

2016-66

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JUL 1 2016
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Notice of GRAMA Appeal to the State Records Committee

Consistent with the authority cited below, we appeal the decision (**Attachment 1: GRAMA Appeal Decision Letter, June 14, 2016**) by the Chief Administrative Officer (CAO) of the Office of the Attorney General ("OAG") in response to our Appeal made June 7, 2016 (**Attachment 2: GRAMA Appeal to CAO, OAG**). Pursuant to 63G-2-403 Appeals to the record committee, we appeal the decision of the CAO of the OAG, including but not limited to, any non-responses to issues and records we raised in our Appeal to the CAO. We request the records committee's assistance to resolve the issues we raised and ask that the records and documents withheld be released for our review and potential copying or imaging.

BACKGROUND

On April 7, 2016 we submitted six separate GRAMA requests to the OAG. On May 2, 2016, we submitted twelve separate GRAMA requests for records to the OAG. The GRAMA requests were subsequently numbered and identified by the OAG as #16-53, #16-54, #16-55, #16-56, #16-57, #16-58, #16-59, #16-60, #16-61, #16-62, #16-63, and #16-64. In her email dated May 13, 2016, Ms. Laura Lockhart, Assistant Attorney General, asserted: "The basis for this extension are Utah Code Subsections 63G-2-204(5)(c), (d), and (e) (**Attachment 3: Lockhart Letter, May 13, 2016**). On June 1, 2016, Ms. Lockhart sent another letter, again extending the time extension for the OAG response to our twelve separate requests until June 9, 2016 (**Attachment 4: Lockhart Letter, June 1, 2016**). We appealed to the CAO of the OAG on June 7, 2016 (**Attachment 2**). On June 14, 2016, the CAO of the OAG responded to our appeal (**Attachment 1**), however there are factual errors or mistakes in the response. Pursuant to Utah Code Annotated ("UCA") 63G-2-403 we timely appeal to the State Records Committee for relief.

APPEAL

In U.C.A. 63G-2-102, GRAMA's prefatory language, the Legislature recognized "the public's right of access to information concerning the conduct of the public's business" and laid out its intent for GRAMA.

FAILURE OF THE OAG TO ISSUE TIMELY APPROVAL OR DENIAL OF REQUESTED RECORDS AND DELAY PRODUCTION IS NOT REASONABLE.

We submitted appropriate requests complying with, and pursuant to, UCA 63G-2-204. The OAG asserts extensions for all of our GRAMA Requests. For the requests at issue here, the OAG cites UCA 63G-2-204(5), Subsections (c), (d), and (e). The respective Subsections state:

- (c) (i) the request is for a voluminous quantity of records or a record series containing a substantial number of records; or
- (ii) the requester seeks a substantial number of records or records series in requests filed within five working days of each other;
- (d) the governmental entity is currently processing a large number of records requests;
- (e) the request requires the governmental entity to review a large number of records to locate the records requested[.]

Since our submissions on May 2, 2016, the OAG failed to respond to even our simplest records request for five weeks. The OAG failed to approve or deny any of our individual GRAMA requests for an extraordinary period of time, as of this filing over half our requests have not received response or have required further appeal to the CAO. The repeated failure by the OAG to timely approve or deny individual requests, or produce any records in more than 35 days is unreasonable and not in good faith.

THE OAG CITES STATUTORY PROVISIONS FOR EXTRAORDINARY CIRCUMSTANCES BUT FAILS TO DEMONSTRATE EXTRAORDINARY CIRCUMSTANCE. EVEN IF THE OAG MADE A PROPER DETERMINATION OR CLAIM OF "EXTRAORDINARY CIRCUMSTANCE," THE OAG FAILS TO COMPLY WITH UCA 63G-2-204(6)(C).

Ms. Lockhart's letter of May 13, 2016, asserts three statutory subsections that identify qualifying circumstance for "extraordinary circumstances" pursuant to UCA 63G-2-204(5). However, while the letter references qualifying circumstances it fails to demonstrate "extraordinary circumstances" beyond the simple claim. While qualifying circumstances may be found regarding specific requests, the governmental entity is to make the determination "that due to the extraordinary circumstances it cannot respond within the time limits provided in Subsection (3)..." UCA 63G-2-204(5). This is something the OAG failed to do beyond simple assertions.

Further, even if the OAG made a proper determination or claim of extraordinary circumstances, the OAG fails to comply with UCA 63G-2-204(6), which states:

(6) If one of the extraordinary circumstances listed in Subsection (5) precludes approval or denial within the time specified in Subsection (3), the following time limits apply to the extraordinary circumstances:

Continuing to the relevant subsections at issue here, based on the assertions of the OAG,

(c) for claims under Subsections (5)(c), (d), and (e), the governmental entity shall:

- (i) disclose the records that it has located which the requester is entitled to inspect;
- (ii) provide the requester with an estimate of the amount of time it will take to finish the work required to respond to the request;
- (iii) complete the work and disclose those records that the requester is entitled to inspect as soon as reasonably possible[.]

The OAG asserts “[t]he basis for the extension is Utah Code Sections 63G-2-204(5)(c), (d), and (e).” Pursuant to UCA 63G-2-204(6)(c) the OAG *shall* (emphasis added) “disclose the records that it has located which the requestor is entitled to inspect[.]” The OAG is failing to disclose records in a reasonably timely manner. We are concerned regarding the failures of the OAG to abide by this statutory provision.

BASED ON THE OAG’S DESCRIPTION OF A QUALIFYING CIRCUMSTANCE FOR “EXTRAORDINARY CIRCUMSTANCES,” WE APPEAL ANY CLAIM OF “EXTRAORDINARY CIRCUMSTANCES” AND ALSO APPEAL THE TIME EXTENSIONS BY THE OAG AS UNREASONABLE.

We do not believe that extraordinary circumstances exist.

UCA 63G-2-204(5) provides specific circumstances that qualify as “extraordinary circumstance.” Ms. Lockhart proffers the statutory provisions (5)(c), (d), and (e) without providing an actual claim or determination by the OAG for extraordinary circumstances. We will address the OAG statutory assertions in order.

The request is for a voluminous quantity of records or a record series containing a substantial number of records; or the requester seeks a substantial number of records or records series in requests filed within five working days of each other.

Several of the separate requests may provide a “voluminous quantity of records or a record series containing a substantial number of records” and we acknowledge filing twelve separate request on May 2, 2016. That being said, some of the separate requests we are making are for the same or almost identical record provided to other agencies such as State Bureau of Investigation (SBI), the Federal Bureau of Investigation (FBI), the Utah House Investigative

Committee, and other independent investigations. The OAG should be able to provide the specified records requested from these files. While we understand some agencies were provided over 60,000 pages, we are reasonably specific in our request and narrowly confine our request to specific time frames, issues, or concerning specific matters. Given the fact the OAG has previously provided the records and information to other agencies and investigations, these records should have been easy to retrieve pursuant to our specific requests. It is entirely unreasonable for it to take over a month for the OAG to provide these records.

The governmental entity is currently processing a large number of records requests.

For an office or agency the size of the OAG what is “a large number of records requests”? Just considering the number of requests, is a large number of records requests 12 dozen? Is it several hundreds of records requests? We are reasonably certain that the number of active records requests, at the time of our submissions to the OAG, would not qualify as a large number of requests, pursuant to the intent of the statute, or with regards to an office or agency the size of the OAG. The OAG often boasts it is the “largest law firm” in the state. It is entirely unreasonable for the largest law firm in the state to take over a month to approve or deny a request and provide records to any requestor.

The request requires the governmental entity to review a large number of records to locate the records requested.

As with the discussion regarding “voluminous quantities of records”, the OAG has previously reviewed records that have been provided to other agencies, investigators, independent investigations, and/or the media. We are requesting records the OAG provided to other parties already. It is unreasonable to think it would take any great length of time to pull the records from electronic files that the OAG has already provided to other agencies, investigators, independent investigations, and/or the media.

These ongoing extensions are unreasonable given the totality of circumstances, regarding our requests when records have previously been provided to others. Further we believe and think that it can be demonstrated that the OAG is engaging in a knowingly and intentional pattern of unreasonable conduct to delay production of GRAMA requests contrary to the statute and legislative intent. When an agency makes extension after extension and fails to reasonably and timely produce records in compliance with specific requests, a prima facie case exists and the agency is abusing the intent and purpose of the statute. When an agency repeatedly continues to fail to act within the specified 10 days for response,¹ repeatedly extends time extensions without producing any results,² when simply asserting subsections of the statute without actually

¹ See: UCA 63G-2-204(3)(b)

² See: UCA 63G-2-204(6)(c), See also: Attachment 3, Lockhart Letter May 13, 2016, paragraph one. In the paragraph Ms. Lockhart states: “If we have not yet been able to complete our responses to all of your requests, we will also provide you then with an updated estimate of the time we will need to complete that work.” There are twelve separate requests. If the OAG is bundling the requests, this is further non compliance with the statute as the plain language of the statute provides for an agency to “treat a request for multiple records as separate record requests,

“The Attorney General’s Office has received over 30 requests from 25 different requesters, including you, since we received your request #16-64.”

“We are continuing to respond to those as we also address yours.”

Paragraph 4. “I have long been aware that extensions have been made many times for many requesters in the past year or two.”

“These extension reflect a significantly increasing workload...”

“We cannot compromise our other statutory responsibilities...”

The CAO response is not an appropriate or proper appeal. Extraordinary deference was provided to the OAG as “I have reviewed the record and discussed the matter with staff responsible for responding to GRAMA requests.” We were provided no such opportunity to “discuss” the matter with the arbiter of the appeal. Further, the attempts to augment and supplement the record, as more of an advocate for the OAG than the arbiter of an appeal, are completely improper and inappropriate. The review of the appeal by the CAO should have made from the actual record and should not have been an attempt to augment and supplement the record.

THE OAG ATTEMPTS TO WRONGFULLY BUNDLE SEPARATE, INDIVIDUAL GRAMA REQUESTS TO MISAPPLY THE APPLICATION OF UCA 63G-2-204(6).

A governmental entity may receive a GRAMA request from a requestor that contains multiple requests or parts within a single records request. Each of the twelve GRAMA requests we submitted on May 2, 2016 were made separately, on individual, singular request forms. This was not a case where a single GRAMA request contained multiple records requests that the OAG had to unbundle, in order to respond succinctly, as authorized by statute. Here the OAG attempts to bundle our separate, individual requests in an attempt to justify further delay in responding “sequentially,” as in order. However, it is an unreasonable delay when applied as we will only deal with one request at a time and not do work on any others until the work on one is complete. We believe that such a reading and application of the statute combine with the legislative intent of GRAMA is improper. It is unreasonable for the OAG to bundle separate, individual requests to apply Subsection (B) in this manner.

CONCLUSION

For the reasons and the authority cited above, we request this appeal be granted. We respectfully request determination of the issues addressed herein and that the records be released immediately for review.

DATED, June 14, 2016.

/s/Helen H. Redd
Helen H. Redd