

State Records Committee

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LRC

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Hello, I would like you to consider this my official appeal of a records denial I received from Tyler R. Green, Solicitor General for the Attorney General's Office on November 22, 2017, in reference to GRAMA Request #17-207.

That GRAMA, filed Oct. 13, 2017 sought:

"The final and completed Utah Attorney General's Office 2012 UTA Investigation report. The same document that the office would eventually turn over to the FBI looking into allegations of impropriety and insider dealings involving former UTA boardmembers including Terry Diehl and Greg Hughes."

On Oct. 26, the AG's office issued a denial citing "Utah Code § 63G-2-305(10)(a)-(d)," writing that:

"As you are probably aware, there is currently an ongoing criminal prosecution related to this investigation, therefore, the justification for the protected classification still exists."

The office also made a weak argument that I was unreasonably duplicating a previous request, though they later abandoned that line. On October 29 I filed an appeal to the denial, citing Utah Code 63G-2-310(1) and also the balancing test of the public's right to know, writing that:

"In this case the justification no longer exists since the investigation phase of the UTA prosecution has concluded. The file goes back five years and could not contain current legal strategy information. As an investigative file that report also refers to events that took place as far back as 2007-10 years ago. Any criminal information disclosed from so long ago has certainly run past the statute of limitations. Having exceeded the statute of limitations the information could not be actionable for any prosecution that might be ongoing now.

Lastly the information is of a vital and compelling public interest and therefore GRAMA's balancing test weighs in favor of public disclosure and against government secrecy."

On November 6, a surprise development occurred when federal prosecutors dropped their remaining charge against Terry Diehl, the developer who was the focus of the prosecution the AG's office cited as the cause for denial of records. That day I notified the Attorney General's Office about the great news and told them I expected by their own admission that they would be able to release the documents to me then. On November 13, Solicitor General Green notified me by a letter that having confirmed the case was resolved and that there was no possibility the case could be brought again, that I was right and that the records would be released, writing:

"Having investigated the matter, I have confirmed that the federal criminal prosecution related to the investigative records you are seeking has been dismissed and there is no prospect of further proceedings. Because the justification for withholding the records no longer exists, I am granting your appeal with instructions that the record be released within ten days of this decision."

Alas, this logical and transparent move on part of the Attorney General's Office apparently ran into a new/old problem. On November 22, 2017 I was informed again that the office had just discovered from "another agency" that as a matter of fact the record could not be released, and again the same reasons were stated, interference with some kind of ongoing investigation or proceeding Utah Code § 63G-2-305(10).

The office also made the claim that the information sought did not measure up to GRAMA's balancing test.

On the contrary, I believe the details of this controversial investigation into allegations of major insider dealings involving UTA and public officials has always been a burning issue to the public. In fact the argument made now that there is still some kind of ongoing investigation is so weak it adds only more fuel to the fire of public concern over this issue. Many critical voices looked at the prosecution of Diehl and how it resolved as no resolution at all-- a technical fumble at best and at worst something more sinister. Understanding the details of this investigation would help the public understand one way or another the way this saga has unfolded.

And the fact that the US Attorney's Office granted immunity to UTA, and now is completely unable to prosecute Diehl undercuts any possibility of federal action. As I noted in my original appeal the record I'm seeking goes back to a state investigation that reaches from 6 to 10 years ago. The clock has run out on any statute of limitations, leaving the only possibility of what? It's hard to say. Some kind of administrative proceeding? The AG's latest denial is vague so it's hard to say what kind of proceeding could still be ongoing, but with state and federal court actions off the table the argument strains credulity to the breaking point and, as I said only reinforces the argument for the public's right to know. Lacking specificity on what agency could possibly be worried about the records jeopardizing their active investigation I reassert that the argument is invalid. If there truly was an ongoing investigation in the works why wasn't it on the AG's radar from the start?

And again, even if there is something in the works, the public's right to know outweighs the government's right here to secrecy. The documents involve public officials involved in highly questionable deals, done with millions of dollars of public money. So far various agencies apparently have investigated the matter and made an attempt at prosecution and that effort has failed. If all of this investigative and prosecutorial activity was done wholeheartedly and with the public's best interest at heart then there should be no problem opening the playbook up to the public to show what could be done, and what was done after so many years of investigation and prosecution.

Thank you for your consideration and let me know what you might need from me to get this matter scheduled before the State Records Committee at your earliest convenience. If it's at all possible to get something in December that would be great for me since I'm scheduled to be at that meeting anyways for another hearing. As usual I've included copies of the request, denials, and appeals for this matter, and a copy of a news article regarding the details of the dropped case against Diehl. I've also included copies of a similar request I made prior to this one that the AG's office referenced when at one point they tried to deny this GRAMA in question as being an unreasonable duplication.

Thanks

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