

The Salt Lake Tribune

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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 Jan. 25, 2019 under the Utah Government Records Access and Management Act (GRAMA). The request was as follows:

- “I am looking for any and all records or notes of discipline against any and all University of Utah employees — including within the Department of Public Safety — related to handling of Lauren McCluskey’s case (so these would be dated from Oct. 22, 2018 up to now). That would include any requirements for certain individuals to go through training, any corrective letters put in personnel files, any complaints where allegations were sustained, any suspensions or paid leaves, etc. It is not limited to that, though.”

I received a “notice of extension” on Feb. 1 saying the university is “currently processing a large number of records requests” and a new estimated response set for Feb. 15. Six days after that set date had passed, on Feb. 21 and after I called to see what was happening, I received a second “notice of extension” delaying the request to March 8.

I then received a denial of my request on March 5 — 21 business days after what should have been the original deadline for an expedited request and 16 business days after what would have been a regularly processed request in the 10-day timeframe. In the email response, Records Coordinator Renee Bay denied my request, in part, and said the university was unable to find public records otherwise. It read:

- “Under GRAMA, public records of discipline only include ‘records that would disclose information relating to formal charges or disciplinary actions against a past or present governmental entity employee if: (i) the disciplinary action has been completed and all time periods for administrative appeal have expired; and (ii) the charges on which the disciplinary action was based were sustained.’ Utah Code § 63G-2-301(2)(o). The University has performed a thorough search of its files and has been unable to locate any public records responsive to your request.

“Records which do not relate to ‘formal charges’ or ‘disciplinary action’ under University policy, such as training requirements, letters of expectation, records of paid administrative leave, and all other personnel records other than those described in section 63G-2-301(2)(o) of GRAMA, are among the records the University classifies as ‘private.’ See Utah Code §§ 63G-2-302(1)(g); 63G-2-302(2)(a).”

After I appealed that decision on March 11, the university’s appeals officer, Gregory Thompson, responded with another denial on March 27. He wrote that he agrees “with the original determination to deny your request for such records.”

ARGUMENT

I. First, I believe the initial reference to Utah law used in the original denial sent by Ms. Bay is incorrectly cited. Utah Code § 63G-2-301(2)(o) describes annual audited financial statements of the Utah Educational Savings Plan. That does not apply to this request.

A. In the case that the denial was intended to refer to Utah Code § 63G-2-301(3)(o), I will write my argument according to that. This section describes records that are “normally public.” The subsection refers to records of formal charges or disciplinary actions that have been “completed and all time periods for administrative appeal have expired.”

II. The University of Utah argues that it was “unable to locate any public records responsive to your request.” However, I have been told by a university employee that those records do, in fact, exist.

A. It appears the denial is defining what records are considered public in an exclusionary way — despite no similar definition being included in state code. The code requires that records of discipline be “completed” before they are released. But it does not define what “disciplinary action” explicitly includes. In the university denial, it says, “‘disciplinary action’ under University policy, such as training requirements, letters of expectation, records of paid administrative leave, and all other personnel records ... are among the records the University classifies as ‘private.’” A university spokesman said in a phone conversation with me that those records exist. But the university in its denial is saying those don’t fit its definition of discipline. The law does not allow for that.

- B. Completed and/or sustained disciplinary records are supposed to be presumed “public” under the Utah Code § 63G-2-301(3)(o). So if that list is not considered disciplinary action, what is?
- C. This section of code stresses that “completed disciplinary action” should be considered public. That should include when The Salt Lake Tribune asks for “any requirements for certain individuals to go through training, any corrective letters put in personnel files, any complaints where allegations were sustained, any suspensions or paid leave.” Certainly, those could be included under the definition of “disciplinary action” because they include the discipline and action taken against a public employee in response to an incident. And certainly, if they are completed, they should be released.
- D. Additionally, some of those are “completed,” as per the requirement by code, when they first occur, such as a letter in someone’s file, and do not go through an appeals process, so presumably they would be available now. There is no reason why those should not be considered discipline or should be classified as private beyond what the code allows.
- E. Of note: If this is actually a matter of waiting until the appeal timeline has expired, then I seek the relief of having my request filled at that time. I do not believe that to solely be the case for the denial of this request, nor is it sufficient reasoning to not find any responsive records.

III. This was a critical event with an obvious public impact of how a state-funded university responded or disciplined its employees after a student was killed on campus. The public’s right to know in this case, as outlined by GRAMA code, outweighs the university’s arguments to privacy.

- A. The Legislature has declared in Utah Code § 63G-2-102(3)(e) its intent to “favor public access when, in the application of this act, countervailing interests are of equal weight.” Even if the records are classified properly as private, it should be released because the interests favoring access are greater than or equal to the interest favoring restriction of access.
- B. In this case, how the University of Utah’s responded — whether it required any employees to go through training, put any corrective letters in personnel files, issued any complaints where allegations were sustained or issued any suspensions or paid leaves — is of public concern. Taxpayers help fund the university and how should know how it reacts to serious incidents.

IV. In the denial, Ms. Bay refers to two further citations: Utah Code §§ 63G-2-302(1)(g) and 63G-2-302(2)(a). The first one says that employment records are “private” that would disclose “that individual’s home address, home telephone number, social

security number, insurance coverage, marital status, or payroll deductions.” The Salt Lake Tribune has no reason to believe that applies in this case. And, if it does, it would gladly accept copies of the records that redact that information rather than deny the entire request.

- V. **The second citation classifies as “private” employment records “including performance evaluations and personal status information such as race, religion, or disabilities.” It specifically says that does not include records under Utah Code § 63G-2-301(3)(o) that are already considered public, which are at the heart of this request and appeal. And, again, the personal status information could be blocked out, if necessary.**

- VI. **Last, the university asked for several extensions before denying my requests, including one that passed a deadline. This is not reasonable and should be taken into account.**
 - A. Those delays seem unnecessary, particularly for a request that was denied. The university responded to my request 21 business days after what should have been the original deadline for an expedited request and 16 business days after what would have been a regularly processed request in the 10-day timeframe.

CONCLUSION

To conclude, I ask that you grant me relief by ordering the records in question be released to me. “Disciplinary action” is much broader than defined in the denial. And sensitive information, including addresses, can be redacted rather than block my entire request.

The public interest in this case also outweighs the university’s claims to privacy.

As such, the requested information should be released.

Sincerely,

Courtney Tanner
The Salt Lake Tribune