officer of Box Elder County (EXHIBIT A, EXHIBIT B).

Six (6) days later, on March 26th, 2018, Ms. Young denied both records requests from Requester while at the same time combining both Requester records requests into a single records request denial (EXHIBIT C).

That same day, Requester immediately appealed Ms. Young's records request denial by filling two separate records request denial appeals to Box Elder County chief executive officer, Commissioner Stan Summers (EXHIBIT D, EXHIBIT E).

Although EXHIBIT E was accidentally addressed only to Ms. Young, Ms. Young has a statutory obligation under GRAMA to pass on the records request denial appeal to Mr. Summers, and Mr. Summers was included in the email chain just one day later and was clearly informed of both Requester's records request denials, which meets the statutory limits and time frame to consider both records request denial appeals made by Requester to Mr. Summers still valid.

On March 28th, 2018, Box Elder Attorney Stephen Hadfield sent Requester an email (EXHIBIT F) attempting to withdraw what Mr. Hadfield admitted was an improper records request denial by Ms. Young, a denial which was had already been issued to Requester.

Both records request denials by Ms. Young towards Requester had already been appealed to Mr. Summers, the Chairman of the Box Elder County Commissioner, who is Box Elder County's chief executive officer. (EXHIBIT D, EXHIBIT E)

Mr. Summers has failed to meet his statutory obligations to respond to a records request denial under Utah Code Ann. 63G-2-401(5)(a)(i)(A) by failing to make a decision on the appeal within 10 business days after the chief administrative officer's receipt of the notice of appeal, and under Utah Code Ann. 63G-2-401(5)(a)(i)(B) by failing to

make a decision on the appeal within 5 days because Requester demonstrated that the request benefits the public rather than Requester.

Either way, Utah Code Ann. 63G-2-401(5)(b)(i) indicates that Mr. Summers' failure to respond under his statutory obligations as chief executive officer to Requester's records request denial appeals is the equivalent of decisions affirming the access denials.

Thus, Requester appeals to the State Records Committee for relief.

Requester asks that because Requester's two GRAMA records requests denial appeals be consolidated by this Committee into a single hearing, because Box Elder County has responded to Requester's records requests by combining two records requests into a single records request denial (EXHIBIT C).

Requester's two separate requests may be consolidated into a single State Records Committee hearing to limit the burden on the Committee from multiple hearings by combining the requests into a single hearing and re-paragraphing each individual request within each records request.

But Requester is more than happy to schedule two separate hearings should the Committee decide such scheduling is proper in this case.

Requester respectfully asks that relief from this Committee should include:

1. State Records Committee action taken to compel Box Elder County to release the records originally requested as statutorily required by issuing a subpoena to Box Elder County to comply with the records requests submitted by Requester to insure full compliance.
2. The issuance of an explicit full fee waiver to be immediately granted to Requester, including for time spent processing this request, the materials generated thereof, and all associated costs of governmental entity's compliance to this request.

Requester has demonstrated that requester is an actively reporting journalist requesting records and/or information for a report for publication to the general public. This records request is made in the public's interest.

Requester has appeared before this Committee during a separate proceeding regarding similar matters and has diligently built two records requests that will hopefully satisfy the Committee's earlier issues with identifying records with reasonable specificity so the Committee may grant relief sought by Requester.

Requester has obeyed the Committee's past instructions and has now submitted records requests that include highly specific search parameters that identify requested records with a great deal of reasonableness.

Please apply your due diligence to duly process this official records request denial appeal. Thank you for your attention to this matter.

Sincerely,

B. I. Empey

Enclosure

cc: Government Records Ombudsman Rosemary Cundiff

cc: Box Elder County Commissioner Stan Summers

cc: Box Elder County Clerk Marla Young

cc: Box Elder County Attorney Stephen Hadfield

## DEFINITIONS

1. The term "record" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and

investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A record bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate record within the meaning of this term.

2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.

3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.

4. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof, or any combination acting in concert with one another.

5. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.

6. The term "referring or relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.

7. The term "employee" means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.

8. The term "summary data" means statistical records and compilations that contain data derived from private, controlled, or protected information but that do not disclose private, controlled, or protected information.

9. The term "classification," "classify," and their derivative forms means determining whether a record series, record, or information within a record is public, private, controlled, protected, or exempt from disclosure under Utah Code Ann. 63G-2-201(3)(b).

10. The term "library" means a database of audio, video, and written material, on a physical site and/or a website.

11. The term "open to the public" means 24 hours per day for access to users.

12. Utah SG 4-12 defines "Administrative Correspondence" as:

"Incoming and outgoing business-related correspondence, regardless of format or mode of transmission, created in the course of administering agency functions and programs. Administrative correspondence documents work

accomplished, transactions made, or actions taken. This correspondence documents the implementation of agency functions rather than the creation of functions or policies. Business-related correspondence that is related to a core function with an associated retention schedule should follow the associated schedule."

Utah SG 4-12 requires Administrative Correspondence to be retained for seven (7) years.

13. "Transitory Correspondence" is defined by Utah SG 4-11 as:

"Incoming and outgoing correspondence, regardless of format or mode of transmission, related to matters of short term interest. Transmittal correspondence between individuals, departments or external parties containing no final contractual, financial or policy information. This correspondence does not impact agency functions. When resolved, there is no further use or purpose."

#### RESPONDING TO REQUESTER'S REQUEST

1. In complying with this request, Box Elder County is required to produce all responsive records that are in Box Elder County's possession, custody, or control, whether held by Box Elder County or Box Elder County's past or present agents, employees, and representatives acting on Box Elder County's behalf. Box Elder County should also produce records Box Elder County has a legal right to obtain, that Box Elder County has a right to copy or to which Box Elder County has access, as well as any records that Box Elder County has placed in the temporary possession, custody, or control of any third party. Requested records should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Requester.

2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request should be read also to include that alternative identification.

3. Requester's preference is to receive records in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.

4. Records produced in electronic format should also be organized, identified, and indexed.

5. Electronic record productions should be prepared according to the following standards:

(a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.

(b) Document numbers in the load file should match document Bates numbers and TIF file names.

(c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.

(d) All electronic documents produced to the Requester should include the following fields of metadata specific to each record; BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD, INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION, BEGATTACH.

6. Records produced to the Requester should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.

7. Records produced in response to this request should be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.

8. When Box Elder County produces records, Box Elder County should identify the paragraph in the Requester's schedule to which the records respond.

9. It should not be a basis for refusal to produce records that any other person or entity also possesses non-identical or identical copies of the same records unless specifically noted in statute.

10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), Box Elder County should consult with the Requester to determine the

appropriate format in which to produce the information.

11. If compliance with the request cannot be made in full by the statutorily required response date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.

12. In the event that a record is withheld on the basis of record classification, provide a record classification log containing the following information concerning any such record:

(a) the record classification asserted;

(b) the type of record;

(c) the general subject matter;

(d) the date, author and addressee; and

(e) the relationship of the author and addressee to each other.

13. If any record responsive to this request was, but no longer is, in Box Elder County's possession, custody, or control, Box Elder County should identify the record (stating its date, author, subject and recipients) and explain the circumstances under which the record ceased to be in Box Elder County's possession, custody, or control.

14. If a date or other descriptive detail set forth in this request referring to a record is inaccurate, but the actual date or other descriptive detail is known to Box Elder County or is otherwise apparent from the context of the request, Box Elder County should produce all records which would be responsive as if the date or other descriptive detail were correct.

15. Unless otherwise specified, the time period covered by this request is from March 1st, 2011 to the present.

16. This request is continuing in nature and applies to any newly-discovered information. Any record not produced because it has not been located or discovered by the return date, should be produced immediately upon subsequent location or discovery.

17. All records should be Bates-stamped sequentially and produced sequentially.

18. Records produced to the Requester shall be delivered to 32 West 200 South #555, Salt Lake City, Utah, 84101. Electronic records produced to the Requester shall be delivered to the original email address from which Requester used to send records request or Requester's previously listed address in this paragraph.

19. Upon completion of the records request production, Box Elder County should submit a notice, signed by Box Elder County or Box Elder County's counsel, stating that: (1) a diligent search has been completed of all records in Box Elder County's possession, custody, or control which reasonably could contain responsive documents; and (2) all records located during the search that are responsive have been produced to the Requester.

20. Nothing in this request should be construed to require governmental entity to create a record.

21. Nothing in this request should not be construed to require governmental entity to compile, format, manipulate, package, summarize, or tailor information.

--

B.I. Empey  
Independent Journalist  
Intermountain West | USA

  
S: Upon Request

---

## 6 attachments

 EXHIBIT A.pdf  
49K