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October 5, 2018

VIA EMAIL: [gproctor@utah.gov](mailto:gproctor@utah.gov)

U.S. MAIL TO FOLLOW

Utah State Records Committee 805201  
Attn: Gina Proctor  
346 South Rio Grande Street  
Salt Lake City, UT 84101

Re: Notice of Appeal of Denial of GRAMA Request

Dear State Records Committee (the "Committee"):

Pursuant to Utah Code §63G-2-403 *et seq.*, this letter is intended to be a formal notice of appeal of a denial of a Government Records Access and Management Act ("GRAMA") request made on behalf of our client, Derrick Erickson ("Mr. Erickson"), on September 26, 2018, which was denied on first appeal by the Beaver County Sheriff's Office ("BCSO") on October 2, 2018. For the following reasons, we believe that this request was improperly denied, and we respectfully request that this Committee overturn BCSO's decision and order that the GRAMA request be granted. As agents of Mr. Erickson, our firm's mailing address and phone number are provided on the letterhead of this letter in compliance with Utah Code §63G-2-403(2)(a). In compliance with Utah Code §63G-2-403(2)(b), copies of the original GRAMA request and the first and second denials from BCSO are included for the Committee's convenience. Additionally, a copy of this notice of appeal has been served upon BCSO pursuant to Utah Code §63G-2-403(3)(a)(i).

Specifically, Mr. Erickson's request is for "[a]ny and all documents related to LEA Case #180300012 or Beaver County case #181500021, including, but not limited to, police reports, probable cause statements. Any and all video and/or audio recordings including, but not limited to, *vide vue* recordings of interviews of witnesses, suspects or victims etc." This information is related to a pending criminal matter where Mr. Erickson is the sole Defendant. We represent Mr. Erickson in a separate civil matter that is related to the criminal matter. We also represent Mr. Erickson in a juvenile court matter that is also related to the criminal matter. Our GRAMA request for this information was denied on the grounds that these records are "protected" under GRAMA and that "[r]eleasing these reports could have an effect on the investigation and court proceedings are currently still active." *See Denial of GRAMA Appeal from BCSO.* Utah Code § 63G-2-305(10) is cited as authority for these grounds for denial. For the following reasons, the Committee should not hold the requested that the requested information be deemed "protected" under GRAMA.

### Protected Records

GRAMA, pursuant to the provisions cited by BCSO, states in relevant part that “records created or maintained for civil, criminal, or administrative enforcement purposes...” are protected “*if* release of the records:

- (a) reasonably could be expected to interfere with investigations undertaken for enforcement, discipline, licensing, certification, or registration purposes;
- (b) reasonably could be expected to interfere with audits, disciplinary, or enforcement proceedings; [or]
- (c) would create a danger of depriving a person of a right to a fair trial or impartial hearing;

Utah Code § 63G-2-305(10) (emphasis added).

BCSO maintains that disclosure of the requested documents will interfere with the investigation in court proceedings that are currently active. This position is demonstrably unreasonable primarily because Mr. Erickson is literally entitled to these documents as the lone criminal defendant. BCSO cannot reasonably point to *any* possible interference with the investigation that is any more obstructive to justice than granting a standard discovery request to a defendant. We can likely assume that BCSO is not taking the position that a properly made discovery request is an interference with an open investigation because such a position would be patently unconstitutional. Furthermore, even if Mr. Erickson was not the subject of the requested documents, BCSO’s policy regarding making GRAMA requests on open criminal cases is not supported by any provisions of GRAMA. This is a policy that they have evidently invented, and the Committee should not allow an uncodified policy to trump Mr. Erickson’s rights.

BCSO has noted in phone calls with counsel that it believes Mr. Erickson should simply get these documents from Mr. Erickson’s criminal attorney. While this is irrelevant, it suffices to say that professional and ethical issues abound in such a practice. It is the best practice for Mr. Erickson’s civil counsel to receive this information directly from the source.

It is ironic that subsection (b) states that the records can be deemed private if its disclosure would create a danger of depriving a person of a right to a fair trial because we see the opposite here. BCSO’s refusal to release these documents to Mr. Erickson are creating a risk that he will be unfairly prejudiced in his other civil district court matter and juvenile court matter, largely because the opposing party has access to much of the information requested.

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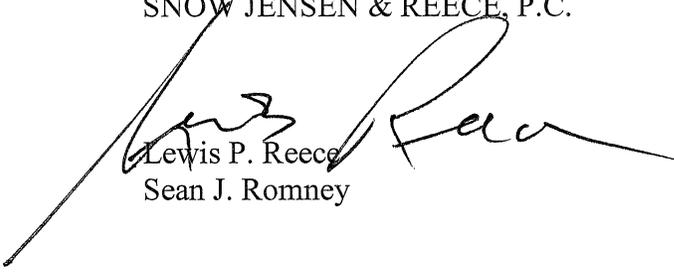
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**Conclusion**

This Committee should find that the requested documents are not “protected”. Therefore, we respectfully request that the request be granted. Please let me know if you have any questions.

Very truly yours,

SNOW JENSEN & REECE, P.C.



Lewis P. Reece  
Sean J. Romney

LPR/sjr/lc

cc: Derrick Erickson, Beaver County Sheriff's Office

Enclosures: Notarized GRAMA request and consent for release, Beaver County Sheriff's Office response to GRAMA request, BCSO GRAMA appeal denial.