

The Salt Lake Tribune

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Nova Dubovik
State Records Committee Executive Secretary
346 Rio Grande
Salt Lake City, Utah 84101

REC'D APR 19 2017
JD

To Whom it May Concern:

I am writing to appeal a denial of a records that I requested from the Unified Police Department on March 16, 2017. The request was:

- Any police records regarding an investigation of Provo Police Chief John King and allegations of sexual misconduct.

I received notice of a denial of my request on March 23. In the email response, UPD officials cite a statutory exemption to the Government Records Access Management Act under Utah Code Ann. 63G-2-305(10)(a):

- The following records are protected if properly classified by a governmental entity:
 - (10) records created or maintained for civil, criminal or administrative enforcement purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if release of the records:
 - (a) reasonably could be expected to interfere with investigations undertaken for enforcement, discipline, licensing, certification or registration purposes.

After I appealed this decision, the department responded with a denial on April 3 and cited Utah Code 63G-2-305(9)(d), which protects records if disclosure of a "source not generally known outside of government" could lead to compromising the source. Additionally, they cited 63G-2-302(2)(d), saying that releasing the reports would be an "unwarranted invasion of privacy."

#2017-39

ARGUMENT

I. The Unified Police Department does not show that the records reasonably could be expected to interfere with investigations per Utah Code Ann. 63G-2-305(10)(a).

1. The Unified Police Department's investigation into the former Provo police chief's actions is complete. However, they cite another investigation, a Peace Officer Standards and Training (POST) probe, as a reason to deny the records request. This committee has denied this argument just recently in *Carlisle vs. Utah County Sheriff's Office*, Case No. 2016-49. In this case, the sheriff's office argued that because POST was investigating the conduct of one of their deputies, internal investigation records should not be released. The SRC rejected that argument, and ordered the records be made public.
2. GRAMA puts the burden on government agencies to prove a record is not public (Utah Code Ann. 63-G-2-103(21)). The statute cited by the department imposes a standard of reasonableness: Records are protected only if they "reasonably could be expected to interfere with investigations." This language demonstrates the legislature recognized that not all investigations are automatically sensitive to interference by the release of related records, and not all expectations of interference are automatically reasonable.

II. The Unified Police Department does not show release of the records would be an unwarranted invasion of personal privacy.

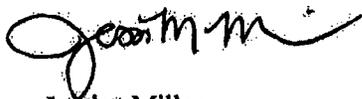
1. It is unclear how the identity of the criminal complainant could not be protected through a simple redaction of the woman's name in the police records. It is possible that further limited and careful redactions could be made in the police records to further protect her identity, if warranted.
2. The department cites the Victim's Rights Act as a reason to deny the request for records, but fails to cite a specific section of the act or what authority it has in this case. Furthermore, the department does not identify the complainant as a victim in their denials — they have referred to her as a "victim/complaining witness" and an "accuser." With a closed criminal case and no charges filed, it's difficult to reason how privacy rights for a victim applies in this situation.
3. In its denial, Unified Police cites an SRC decision, *Oram v. Granite School District*, Case No. 12-21. In that decision, the Granite School District details a "strict duty" to protect its students. While they cite a "strong preference in the law to protect the identity of sexual assault victims," the Unified Police Department does not have the same level of "duty" that is cited by the school district. Additionally, the Granite School District articulated real harm that the students suffered — that they were ridiculed and suffered abuse as a direct results of their participation in an investigation. Here, the Unified Police Department asserts no claims of actual harm to the complainant if this information were to be released. Under the police department's rationale, information from sex abuse crimes would never be released, because it may identify the victim. But that is not their practice. For example, in 2015, they released information about one of their own officers accused of having a sexual relationship with a 17-year-old girl. They also have released information about other cases with victims who were minors at the time of the sexual assault.

It should be noted that the public has a heightened interest in any matter that involves criminal allegations involving police officers. Police hold extraordinary power in our communities, and transparency is critical. The public has an interest in learning more about the actions of a Utah police chief, as well as an interest in learning more about how those allegations were investigated by the Unified Police Department.

In conclusion, I do not believe that the Unified Police Department has shown that releasing the records would reasonably interfere with an ongoing investigation. Furthermore, they have not clearly articulated how releasing the records — even with limited redactions — would constitute a “clearly unwarranted invasion of privacy.”

Thank you for considering my appeal.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jessica Miller', with a stylized flourish at the end.

Jessica Miller
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The Salt Lake Tribune
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