



September 18, 2018

Gina Proctor, Executive Secretary
State Records Committee
Utah State Archives and Records Service
346 S. Rio Grande
Salt Lake City, UT 84101

REC'D SEP 20 2018

PEOPLE FOR
THE ETHICAL
TREATMENT
OF ANIMALS

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Sent Via U.S. Certified Mail

Dear Ms. Proctor:

Pursuant to Utah Code § 63G-2-403 of the Government Records Access and Management Act (GRAMA), we write on behalf of People for the Ethical Treatment of Animals (PETA) and Students for Animal Welfare (SAW) to appeal the University of Utah (“the University”)’s denial of a fee waiver in response to a request for records related to recent egregious violations of the federal Animal Welfare Act (AWA) that occurred at the University of Utah. The University is asking for a “prepayment” fee of \$5,000 before it will provide responsive records.

Background

On June 29, 2018, PETA & SAW submitted a GRAMA request for various records related to recent violations of the AWA that occurred at the University of Utah.¹ The U.S. Department of Agriculture’s Animal and Plant Health Inspection Service (USDA-APHIS), which is responsible for enforcing the AWA, cited the University during a September 6, 2017 inspection for a “Critical” violation.² This violation was assessed because laboratory staff at the University failed to insert an IV catheter into a nonhuman primate prior to surgery, as required by the protocol. Despite this clinical failure, laboratory staff decided to proceed with a 14-hour invasive surgery, anyway. The monkey died soon after.

The second AWA violation, which was assessed on May 23, 2018, was assessed because University experimenters carried out unapproved tests on at least 20 separate occasions on baby lambs.³ At least one lamb died as a result of these unapproved tests. This AWA violation was in direct response to a December 20, 2017 complaint filed with the relevant federal authorities by PETA and SAW.⁴

In order to learn more about these incidents, PETA & SAW sent a GRAMA request to the University seeking records about the underlying incident, as well as documents that would reveal the University’s internal investigative and disciplinary process for handling federal noncompliances. In our request, we requested a fee waiver in light of the fact that we intend to use the records to inform the general public and the student body on a matter of significant public interest.

¹ GRAMA Request from PETA and SAW. June 29, 2018. Attached as Exhibit A.

² USDA-APHIS Inspection Report of the University of Utah. September 6, 2017. Attached as Exhibit B.

³ USDA-APHIS Inspection Report of the University of Utah. May 23, 2018. Attached as Exhibit C.

⁴ USDA-APHIS Complaint from PETA & SAW (without exhibits). December 20, 2017. Attached as Exhibit D.



Students for
Animal Welfare

On July 20, 2018, PETA received a “University of Utah GRAMA Notice of Prepayment Required” from the University of Utah, which was dated July 16, 2018.⁵ This notice states that the University is requiring “prepayment of [\$5,000] before [the University] take[s] further action in connection with your request.” This letter is an appeal of the University’s determination to deny PETA’s fee waiver and assess these unreasonable fees.

Public Interest Justifies a Fee Waiver

Utah Code § 63G-2-403(6) allows PETA & SAW to appeal the University’s denial of a fee waiver, and states that the Utah State Records Committee, as the present adjudicative body, “shall review the fee waiver de novo.” In enacting GRAMA, the Utah Legislature stated that the public has a constitutional “right of access to information concerning the conduct of the public’s business.” Utah Code §63G-2-102(1)(a). The Supreme Court of the United States has similarly found that transparency and access to government records is vital “to ensure an informed citizenry, . . . check against corruption and to hold the governors accountable to the governed.”⁶ In this case, PETA & SAW are requesting records which will shed light on a pattern of violations of federal law at the University of Utah. These records will allow the public to better understand how and why this episode of malfeasance, negligence, and misuse of public funds occurred.

GRAMA states that a government agency is “encouraged” to fulfill a request for information without charge if “releasing the record primarily benefits the public rather than a person.” The public interest in these records is quite clear. Animal welfare is an established issue of significant public interest and media attention. A recent Pew Research Center survey found that 52 percent of Americans now oppose all tests on animals.⁷ *The Salt Lake Tribune* and *Deseret News* have already published in-depth news articles on the University’s recent violations of animal welfare rules and regulations, with some of the coverage being picked up by the Associated Press wire service.^{8,9} The subject matter of this recent media interest includes the exact episodes that are at the center of this records request.

The State Records Committee Has Authority to Grant Fee Waivers

On August 13, 2018, we filed an appeal of this fee waiver denial with Dr. Gregory Thompson, the University’s records officer.¹⁰ On August 20, 2018, Dr. Thompson sent a letter denying our appeal.¹¹ Dr. Thompson’s denial of our appeal relies on previous decisions by the State Records Committee and the District Court, noting that the issues at hand here are similar in some respects to those raised by the earlier cases. However, Dr. Thompson crucially overlooks that, since those cases were decided, the Legislature has amended relevant provisions of GRAMA. Additionally,

⁵ University of Utah GRAMA Notice of Prepayment Required. July 16, 2018. Attached as Exhibit E.

⁶ *NLRB v. Robbins Tire Co.*, 437 U.S. 214, 242 (1978).

⁷ Strauss, Mark. Americans are divided over the use of animals in scientific research. *Pew Research Center*. August 16, 2018. Available at <http://www.pewresearch.org/fact-tank/2018/08/16/americans-are-divided-over-the-use-of-animals-in-scientific-research/>.

⁸ Wood, Benjamin. Rabbits, mice and a lamb were ‘tortured to death’ at University of Utah laboratories, PETA reports. *The Salt Lake Tribune*. December 20, 2017. Available at <https://www.sltrib.com/news/education/2017/12/20/university-of-utah-faces-new-animal-mistreatment-complaints/>

⁹ Knox, Annie. Report: U didn’t properly disclose plan for lamb research. *Deseret News*. June 22, 2018. Available at <https://www.deseretnews.com/article/900022634/report-u-didnt-properly-disclose-plan-for-lamb-research.html>.

¹⁰ August 13, 2018 Appeal of Fee Waiver. Attached as Exhibit F.

¹¹ Dr. Gregory Thompson. Denial of administrative appeal. August 20, 2018. Attached as Exhibit G.

there are newly discovered issues with the University's approach the fees under GRAMA that were either unknown or not present in the earlier cases.

In 2016, HB63 was passed into law, providing for *de novo* review of fee waiver/reduction denials upon appeal to the State Records Committee. It remains true that Utah Code § 63G-2-203(4), which allows a governmental entity to grant a fee waiver, is permissive rather than mandatory. However, Utah Code § 63G-2-203(6)(b)(i) provides that the State Records Committee "shall" conduct a *de novo* review of the request for a fee waiver.

The University's Fee Assessments Exceed Statutory Limits

In a letter dated January 19, 2018¹² responding to a different GRAMA request filed by SAW alone, the University provided their accounting of the "actual cost of providing [the] record[s]" which had been provided. This followed SAW's appeal of a fee waiver denial and subsequent agreement with the University to resolve the dispute for a substantially reduced amount. Presumably, this was done to illustrate the propriety of the University's original fee estimate and request for prepayment.

The University assessed their real cost of providing 305 pages of records to be \$2,109.19. If the settlement had not been reached and the University succeeded in billing SAW for this amount, SAW's cost for the records would have been \$6.92 per page. This cost per page is itself so unreasonably high that it is inconsistent with the Legislature's intent to "promote the public's right of easy and reasonable access to unrestricted public records" (Utah Code § 63G-2-102(3)(a)). We are concerned that the University is apparently continuing this troubling practice with the present request.

Additionally, the University's cost estimate included expenses which they are explicitly disallowed from including in fees assessed for records access. While the University is entitled to recover their "actual cost of providing a record," there are statutory limits to their ability to assess fees. In particular, the law bars the University from charging a fee for "reviewing a record to determine whether it is subject to disclosure" (Utah Code § 63G-2-203(5)(a)).

The largest line item, \$1,016.20 of a professor's time, is for "tailoring (scientific review, segregation, redaction)." There is no provision of GRAMA which requires "scientific review" of records prior to their release. The only plausible explanation for such a line item is that the University must conduct a "scientific review" of the records to determine whether they are exempt to disclosure or must be released, a process for which they may not assess fees. The University's accounting of costs also includes charges for "legal review," "redaction," and "segregation," which are likewise tasks associated with determining whether a record is subject to or exempt from disclosure.

¹² Laura Anne Stetson. Letter regarding earlier GRAMA request from SAW. January 19, 2018. Attached as Exhibit H.

Request for Relief

Utah Code § 63G-2-403(2)(c) requires appellants to the State Records Committee to include the relief sought in their notice of appeal. We seek a *de novo* review of the University's denial of our request for a fee waiver and for the Committee to use the discretionary power granted it by the statute to grant a fee waiver to our request. In the alternative, we ask the Committee to review the University's fee estimates and, if they are found to be improperly inflated, disallowed under Utah Code § 63G-2-203(5)(a).

Conclusion

The University has already squandered significant taxpayer money and betrayed the public trust by needlessly killing animals in violation of approved animal use protocols and federal law. Now, the University is compounding its malfeasance by demanding exorbitant fees for records that will help the public better understand how these avoidable acts of negligence and violations of federal animal welfare laws keep occurring. In light of this, we respectfully request that PETA & SAW's request for a fee waiver be upheld.

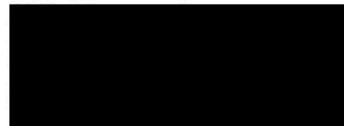
Sincerely,

Handwritten signature of Jeremy Beckham in black ink, featuring a stylized 'B' and 'J'.

Jeremy Beckham, MPA, MPH, CPH
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Handwritten signature of Maria Hiatt in black ink, written in a cursive style.

Maria Hiatt
President
Students for Animal Welfare



cc: Gregory Thompson, University of Utah
University of Utah, Office of General Counsel