

#2017-36

REC'D APR 11 2017

Steven J. Onysko

Nova Dubovik
Executive Secretary
State Records Committee
346 S. Rio Grande
Salt Lake City, UT 84101-1106

Ms. Dubovik:

Subject: Appeal to the State Records Committee of Denied Access for Steven J. Onysko to District(s) Records, Jordanelle Special Service District, and Twin Creeks Service District, by the Districts' Chief Administrative Officer, February 28, 2017

Steven J. Onysko, appellant, made several GRAMA requests to Jordanelle Special Service District (JSSD), and JSSD-managed Twin Creeks Special Service District (TCSSD), commencing October 11, 2016, and continuing for several weeks. Appellant's GRAMA requests sought information that might address whether or not JSSD general manager Rondall Phillips engaged in violations of Utah Code, including:

76-8-201	Official Misconduct - Unauthorized Acts or Failure of Duty
76-8-301	Interference with Public Servant
76-8-504	Written False Statement

A copy of a specific GRAMA request for telephone records, namely, Appellant's October 11, 2016, GRAMA request, is attached [Exhibit 1]. Phillips was notified [Exhibit 2] on October 20, 2016, by the Wasatch County Attorney's office of one or more of Appellant's GRAMA requests. Phillips requested [Exhibit 3] that the County Attorney office forward to him Appellant's GRAMA requests for fulfillment, "even if they are about me." Phillips appears to have conducted the records research himself for requested records about himself. Phillips responded to Appellant [Exhibit 4] that but one, 2-page, relevant document [Exhibit 5] was "found" by him. Yet, Phillips certainly had knowledge of multiple relevant emails that he himself authored and he withheld from Appellant. Appellant asks the Committee to initiate investigation of Phillips for his conduct as the Districts' GRAMA Records Officer.

Appellant asserted to the Division of Archives & Records Service Management Ombudsman, Rosemary Cundiff, that Phillips could not ethically fulfill GRAMA requests that seek records concerning Phillips himself. Appellant also protested that Phillips was serving as both JSSD's Records Officer and its Chief Administrative Officer. To wit, Phillips was adjudicating GRAMA appeals of GRAMA requests that he himself had denied.

The Ombudsman subsequently provided Appellant with information that JSSD legal counsel, at Parsons, Behle, and Latimer, Salt Lake City, would substitute as JSSD's Records Officer officer forthwith. Parsons, Behle, and Latimer attorneys, namely Wendy Crowther and later Robert Hughes, facilitated re-fulfillment of Appellant's GRAMA requests, and Hughes mailed records of response, dated February 3, 2017, to Appellant.

Appellant asks that the Committee give weight to the circumstance of Phillips' indecorous conduct in fulfillment of Appellant's GRAMA requests. Appellant asks that the Committee give weight to the circumstance of the JSSD Board's and JSSD management's history of untrustworthy conduct. In 2015, the Utah State Auditor released a scathing, 32-page, final report by Audit Director Van Christensen which has been extensively cited [Exhibits 6-9] in headlines of JSSD's conduct and history. The audit:

- questioned whether District officials misused their taxpayer credit cards;
- found that the District failed to keep minutes of closed meetings as required by law;
- established a pattern of so many missing District documents that it begged the question of whether or not District officials deliberately tried to impair the audit;
- described a business as usual management style at the District that is resistant and dismissive to sound business practices;
- noted the District's approach to the audit/investigation was to defend inappropriate activity, and distort, deflect, and manipulate facts and information; and,
- apparently sparked a subsequent FBI inquiry into how Wasatch County officials conduct business;

Appellant asks that the Committee consider whether or not JSSD representatives should even be accorded a presumption of truthfulness in these matters before the Committee.

On February 28, 2017, Appellant appealed [Exhibit 10] to JSSD's newly-designated Chief Administrative Officer, Wasatch County Council Chair, and JSSD Board Chair, Mike Petersen.

Appellant asserted that the redaction of telephone records in the JSSD February 3, 2017, GRAMA response to Appellant constituted denial of Appellant's GRAMA request for District telephone records. Appellant appealed per the relevant Utah Code:

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

...

(1)

(a) A requester or interested party may appeal an access denial to the chief administrative officer of the governmental entity by filing a notice of appeal with the chief administrative officer within 30 days after:

(i) the governmental entity sends a notice of denial under Section 63G-2-205, if the governmental entity denies a record request under Subsection 63G-2-205(1); or

(ii) the record request is considered denied under Subsection 63G-2-204(8), if that subsection applies.

...

(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.

In a written response [Exhibit 11], dated March 13, 2017, JSSD Board Chair, and Wasatch County Council Chair, Mike Petersen, denied Appellant's February 28, 2017, appeal [Exhibit 5] that he be provided with non-redacted telephone records .

Appellant wishes to appeal this March 13, 2017, denied appeal to the chief administrative officer .

The relevant Utah Code is:

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.

Appellant acknowledges his 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

...

(b) may file a short statement of facts, reasons, and legal authority in support of the appeal.

Title 63G-2-403(2)(c) Relief Sought by Appellant

Appellant seeks the following relief to the nonresponsive aspects of JSSD's February 3, 2017, GRAMA response, and the JSSD Chief Administrative Officer's March 13, 2017, denial of Appellant's appeal.

JSSD shall provide both the Appellant and the Wasatch County Sheriff's Office with non-redacted copies of the telephone records provided to Appellant in the February 3, 2017, GRAMA response by JSSD to his October 11, 2016, GRAMA request. JSSD shall provide both the Appellant and the Wasatch County Sheriff's Office with any as-yet unreleased telephone records responsive to Appellant's initial GRAMA request [Exhibit 1], including cellphone records which appear to have been willfully withheld previously by JSSD.

Short Statement of Facts, Reasons, and Legal Authority in Support of the Appeal

The Chief Administrative Officer, Wasatch County Council Board Chair Mike Petersen, wrote on March 13, 2017, in the appeal denial:

Mr. Onysko:

... [o]n February 3, 2017, JSSD and TCSSD (collectively, the "Districts") provided you with hundreds of pages of documents responsive to your GRAMA requests, consisting primarily of emails and phone bills.

Petersen's lament is disingenuous. Among the 965 pages of records that JSSD provided to Appellant, 778 pages were such severely redacted telephone records that they are useless. Furthermore, the telephone records provided to Appellant for the four JSSD employees specified in his GRAMA request amounted to only 135 of these 778 pages. The other 643 pages among the 778, were unnecessarily provided for 19 JSSD employees whose records were not even requested by Appellant. JSSD warrants no accolades for hundreds of pages of nonresponsive documents.

Petersen conspicuously failed to address Phillips' 2-page, single document fulfillment of the exact same GRAMA request by Appellant that Parsons, Behle, and Latimer later fulfilled with 965 pages of documents. Phillips' antics, and Petersen's reticence, certainly do not surprise Appellant, given JSSD's notoriety for shenanigans [Exhibits 6-9].

Appellant has expressed concerns about conduct [Exhibit 12] by Rondall Phillips. [Phillips is JSSD's general manager]. And, Appellant has expressed concerns about conduct [Exhibit 13] by Mike Kohler. [Kohler is former JSSD Board chair, former TCSSD Board chair, former Wasatch County Council Board Chair, and still Midway City employee.]. The Wasatch County Sheriff is investigating Appellant's expressed concerns. Appellant has legal right of access to the non-redacted telephone records so that he may contribute information to the lawful Wasatch County Sheriff's investigation.

Appellant asserts that Phillips obstructed, and interfered with, Appellant's State government activities for the Division of Drinking Water. Appellant asserts that Phillips refused to provide information to Appellant, and provided false information to Appellant, during Appellant's write-up of Appellant's 2016 sanitary survey of the JSSD-managed Billy Bethers Water Supply public water system in Wasatch County, Utah. Appellant alleges that Phillips retaliated against Appellant when Appellant refused to omit mention in the report of Safe Drinking Water Act violations at the Billy Bethers Water Supply water system, and when Appellant alerted the Division of Water Rights about TCSSD water rights State Rules transgressions.

Appellant asserts that Phillips and then-JSSD Board Chair (and then-Wasatch County Council Chair) Mike Kohler reacted with retaliatory false accusations against Appellant. And they did this in collusion [Exhibit 14] with Appellant's State employment supervisor . Appellant defended himself against the false allegations via several avenues of legal redress including complaints to the Wasatch County Sheriff [Exhibits 12-13].

There is already compelling email evidence of the collusion among these individuals:

- on August 23, 2016, Phillips sent an internal JSSD email which implicates Appellant's supervisor in the Division of Drinking Water for collusion with Phillips to retaliate against Appellant [Exhibit 14];
- on September 6, 2016, Kohler sent an email to Phillips wherein Kohler represented that he could use his good friendship with Alan Matheson, Executive Director of the Utah Department of Environmental Quality, where Appellant is employed, to effect "more consequences" for Appellant [Exhibit 15];
- on September 6, 2016, Phillips sent an email of maliciously false allegations about Appellant [Exhibit 16] to Appellant's supervisor in the Division of Drinking Water, just 1-2 days after Phillips received Appellant's survey report on water system deficiencies at the JSSD-managed Billy Bethers Water Supply water system ;
- on September 7, 2016, Phillips sent an email to Kohler wherein Phillips represented that he too could use the circumstance of his knowing well Alan Matheson, Executive Director of the Utah Department of Environmental Quality, where Appellant is employed, to go meet with Matheson [Exhibit 17];
- on September 7, 2016, Phillips sent an email to Kohler again implicating Appellant's supervisor in the Division of Drinking Water in collusion with Phillips to retaliate against Appellant [Exhibit 18];
- Kohler sent a menacing email to Appellant, October 20, 2016, [Exhibit 5], about Kohler monitoring Appellant's correspondence with JSSD, Kohler admitting fomenting of trouble for Appellant by contacting Appellant's work colleagues in Wasatch County;

Against this backdrop, Appellant filed GRAMA requests for JSSD telephone records to determine whether or not Phillips and Kohler engaged in conspiratorial telephone communications to each other and third parties. These telephone records may prove the parties' opportunities for furthering their retaliatory actions against Appellant for doing his federal Safe Drinking Water Act (SDWA) protected activities in regulation of public drinking water supplies. The telephone records will also prove whether or not Kohler conducted these ostensible JSSD conversations during his employment hours with Midway City, which would constitute misuse of City time and resources.

Current Wasatch County Council Chair, Mike Petersen wrote to Appellant:

The Districts elected to redact the last four digits of phone numbers listed on the phone bills, pursuant to Utah Code Ann. § 63G-2-302(2)(d), because the Districts determined that listing the entire phone numbers would be a "clearly unwarranted invasion of personal privacy." This is the only aspect of the February 3, 2017 response that you have appealed.

Petersen's thesis is irrelevant in light of the Wasatch County Sheriff's investigation. The investigator, Deputy Sheriff Chris Goode, has assured Appellant that if Appellant provides the non-redacted telephone numbers to the Sheriff's office, investigators will follow the leads that Appellant represents as significant. A Sheriff's investigation does not even remotely rise to the level of "a clearly unwarranted invasion of personal privacy." Appellant is convinced that this "invasion of privacy" argument is a "red herring" proffered by Petersen to shield culpable individuals from lawful investigation of these individuals' conduct.

Current Wasatch County Council Chair, Mike Petersen further wrote to Appellant:

The redacted phone numbers belong to members of the general public. People call the Districts for a variety of reasons. Some may just have a question about a water bill. But others may be calling for more private reasons. They might be having trouble paying a water or sewer bill, and need to set up a payment plan. Others call to discuss sensitive commercial matters pertaining to land development projects. Whatever their reason, when members of the public place a phone call to a District, they do not expect that the fact that they called the District will be made public knowledge. Armed with complete phone numbers, it would be relatively simple for you - or anyone - to use an online reverse phone lookup service to identify the names of individuals who have phoned the least that they won't be made public simply because they called a government entity.

Petersen's arguments are specious. The Legislative intent with respect to public access to records is indisputable [see Title 63G-2-101(3)(e)]. It is the intent of the Legislature to favor public access in the application of GRAMA when countervailing interests are of equal weight. Petersen's implication that water or sewer bill conversational interests could rise to level equal to lawful criminal investigation interests is absurd. Certainly Appellant's

thesis that Phillips and Kohler were engaged in telephone conversations with others for purpose of colluding in causing Appellant "additional consequences" is more plausible.

Appellant asserts that he is entitled to the telephone records so that he can provide them to the Wasatch County Sheriff as material evidence that Phillips retaliated against Appellant in:

- engaging in telephone conversations with Appellant's State employment supervisors to foment undeserved trouble for Appellant;
- engaging in telephone conversations with water system representatives, and consulting engineering company representatives, who work with Appellant daily in his Wasatch County work assignments, to disparage Appellant's professional reputation; and,
- engaging in telephone conversation with other individuals who have been complicit in retaliation against Appellant for his SDWA protected activities regulating public water systems;

Current Wasatch County Council Chair, Mike Petersen misrepresents case history in writing to Appellant:

The State Records Committee has upheld the classification of similar records as private under § 63G-2-302(2)(d). See, e.g., Truth in Advertising, Inc. vs. Utah Dept. of Commerce, 14-20 (names of people who filed complaints with Division of Consumer Protection); Salt Lake Tribune v. Granite School District, 09-13 (dates of birth of school district employees). In one case, the State Records Committee specifically held that e-mail addresses of volunteer community chairs should be protected as private because they "should receive the same type of privacy protection afforded to a home telephone number." Uno v. Salt Lake City School Dist., 10-18, at ~ 8. In other words, the State Records Committee took it for granted that home telephone numbers are entitled to privacy protection.

None of these cases involved lawful investigation of government employees by a County Sheriff for violations of Utah Code:

76-8-201 Official Misconduct - Unauthorized Acts or Failure of Duty
76-8-301 Interference with Public Servant
76-8-504 Written False Statement

None of these cases involved lawful investigation of government employees for collusion and conspiracy to violate the Safe Drinking Water Act (SDWA) in retaliating against a federally-funded State drinking water program employee for his SDWA-protected activities.

The redacted telephone records for JSSD general manager in the three months of Phillips' and Kohler's most aggressive retaliation against Appellant show in excess of 100 partial telephone number matches to:

- telephone numbers of former Wasatch County Councilman Mike Kohler, including personal, County, and his Midway City employer;
- telephone numbers of State of Utah government offices in the Multi-State Agency State Office Building (MASOB), Salt Lake City, Utah, telephone numbers where Department of Environmental Quality offices are located, and where Appellant is employed;
- telephone numbers of Park City offices of Loughlin Water Associates, whose principal has a 20-year consulting relationship with JSSD, and whose principal made false accusations about Appellant to Appellant's employer within days of Phillips' false allegations; and
- the internet-posted telephone number of a known associate of Phillips, also an engineering consultant, in Draper, Utah, who holds Appellant responsible for his reputedly forced retirement from the Snyderville Basin Sewer Improvement District (now Snyderville Basin Water Reclamation District) [Exhibit 19];

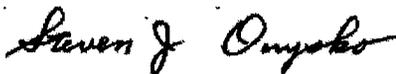
Current Wasatch County Council Chair, Mike Petersen further wrote to Appellant:

I also find it compelling that GRAMA specifically classifies the personal phone numbers of public employees to be private. See Utah Code Ann. § 63G-2-302(1)(g). It would be illogical for members of the general public to receive less protection under GRAMA than a public employee. See Uno, 10-18, at ¶ 6.

Petersen's reliance on inferential logic, with no supporting citation in the law, is reason enough for the Committee to dismiss his proposition. Such obfuscation is not unexpected. The State Auditor's recent report stated that "the district defends certain actions simply by throwing mud in a clear pool of water so that the picture becomes cloudy" [Exhibit 7].

Appellant believes that JSSD's redaction of telephone records has illegitimate purpose of protecting JSSD general manager, Rondall Phillips, and other parties, from lawful investigation of their actions. Appellant respectfully implores this Committee that it not allow this obstruction of lawful investigation to persist. I thank the Committee for its consideration of my appeal.

Respectfully yours,



Steven J. Onysko

cc: Mike Petersen, JSSD Board Chair, Wasatch County Council, mpetersen@wasatch.utah.gov
Rosemary Cundiff, Utah State Archives and Records Service Ombudsman, rcundiff@utah.gov