

# The Salt Lake Tribune

Utah's Independent Voice Since 1871

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Gina Proctor  
Executive Secretary  
State Records Committee  
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To Whom it May Concern:

I am writing to appeal a denial of records that I requested from the University of Utah on Dec. 20, 2018 under the Utah Government Records Access and Management Act (GRAMA). The request was as follows:

- “I am requesting all of the emails sent anonymously to [ansr.me/UDeptPSReview](mailto:ansr.me/UDeptPSReview) while a team investigated the University of Utah's handling of the case involving Lauren McCluskey. That includes anything from Nov. 1, 2018 to Dec. 19, 2018.”

After a “notice of extension” dated Jan. 2, I received a denial of my request on Jan. 16. In the email response, university officials did not cite a statutory exemption to GRAMA. Their response reads:

- “It was always the intention of the University that the independent review of campus safety would be conducted by outside experts with complete independence. The University never expected to receive, and has not received, copies of the notes, files, or other working documents created or reviewed by the independent review team in the course of their work. It is of paramount importance to the University to respect the expectations of the participants in the review process that the interviews were confidential, and that information provided by participants would not be shared with the University or with the public, except in the form of the reviewers' final report. Accordingly, the University does not maintain any records responsive to your request.”

After I appealed that decision on Feb. 4, the university responded with a denial on Feb. 19 and cited Utah Code 63G-2-201(22)(a)(i), arguing that the records requested are not considered “records” under the law, and the university does not own or retain them.

## ARGUMENT

**I. The University of Utah argues that it does not own and never received a copy of the records; however, the school ordered the review and presumably financed it. That means it, too, can be considered as “owning” the documents, or least helping to prepare them; they would not exist without the university asking for their creation.**

A. There is precedent for records being released in similar cases. In a 2016 Utah State Records Committee decision called Utah Rivers Council v. Washington County Water Conservation District, the committee ordered the conservation district to produce the record in question. Even though a third-party vendor was in possession of the record, the committee found that the conservation district was the owner of that record because it hired the vendor to create it. The case reads: “Respondent, and the third party maintains the records as Respondent’s agent.” A copy of the ruling can be found at:  
<https://archives.utah.gov/src/srcappeal-2016-19.html>.

B. In this case, the University of Utah named a three-person review committee to investigate university records in the handling of concerns and responses to the death of student Lauren McCluskey. The school selected the members of the committee and gave them their task. That included having any member of the community anonymously send messages to [ansr.me/UDeptPSReview](https://ansr.me/UDeptPSReview) — those responses are what The Salt Lake Tribune is requesting — to help in the task and finding information. Those emails were sent to and reviewed by a committee acting for and on behalf of the university in an effort to see how the university misstepped in this case. They informed the final report that was provided to the school.

C. In the original denial, the university says, “It was important to the integrity of the independent review that the Review Team own the records and that they not be available to the University.” That means a public agency likely used public funds for records that it now says it does not own. Additionally, the review is over and done, so releasing the emails now would have no impact on “the integrity of the independent review.”

**II. The university argues in its denial that there was an expectation that the emails would not be shared with the university and therefore it does not retain the records; however, in a phone conversation The Tribune had with a university spokesperson, it was clear those records had in fact been seen by school officials. This individual spoke to what the emails sent to [ansr.me/UDeptPSReview](https://ansr.me/UDeptPSReview) said and how many were sent.**

- A. The fact that a university spokesperson had seen the records and could describe them would suggest that the school did, in fact, receive a copy of the emails in question at some point.

**III. This was a critical event with an obvious public impact of how a state-funded university handled the complaints of a student before she was killed on campus. The public's right to know in this case, as outlined by GRAMA code, outweighs the university's arguments over record ownership.**

- A. In this case, the University of Utah named a three-person review team to look at its handling of McCluskey's case and ask the public for input. That public input — in the form of emails to [ansr.me/UDeptPSReview](mailto:ansr.me/UDeptPSReview) — should be released to the public. It includes concerns that community members had and gave to inform the committee's work in examining the state-funded school. Those responses informed the final report provided to the university and could inform the public further if they have not been acted on.

**IV. Additionally, the university argues that the emails were intended to be "confidential." The email account was set up to be anonymous, so that is not actually at question here with this request.**

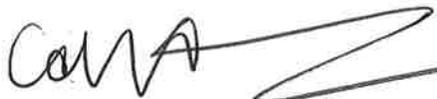
- A. Releasing the emails would not release who sent or wrote them because if they were sent anonymously that information should not be attached to the messages. Additionally, if it is, The Tribune would request that identifying information be selectively redacted to keep the emails confidential rather than denying all access.
- B. The Tribune is seeking only the emails sent to [ansr.me/UDeptPSReview](mailto:ansr.me/UDeptPSReview) — not all documents that the committee compiled. This is a reasonable and limited request.

## CONCLUSION

GRAMA defines records as documents "prepared, owned, received or retained by a governmental entity of political subdivision." The university has not proven that it did not receive the emails in question — as a spokesperson could describe them — and had a part in financing their creation.

As such, the emails should be released.

Sincerely,



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