

Tiffany Gilman

[REDACTED]

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Gina Procter, State Records Committee

346 S. Rio Grande

Salt Lake City, UT 84101

September 3, 2019

RE: Notice of Appeal under UCA § 63G-2-403

Dear Ms. Procter:

I received a denial letter of my GRAMA request for records from the Department of Corrections' records manager, Kara Kummer, on July 25, 2019, and another denial by Deputy Director Chyleen Richey on August 19, 2019. Please consider this letter as my formal appeal of the denial decisions under UCA § 63G-2-403.

I requested Department records on Theodore Robert Bundy's 1976 escape attempt from the Utah State Prison, any incident reports, and correctional officers' logs regarding Bundy specifically. In their letters, the Department of Corrections listed UCA § 63G-2-302(2)(d) as the reason for denying the release of these records. UCA § 63G-2-302(2)(d) states the following:

(2) The following records are private if properly classified by a governmental entity:

(d) other records containing data on individuals the disclosure of which constitutes a clearly unwarranted invasion of personal privacy

Mr. Bundy is dead. He was executed by the State of Florida on January 24, 1989. It is my contention, as has been generally upheld by both Utah state and federal courts, that the dead do not have a right to personal privacy. Judicial justification for the termination of privacy rights at death is centered on two main points: firstly, the deceased can no longer be active agents, and secondly, the deceased are incapable of being harmed by invasion of privacy. See *Jesse James, Jr. v. Screen Gems Inc.*, 174 Cal. App. 2d 650 (1959).

Federal courts have found that when a statute uses the term “person,” it refers to “a living human being” and does not provide a basis for a posthumous claim for violation of the statute or right at issue. See *Guyton v. Phillips*, 606 F.2d 248, 250 (9th Cir. 1979) (finding a deceased person could not bring an action under the Civil Rights Act); see also *Whitehurst v. Wright*, 592 F.2d 834, 840 (5th Cir. 1979) (“[A decedent] is no longer a person within our constitutional and statutory framework, and has no rights of which he may be deprived.”); see also *Gruschus v. Curtis Publishing Co.*, 342 F.2d 775 (10th Cir. 1965) (finding a claim of privacy only extends to one’s own privacy and does not survive the death of the party whose privacy was invaded). **Federal courts look only to common law privacy protections to determine whether a Freedom of Information Act (FOIA) request should be denied under a privacy exception, and thus FOIA generally does not protect posthumous privacy interests.** See Natalie Banta, *Death and Privacy in the Digital Age*, 94 N.C. L. Rev. 927 (2016).

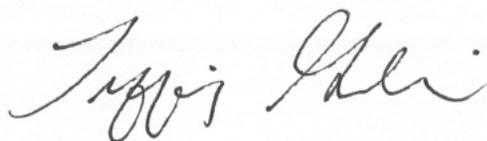
Other commenters have made it clear that privacy rights do not survive death. See 62A AM. JUR. 2D Privacy § 13 (2005 & Supp. 2015) (“The right of privacy is a purely personal one, and the plaintiff must show an invasion of his or her own right of privacy before recovery may be had. The general rule is that even a close relative may not recover for the invasion of privacy of another. Thus, an action for invasion of privacy may be brought only by the person who was the actual subject of the invasion of privacy, and not by other persons such as members of his or her family.”).

In addition, the state of Utah has no statute providing for post-mortem privacy beyond common law and does not extend any clear rights of personal identity privacy to the deceased beyond property rights. As the state of Utah classifies the right to publicity and privacy as a personal right, post-mortem assertions of a right to privacy are generally not recognized due to the common law stipulation that personal rights only apply to the living. See [Utah Code § 45-3-1 et seq.](#) As such, the right to privacy is entirely personal and cannot survive after the individual dies. It belongs only to a living person and cannot be transferred to heirs. See Aubrie Hicks, *The Right to Publicity After Death: Postmortem Personality Rights in Washington in the Wake of Experience Hendrix v. HendrixLicensing.com*, 36 Seattle U. L. Rev. 275 (2012).

I am seeking relief in the form of the Department releasing the previously requested records related to Theodore R. Bundy for the purpose of scholarly research. **If the privacy concerns are related to other living individuals named in the documents, redaction should easily remedy this concern, so that the rest of the record may be released.** See *KUTV Inc. v. Utah State Bd. of Educ.*, 689 P.2d 1357, 1362 (Utah 1984).

Thank you for your prompt attention to this matter.

Sincerely,



Tiffany Gilman



(Enclosures)