

## GRAMA Notice of Appeal to State Records Committee

**Note:** Utah Code § [63G-2-403](#) (GRAMA) provides that any person may further appeal the chief administrative officer's denial of an appeal by filing a notice of appeal with the State Records Committee. This notice must be filed within 30 days of the response from a governmental entity's chief administrative officer or no later than 45 days after the records request was made if the following occur: the governmental entity claims extraordinary circumstances, and the chief administrative officer failed to make a determination.

### Requester's information

Name: Schatz Anderson and Associates on behalf of David Drew Date: November 13, 2018

Address: 321 North Mall Drive #O-201, St. George Utah 84790 City/State/Zip:

Daytime telephone number: 435-251-9647

### Make request to

SRC Executive Secretary  
346 South Rio Grande Street  
Salt Lake City, Utah 84101  
[gproctor@utah.gov](mailto:gproctor@utah.gov)

### Explanation of Relief Sought

**Note:** Relief can relate to conflicts over denial of access to records (Utah Code § [63G-2-402](#)) as well as disputes over fees (Utah Code § [63G-2-203\(6\)](#)) or extraordinary circumstances (Utah Code § [63G-2-402](#)).

The State Records Committee can also use the weighing provision to order the release of records that are properly restricted if it determines that the interests favoring access are greater than or equal to the interests favoring restriction (Utah Code § [63G-2-203\(11\)](#))

See attached Statement of Facts and Authorities



Richard Jorgensen (Bar #9987)  
Schatz Anderson & Associates LLC  
1445 E 3300 S  
Salt Lake City, UT 84106  
Telephone: (801) 746-0447  
[richard@schatzanderson.com](mailto:richard@schatzanderson.com)

**BEFORE THE UTAH STATE RECORDS COMMITTEE**

<p>DAVID DREW</p> <p>Petitioner,</p> <p>v.</p> <p>UNIFIED POLICE DEPARTMENT OF GREATER SALT LAKE</p> <p>Respondent.</p>	<p>PETITIONER'S STATEMENT OF FACTS AND LEGAL AUTHORITIES</p>
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On September 13, 2018, Nicolle Loe of Schatz Anderson and Associates acting on behalf of David Drew requested certain records regarding Mr. Drew, case number 18-27401. A notarized release signed by Mr. Drew accompanied the request. On September 19, 2018, UPD denied several of the requested records. An appeal was delivered to the chief administrative officer on September 28, 2018. The chief administrative officer has not responded to that appeal effectively denying our request. We now appeal that denial on behalf of Mr. Drew.

**The Video Is a Public Record and Must Be Released**

We requested any video and audio from Officer Franco and any other officer who interacted with Mr. Drew at the time of his arrest. Unified Police denied this request stated, "UPD has classified all video, (sic) and audio as 'Protected' at this time." The denial cited U.C.A. §§ 63G-2-305(10)(a) and (10)(c) as reasons for denying the records. The denial further stated, "Please make your request through discovery."

## **Pre-Classification of Records**

UPD states: “UPD has classified all video, (sic) and audio as ‘Protected’ at this time.” In other words, UPD had determined the classification of all police video prior to receiving the initial request in this case. While UPD may make a general classification to specific types of records, it may not make a blanket classification then apply that classification to all requests for that record type contrary to GRAMA classifications. The classification given to a record by the GRAMA statute eclipses a contrary classification given by a government entity.

## **Police Video is a Public Record**

U.C.A. § 63G-2-103(14)(a) defines an initial contact report as “an initial written or recorded report, however titled, prepared by peace officers engaged in public patrol or response duties describing official actions initially taken in response to either a public complaint about or the discovery of an apparent violation of law...” Subsection 301(3)(g) states that initial contact reports are public records.

The Utah State Records Committee has addressed this issue several times. Each time the Committee has ruled that police video is a public record and must be released.<sup>1</sup> Utah Courts have upheld the committee's decisions.<sup>2</sup>

## **Sections 63G-2-305(10) (a) & (c)**

In both *Vanocur* and *ACLU*, the Committee specifically rejected arguments that the release of a video would interfere with an investigation or deprive an individual of the right to a fair hearing. UPD has made no effort to demonstrate how the release of the video would interfere

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<sup>1</sup> *Chris Vanocur/ABC 4 News v. Utah Department of Public Safety*, 2010-05 (State Record Committee of the State of Utah, Jan. 12, 2010); *Jessica Phillips v. West Jordan Police Department*, 14-04 (State Records Committee of the State of Utah, Mar. 28, 2014); *American Civil Liberties Union v. Salt Lake County District Attorney and the Salt Lake City Police Department*, 2017-02 (State Records Committee of the State of Utah, Jan. 24, 2017);

<sup>2</sup> *Utah Department of Public Safety v. State Records Committee, et al.*, 100904439, Utah 3<sup>rd</sup> Dist. Jun. 17 2010) (upholding the Utah State Records Committee’s decision in *Vanocur*).

with an investigation or deprive the subject of the record of a fair hearing that would necessitate the records classification as protected. It is inappropriate for UPD to cite these two subsections without offering some basis for the assertion.

This is similar to a criminal defendant who challenges a warrantless search or seizure. The Utah Supreme Court has said: “It has long been the law that once a defendant adequately challenges a warrantless seizure, the State bears the burden of proving the reasonableness of law enforcement's action.”<sup>3</sup> While not specifically stated in GRAMA, when the classification of a record is challenged the entity making the determination of classification should have to justify that determination. When claiming that releasing a record will deprive an individual the right to a fair hearing or interfere with an investigation, an agency must be required to show a legitimate basis for such a claim. If governmental entities are not required to justify a classification stricter than the classification provided in the GRAMA statute, they can sidestep the legislative intent of “promot[ing] the public’s right of easy and reasonable access to unrestricted public records[.]”<sup>4</sup> The public’s rights and law become meaningless.

### **GRAMA and Discovery**

The denial letter contained the instruction, “Please make your request through discovery.” U.C.A. § 63G-2-207 addresses the issue of discovery and GRAMA. GRAMA and the discovery process are not the same, and UPD cannot deny access to a public record due to pending litigation. The State Records Committee made this clear when it said, “[T]he right to access public government records is not lost, and may not be impaired, when a citizen is involved in litigation with a governmental entity that maintains those records.”<sup>5</sup>

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<sup>3</sup> *State v. Worwood*, 2007 UT 47 ¶ 39.

<sup>4</sup> U.C.A. § 63G-2-102.

<sup>5</sup> *Jessica Phillips* (Mar. 28, 2014)

UPD has incorrectly classified the video in this case. The video is a public record, and it must be released.

### **Other Requested Records**

In addition to the video, we requested the original complaint or 911 call and dispatch audio including radio traffic between the dispatcher and officers and radio traffic between the officers. We also requested the Computer Aided Dispatch (CAD) hardcopy and a transcript of the communications between officers on the Mobile Data Terminal's (MDT). UPD neither provided these records nor issued a proper denial. These are all are public records and must be provided.

### **Conclusion and Relief Sought**

The Unified Police Department has incorrectly classified the video as protected. The video is a public record and must be released. The remaining requested records are also public records, and UPD must release them as well. I request the Committee order UPD to release these records immediately.

Sincerely,

A handwritten signature in blue ink, appearing to read "Richard Jorgensen".

Richard Jorgensen  
Attorney for David Drew



# SCHATZ | ANDERSON & ASSOCIATES

## NORTHERN UTAH OFFICE

1445 EAST 3300 SOUTH  
SALT LAKE CITY, UTAH 84106

P: 801-746-0447  
P: 888-4SLCDUI  
F: 801-746-3744

ATTORNEYS AT LAW  
www.SchatzAnderson.com

## SOUTHERN UTAH OFFICE

321 NORTH MALL DRIVE #O-201  
ST. GEORGE, UTAH 84790

P: 435-251-9647  
P: 888-DUIDIXIE  
F: 435-251-9780

September 13, 2018

Unified Police Department  
Attn: Records Custodian  
3365 South 900 West  
Salt Lake City, UT 84119

Re: David Drew  
Police Case No. 18-27401  
Date of Arrest: 2/20/2018

To whom it may concern:

The above named Defendant was arrested for Assault on **2/20/2018**, by **Officer Elayne Franco**, of the **Unified Police Department**. At this time we respectfully request that your office preserve all evidence pertinent to this case in your possession pertaining to the Defendant's arrest.

Furthermore, we respectfully request that your office provide us with a copy the following records:

1. Any video and/or audio recording from Officer Franco's patrol vehicle dashboard camera or any other type of recording device, including, but not limited to, recordings from body cameras, cell phone devices, or any other device used to record during this incident.
2. Any video and/or audio recordings, including, but not limited to, recordings from body cameras, cell phone devices, or any other device used from any other officer who responded to the scene with respect to the arrest of David Drew.
3. All contact information, reports, and recordings that any officer with Unified Police Department had with David Drew between 2/19/2018 – 3/5/2018.
4. The police dispatch recording of **the original complaint call from the complaining caller to the emergency dispatcher.**
5. The police dispatch recording **containing all dispatch information transmitted between the emergency dispatcher and the officers in the field.**
6. The police dispatch recording containing **all dispatch and communication between all officers in the field** relating to the Defendant's arrest

7. A hardcopy of the **dispatch log, CAD Call, and any other document** that details the **dispatch time, arrival time, call clearance time, time of arrest**, and other documented times by the primary officer and back up officers on scene.
8. Any **Mobile Data Terminal (MDT) communication** between officers in the field and between any officer and the dispatcher relating to the Defendant's arrest.

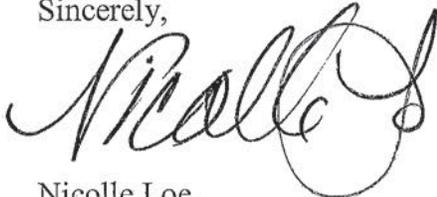
It is understood that the requested records may contain information that is classified by the GRAMA statute as private and/or protected. Pursuant to U.C. A. 63G-2-202 a signed, notarized release of information from the subject of these records has been included. Please do not redact private or protected information regarding our client.

It is also understood that the requested records may contain private or protected information not relevant to our client. Pursuant to U.C.A. 63G-2-202 (3) we ask that you redact any such information and provide the requested record.

The above listed information is vital to any DUI case therefore we would appreciate your cooperation in preserving this evidence. Please forward a copy of the items requested above to our office as soon as possible. If there are any costs associated with the duplication of these items please let us know and we will forward payment.

Thank you very much for your cooperation. Please contact our office if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nicolle Loe', with a large, stylized flourish at the end.

Nicolle Loe  
Paralegal to Richard Jorgensen  
[nicolle@schatzanderson.com](mailto:nicolle@schatzanderson.com)

cc: David Drew

**Unified Police Department  
GRAMA Request for Records and Video  
3365 South 900 West, Salt Lake City, UT 84119**

Name of Requestor: Nicolle Loe Day time Telephone: 435.251.9647  
Organization: Schatz Anderson & Associates Date of Request: September 13, 2018  
Mailing Address: 321 N Mall Dr #O-201 Date of Arrest: 2/20/2018  
St. George, UT 84790 Name of Driver: David Drew  
Email: Nicolle@schatzanderson.com Case number 18-27401

Description of records requested: Please see attached letter.

If there any fees associated with the duplication and mailing of these items please forward an invoice.

**Certificate of Requestor**

I, the undersigned, do hereby certify, that pursuant to Utah Code Annotated 63G-2-202, which governs the release of private records, that the following apply to me (check the appropriate box):

1.  I am the subject of the record;
2.  A parent or guardian of an unemancipated minor who is the subject of the record;
3.  The legal guardian of a legally incapacitated individual who is the subject of the record
4.  any other individual who:
  - a. has a power of attorney from the subject of the record;
  - b. submits a notarized release from the subject of the record or the individual's legal representative dated no more than 90 days before the date the request is made.

Notarized release enclosed

  
\_\_\_\_\_  
Signature  
Nicolle Loe  
Paralegal to Richard Jorgensen

9/13/18  
\_\_\_\_\_  
Date





**Unified Police Department  
Of Greater Salt Lake**  
Intent to Comply with G.R.A.M.A. Request  
Access to private, protected records, controlled  
records



REQUESTOR Schatz/Anderson Today's Date 9/19/2018  
 REQUESTED RECORDS 18-27401  
 RECORDS PROVIDED (If different than above) See "Protected" Section  
 RECORDS CUSTODIAN: Sherry Gonzales Clerk Processing this Request: Monica

Your request for records has been processed in accordance with the requirements of the Government Records Access Management Act (GRAMA) 63G-2-101 Utah Code Annotated (UCA).  
 Following you will find information regarding records that may not have been provided to you.

63G-2-201(2) All records are public unless otherwise expressly provided by statute.  
 63G-2-201(3) The following records are not public: (a) records that are private, controlled, or protected under Sections 63G-2-302, 63G-2-303, 63G-2-303, and 63G-2-304, and 63G-2-305  
 63-2-202(3) **If there is more than one subject of a private or controlled record, the portion of the record that pertains to another subject shall be segregated from the portion that the requester is entitled to inspect.**

The records subsequent to your request or subpoena contain data elements that are classified as **"Private"** 63G-2-302 and 63G-2-303 which have been edited in accordance with GRAMA:

63G-2-202(1) Upon request, a governmental entity shall disclose a **private** record to:  
 (a) the subject of the record;  
 (b) the parent or legal guardian of an unemancipated minor who is the subject of the record;  
 (c) the legal guardian of a legally incapacitated individual who is the subject of the record;  
 (d) any other individual who:  
 (i) has a power of attorney from the subject of the record;  
 (ii) submits a notarized release from the subject of the record or his legal representative dated no more than 90 days before the date the request is made.

The records subsequent to your request or subpoena contain data elements that are classified as **"Controlled"** 63G-2-304 which have been edited in accordance with GRAMA:

63G-2-202(2)(a) Upon request, a governmental entity shall disclose a **controlled** record to:  
 (i) a physician, psychologist, certified social worker, insurance provider or producer, or a government public health agency upon submission of a release from the subject of the record that is dated no more than 90 days prior to the date the request is made and a signed acknowledgment of the terms of disclosure of controlled information as provided by Subsection (2)(b); and under (ii), (b), and 63G-2-107.

**The records subsequent to your request or subpoena are classified as “Protected” 63G-2-305:  
Upon request, a governmental entity shall disclose a protected record to:**

- (a) the person who submitted the record;
- (b) any other individual who:
  - (i) has a power of attorney from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification; or
  - (ii) submits a notarized release from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification or from their legal representatives dated no more than 90 days prior to the date the request is made;
- (c) any person to whom the record must be provided pursuant to a court order as provided in Subsection (7) or a legislative subpoena as provided in Title 36, Chapter 14; or
- (d) the owner of a mobile home park, subject to the conditions of Subsection 41-1a-116(5)

**Records by Subpoena—63G-2-207**

Subpoenas and other methods of discovery under the state or federal statutes or rules of civil, criminal, administrative, or legislative procedure are not written requests under Section 63G-2-204.

(2) (a) (i) Except as otherwise provided in Subsection (2)(c), in judicial or administrative proceedings in which an individual is requesting discovery of records classified private, controlled, or protected under this chapter, or otherwise restricted from access by other statutes, the court, or an administrative law judge shall follow the procedure in Subsection 63G-2-202(7) before ordering disclosure.

(ii) Until the court or an administrative law judge orders disclosure, these records are privileged from discovery.

(b) If, the court or administrative order requires disclosure, the terms of the order may limit the requester's further use and disclosure of the record in accordance with Subsection 63G-2-202(7), in order to protect the privacy interests recognized in this chapter.

(c) Unless a court or administrative law judge imposes limitations in a restrictive order, this section does not limit the right to obtain:

- (i) records through the procedures set forth in this chapter; or
- (ii) medical records discoverable under state or federal court rules as authorized by Subsection 63G-2-302(3)

**The following records subsequent to your GRAMA request or SUBPOENA are privileged from disclosure or discovery in part or in their entirety, or they are not available:**

Body cam & Audio - UPD has classified all video, and audio as "Protected" at this time. Under Statue 63G-2-305(10)(a), could reasonably be expected to interfere with an open investigation pending court proceedings. Also "Protected" under 63G-2-305(10)(c), would create danger of depriving a person a right to a fair trial or impartial hearing. Please make your request through discovery.

### **Right to Appeal**

Any person aggrieved by this decision may appeal the determination within thirty (30) days after receiving this notice from the UPD. Please forward any appeals to the Unified Police Department of Greater Salt Lake, Chief Administrative Officer, at 3365 S. 900 W., Salt Lake City, Utah 84119. The notice of appeal shall contain the petitioner's name, mailing address, and daytime phone number. State relief sought and a short statement of facts, reasons, and legal authority in support of the appeal. You may also wish to contact the Utah State Public Records Ombudsman at (801) 531-3858 with any questions you may have regarding the Utah State Government Records Access & Management Act (GRAMA).

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A full copy of "GRAMA" can be found on the Internet at <http://le.utah.gov/~code/TITLE63G/63G02.htm>; or at your local Library.

Sheriff's Office /UPD Administration Building\*3365 South 900 West\*(385) 468-9755

Form Revised 04/30/2015 SG

## GRAMA Notice of Appeal to Chief Administrative Officer

**Note:** Utah Code § [63G-2-401](#) (GRAMA) provides that any person aggrieved by a governmental entity's access determination may appeal that determination within 30 days to the chief administrative officer by filing a notice of appeal.

### Requester's information

Name: Nicolle Loe Paralegal to Richard Jorgensen, Attorney for David Drew Date: 9/28/2018

Address: 1445 E. 3300 S.

City/State/Zip: Salt Lake City, UT 84106

Daytime telephone number: (801) 746 0447

### Make request to

Name of chief administrative officer: Chief Administrative Officer

Address: 3365 S. 900 W.

City/State/Zip: Salt Lake City, UT 84119

### Explanation of Relief Sought

**Note:** Relief can relate to denial of access to records (Utah Code § [\(63G-2-401\)](#) as well as unreasonable denials of fee waivers (Utah Code § [\(63G-2-203\(6\)\)](#)) or extraordinary circumstances (Utah Code § [\(63G-2-401\)](#)).

A chief administrative officer can apply the weighing provision. This means that he or she can order the disclosure of information that was properly restricted if he or she determines that in a specific instance the interests favoring access are greater than or equal to the interests favoring restriction, Utah Code § [\(63G-2-401\(6\)\)](#). For this reason a requester's convincing argument may be helpful.

Please see attached letter.

### **Inclusions for notice of appeal**

This petition to appeal to the chief administrative officer can include the following attachments:

- Statement of facts, reasons, and legal authority in support of this appeal
- Original GRAMA request
- Notice of denial from the governmental agency's records officer

### **Request assistance**

A petitioner may request assistance from the government records ombudsman. The ombudsman's responsibility is to serve as a resource for a person who is filing an appeal relating to a records request. The ombudsman may also attempt to mediate disputes between requesters and responders (Utah Code § [63A-12-111\(2\)](#)).

Rosemary Cundiff  
346 South Rio Grande Street  
Salt Lake City, Utah 84101  
[rcundiff@utah.gov](mailto:rcundiff@utah.gov)  
(801) 531-3858

September 27, 2018

Unified Police Department  
of Greater Salt Lake  
Chief Administrative Officer  
3365 S 900 W  
Salt Lake City, UT 84119

To whom it may concern:

Re: GRAMA request for David Drew

On September 13, 2018, we requested certain records on behalf of David Drew, case number 18-27401. A notarized release signed by Mr. Drew accompanied the request. UPD denied several of the requested records. On behalf of Mr. Drew, we now appeal that denial.

### **The Video Is a Public Record and Must Be Released**

We requested any video and audio from Officer Franco and any other officer who interacted with Mr. Drew at the time of his arrest. Unified Police denied this request stated, "UPD has classified all video, and audio as 'Protected' at this time." The denial cited U.C.A. §§ 63G-2-305(10)(a) and (10)(c) as reasons for denying the records. The denial further stated, "Please make your request through discovery."

### **Police Video is a Public Record**

U.C.A. § 63G-2-103(14)(a) defines an initial contact report as "an initial written or recorded report, however titled, prepared by peace officers engaged in public patrol or response duties describing official actions initially taken in response to either a public complaint about or the discovery of an apparent violation of law..." Subsection 301(3)(g) states that initial contact reports are public records.

The Utah State Records Committee has addressed this issue several times. Each time the Committee has ruled that police video is a public record and must be released.<sup>1</sup> Utah Courts have upheld the committee's decisions.<sup>2</sup>

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<sup>1</sup> *Chris Vanocur/ABC 4 News v. Utah Department of Public Safety*, 2010-05 (State Record Committee of the State of Utah, Jan. 12, 2010); *Jessica Phillips v. West Jordan Police Department*, 14-04 (State Records Committee of the State of Utah, Mar. 28, 2014); *American Civil Liberties Union v. Salt Lake County District Attorney and the Salt Lake City Police Department*, 2017-02 (State Records Committee of the State of Utah, Jan. 24, 2017);

<sup>2</sup> *Utah Department of Public Safety v. State Records Committee, et al.*, 100904439, Utah 3<sup>rd</sup> Dist. Jun. 17 2010) (upholding the Utah State Records Committee's decision in *Vanocur*).

Sections 63G-2-305(10) (a) & (c)

In both *Vanocur* and *ACLU*, the Committee specifically rejected arguments that the release of a video would interfere with an investigation or deprive an individual of the right to a fair hearing. UPD has made no effort to demonstrate how the release of the video would interfere with an investigation or deprive a subject of a fair hearing requiring the records to be classified as protected. It is inappropriate for UPD to cite these two subsections without offering some basis for the assertion.

GRAMA and Discovery

The denial letter contained the instruction, "Please make your request through discovery." U.C.A. § 63G-2-2-7 addresses the issue of discovery and GRAMA. GRAMA and the discovery process are not the same, and UPD cannot deny access to a public record due to pending litigation. The State Records Committee made this clear when it said, "[T]he right to access public government records is not lost, and may not be impaired, when a citizen is involved in litigation with a governmental entity that maintains those records."<sup>3</sup>

UPD has incorrectly classified the video in this case. The video is a public record, and it must be released.

**Other Requested Records**

In addition to the video, we requested the original complaint or 911 call and dispatch audio including radio traffic between the dispatcher and officers and radio traffic between the officers. We also requested the Computer Aided Dispatch (CAD) hardcopy and a transcript of the communications between officers on the Mobile Data Terminal's (MDT). These records were neither provided nor a proper denial issued. These are all are public records.

**Conclusion and Relief Sought**

Unified Police Department has incorrectly classified the video as protected. The video is a public record and must be released. The remaining requested records are also public records, and UPD must release them as well.

Please consider that if UPD continues to deny the requested records, we, on behalf of Mr. Drew, will appeal until UPD complies with the law.

Sincerely,

Nicolle Loe  
Paralegal to Richard Jorgensen

Richard Jorgensen  
Attorney for David Drew

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<sup>3</sup> *Jessica Phillips* (Mar. 28, 2014)