

#2017-77

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Steven J. Onysko

August 4, 2017

Nova Dubovik
Executive Secretary
State Records Committee
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Ms. Dubovik:

Subject: Appeal of DHRM Chief Administrative Officer July 17, 2017, Denial of GRAMA Appeal, Dated July 10, 2017

This communication to you is my GRAMA-related appeal per:

Title 63G-2-401. Appeal to chief administrative officer – Notice of the decision of the appeal.

...
(5)

(a) *The chief administrative officer shall make a decision on the appeal within:*

(i) *five business days after the chief administrative officer's receipt of the notice of appeal; or*

(ii) *12 business days after the governmental entity sends the notice of appeal to a person who submitted a claim of business confidentiality.*

(b)

(i) *If the chief administrative officer fails to make a decision on an appeal of an access denial within the time specified in Subsection (5)(a), the failure is the equivalent of a decision affirming the access denial.*

Title 63G-2-402. Appealing a decision of a chief administrative officer.

(1) *If the decision of the chief administrative officer of a governmental entity under Section 63G-2-401 is to affirm the denial of a record request, the requester may:*

(a)

(i) *appeal the decision to the records committee, as provided in Section 63G-2-403; or*

...

(2) *A requester who appeals a chief administrative officer's decision to the records committee or a local appeals board does not lose or waive the right to seek judicial review of the decision of the records committee or local appeals board.*

(3) *As provided in Section 63G-2-403, an interested party may appeal to the records committee a chief administrative officer's decision under Section 63G-2-401 affirming an access denial.*

I am aware of my following obligations:

Title 63G-2-403(2).

(2) The notice of appeal shall:

- (a) contain the name, mailing address, and daytime telephone number of the records committee appellant;*
- (b) be accompanied by a copy of the decision being appealed; and*
- (c) state the relief sought.*

Title 63G-2-403(3).

(3) The records committee appellant:

- (a) shall, on the day on which the notice of appeal is filed with the records committee, serve a copy of the notice of appeal on:*
 - (i) the governmental entity whose access denial is the subject of the appeal, if the records committee appellant is a requester or interested party; or*
 - (ii) the requester or interested party who is a party to the local appeals board proceeding that resulted in the decision that the political subdivision is appealing to the records committee, if the records committee appellant is a political subdivision; and*
- (b) may file a short statement of facts, reasons, and legal authority in support of the appeal.*

I have attached a copy of my June 13, 2017, initial GRAMA request to the Department of Human Resource Management (DHRM) [Exhibit 1].

I have attached a copy of DHRM's June 27, 2017, response [Exhibit 2]. Appellant deems the response is: (i) in violation of the prohibition at Title 63G-2-201(11) of unreasonable hindrance of the rights of Appellant to inspect and receive copies of records under Title 63G Chapter Chapter 2, Government Records Access and Management Act, and (ii) nonresponsive to the request for various records including the specified DHRM Investigative Report vis-à-vis Appellant, Steven Onysko.

I have attached a copy of Appellant's July 10, 2017, appeal [Exhibit 3] to DHRM Chief Administrative Officer, Debbie Cragun, the unacceptable-to-Appellant DHRM initial response of June 27, 2017.

I have attached a copy of the DHRM Administrative Officer's July 17, 2017, sustaining letter [Exhibit 4] with respect with the DHRM unacceptable-to-Appellant response of June 27, 2017.

I have attached a copy of a pertinent DHRM Letter of Investigation Findings [Exhibit 5], dated June 12, 2017.

I have attached a copy of a pertinent Department of Environmental Quality (DEQ) letter of intent to discipline [Exhibit 6] Appellant, dated July 10, 2017.

I have attached a copy of relevant DHRM Rules, namely, R477-11-2, Dismissal or Demotion [Exhibit 7].

Relief Sought for the Chief Administrative Officer's July 17, 2017, Sustaining of the Denial, Includes All the Relief Identified in Appellant's July 10, 2017, Appeal to the Chief Administrative Officer [Exhibit 3].

Appellant reiterates the reasons previously-identified [Exhibit 3] that the DHRM response is unacceptable to Appellant. Appellant reiterates the previously-identified [Exhibit 3] relief that he seeks. Namely:

DHRM's GRAMA request response [Exhibit 2], dated June 27, 2017, is illegitimate, and unacceptable to Appellant. Appellant seeks Title 63G-2-401(2)(b) relief beginning with reissuance by DHRM of a coherent, accurate explanation of the records/documents in DHRM possession pertinent and responsive to Appellant's June 13, 2017, GRAMA request.

And, Appellant seeks Title 63G-2-401(2)(b) relief in the form of a concomitant coherent explanation of the segregation of records/documents into DHRM's chosen "disclosed" and "not disclosed" categories. Nebulous statements such as, "DHRM is not disclosing the remaining documents," are illegitimate in the context of Title 63G, Chapter 2, "Government Records Access and Management Act." Appellant will not abide by DHRM's noncompliance with GRAMA requirements. Appellant insists that DHRM revise its response -- which will entail correcting errors of representation and omission -- such that the response does conform to GRAMA requirements.

Appellant seeks relief in the form of immediate transmittal of copies to Appellant of the eight groups of records/documents already identified by DHRM in the June 27, 2017, response [Exhibit 2], including the DHRM Final Investigative Report vis-à-vis Appellant, Steven Onysko, and even as DHRM works to correct the errors and omissions in that response. Upon receipt of new records disclosures from DHRM, Appellant will appeal as necessary any continuing nonresponse or unacceptable response with respect to Appellant's original GRAMA request.

Respectfully yours,

Steven J. Onysko

cc: Nova Dubovik, Executive Secretary, Utah State Records Committee, ndubovik@utah.gov
Rosemary Cundiff, Utah State Archives and Records Service Ombudsman, rcundiff@utah.gov
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Steven Onysko,