

#2015-95-102

Notice of Appeal - SRC

# The Salt Lake Tribune

*Utah's Independent Voice Since 1871*

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Annie Knox  
The Salt Lake Tribune  
90 S. 400 West, Suite 700  
Salt Lake City, 84101  
(801) 257-8779  
aknox@sltrib.com

State Records Committee  
c/o Nina Dubovik  
Utah State Archives and Records Service  
346 S. Rio Grande Ct.  
Salt Lake City, UT 84101-1106.

Dear Ms. Dubovik,

The Salt Lake Tribune is appealing denials by Utah's eight public universities and colleges for a list of the names of students found responsible by their institutions for sexual or violent misconduct over the past five years, along with corresponding details about the disciplinary action.

I am appealing in a single letter to the records committee because each school — Dixie State University, Salt Lake Community College, Snow College, Southern Utah University, the University of Utah, Utah State University, Utah Valley University and Weber State University — denied the request on nearly identical grounds, and the schools worked together to prevent The Tribune from obtaining this public information, the release of which is in the interest of Utah residents.

The colleges have in part granted my request, providing the years the violations were committed and the sanctions. But they have not disclosed the names of students found responsible for the violations, saying that this would constitute an "unwarranted" invasion of privacy.

I challenge the notion that federal and state law protect this information. The Family Educational and Privacy Rights Act, 20 U.S.C. 1232g (FERPA) prohibits the release of most information related to school disciplinary processes. But it makes a specific exception for cases of violent or sexual nature:

(B) Nothing in this section shall be construed to prohibit an institution of postsecondary education from disclosing the final results of any disciplinary proceeding conducted by such institution against a student who is an alleged perpetrator of any crime of violence (as that term is defined in section 16 of title 18), or a nonforcible sex offense, if the institution determines as a result of that disciplinary proceeding that the student committed a violation of the institution's rules or policies with respect to such crime or offense.

(C) For the purpose of this paragraph, the final results of any disciplinary proceeding (i) shall include only the name of the student, the violation committed, and any sanction imposed by the institution on that student.

The schools have failed to articulate how releasing these names would be a "clearly unwarranted invasion of personal privacy" [emphasis added] under Utah Code 63G-2-302(2).

The schools offered reasonings that those involved had an expectation of privacy, and that no one had anticipated the release of the names. But these are not sufficient reasons for denial, given that FERPA clearly and explicitly states that institutions are not prohibited from disclosing the final results

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of a disciplinary proceeding that determines a student did commit a violation.

In addition, our request pertains only to cases that reached a “final disposition,” which also are not protected under UCA 63G-2-305(10), which the schools cited in their denials. Release of the names could not reasonably be expected to interfere with ongoing investigations or disciplinary processes.

The schools demand that The Tribune explain our reasons for wanting the students’ names, citing Utah Code 63G-2-401. The basic details that The Tribune seeks are not attainable by other means, and we have cited state and federal law — the “facts, reasons and legal authority” that promote the release of this public information. The schools used the absence of further reasons to buttress their denials, but we are under no obligation to reveal our reporting plans to the schools.

It is, however, the public’s right to know how taxpayer-funded institutions are responding to alleged crimes of violence and nonforcible sex offenses. The information we are seeking would provide a window into the number and severity of sexual assaults that occur on campus, how Utah colleges are handling the resulting discipline, and how that overlaps — or doesn’t — with local law enforcement efforts. This public interest is more valuable than the privacy of alleged student perpetrators whose cases were sustained by their schools. We hope that even if the Committee rules that the records are private, its members use their discretion to determine that the public access outweighs that privacy interest.

After briefly citing UCA 63G-2-302(2), the schools, in both denials, devoted hundreds of words to hypothetical scenarios and “potential impacts” of the records’ release to justify the protection of the records, without support of any legal precedent or facts. As the Utah Supreme Court ruled in 2008 in the case of Deseret News Publishing company v. Salt Lake County, “these hypothetical, untoward events are too improbable to merit assigning them weight.”

Sincerely,  
Annie Knox