

#2017-74

The Salt Lake Tribune

Utah's Independent Voice Since 1871

REC'D AUG 02 2017
RD

Aug. 02, 2017

Nova Dubovik
State Records Committee Executive Secretary
346 Rio Grande
Salt Lake City, Utah 84101

To Whom it May Concern:

Please consider this appeal of the denial of a records request submitted to the Murray Police Department on June 10. The request was:

- Police reports and any related investigative documents involving .

Notice of a denial of the request was dated June 14. In its response, officials cited a statutory exemption to the Government Records Access Management Act under Utah Code Ann. 63G-2-305(9)(a) and (c). This cited statute references records dealing with the sale of personal property. We have assumed this citation is in error, and instead the department intended to cite Utah Code Ann. 63G-2-305(10)(a) and (c):

- The following records are protected if properly classified by a governmental entity:
 - (10) records created or maintained for civil, criminal or administrative enforcement purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if release of the records:
 - (a) reasonably could be expected to interfere with investigations undertaken for enforcement, discipline, licensing, certification or registration purposes.
 - (c) would create a danger of depriving a person of a right to a fair trial or impartial hearing.

Murray City's mayor pro tem held a hearing on July 17, where parties from the Salt Lake Tribune, the city and the Utah Attorney General's Office stated their positions about the records release. On July 20, the mayor pro tem/hearing officer issued a written ruling declining release of records, citing the state code listed above. Hearing officer Doug Hill also made a number of other conclusions, such as whether the appeal was a new request and concerns about victim sensitivity, that were not argued by any party. In this appeal, we largely echo arguments made before the hearing officer, and will also address Hill's other assertions.

ARGUMENT

I. The Murray Police Department does not show that the records reasonably could be expected to interfere with investigations per Utah Code Ann. 63G-2-305(10)(a).

A. While the police department cites a pending criminal prosecution, it makes no assertion that there is any active investigation by its police department. Even if there were an active investigation, the police department fails to establish how releasing the requested records could interfere with this investigation.

1. GRAMA puts the burden on government agencies to prove a record is not public: Utah Code Ann. 63G-2-103(21): "Public record" means a record that is not private, controlled, or protected and that is not exempt from disclosure as provided in Subsection 63G-2-201(3)(b).
2. The statute cited by the department imposes a standard of reasonableness: Records are protected only if they "reasonably could be expected to interfere with investigations." This language demonstrates the legislature recognized that not all investigations are automatically sensitive to interference by the release of related records, and not all expectations of interference are automatically reasonable.

II. The Murray Police Department does not show how the release of records would create a danger of depriving a person a right to a fair trial per Utah Code Ann. 63G-2-305(10)(c).

A. It is true that there are criminal charges pending against the department does not clearly articulate how releasing the records could influence the defendant's right to a fair trial. There is plenty of information about the accusations against that is already public record — including the charging records, pending court motions, preliminary hearing testimony and Department of Professional Licensing records. Releasing the records will likely reveal little new information about the accusations against but will provide a better picture of what authorities knew at that time, when the alleged victims reported to police, and the outcome of Murray police's investigation.

1. In its arguments, the government has thus far simply argued that because the case is currently being prosecuted, there is an open investigation and records should not be released because it might taint court proceedings. But publicly disclosing information and records does not automatically compromise a case or proceeding, as the legislature indicated in the language of the law (as argued above). High-profile criminal cases move forward every day in the court system, mostly unaffected by release of police initial reports, probable cause statements, media interviews with witnesses, public pretrial testimony, or any other information.
2. In the appeal denial, Hill cites the district court judge's carefulness in not allowing the witnesses to hear each other's testimony at the preliminary hearing. While the judge's efforts are understandable, it does not change the fact that the preliminary hearing testimony is a public record. If one of the witnesses sought out that information, she could legally obtain a copy through the courts. Additionally, it

should be noted that the alleged victims in this case have also testified in a DOPL disciplinary hearing. That is a private proceeding, but we raise the point only to show that there is a possibility the witnesses have already heard each other's testimonies or facts of one another's cases in another venue.

III. The Tribune's appeal is not a new request; Concerns of victim privacy can be remedied by redactions.

1. In his decision, Hill makes note that the appeal filed by the Tribune is "markedly more focused and specific" than the original request, and asserts that it could be considered a new request. We disagree. The appeal did not ask for any record other than what was in the original request, so it is unclear why Hill would come to such a conclusion. Of course, the appeal is more detailed, as an argument must be made as to why the records should be released. It would be nonsensical to make such an argument on an initial request before the government has denied that request for records.
2. In his written denial and at the hearing, Hill expressed concerns about victim privacy — concerns that were not argued by any of the parties present. If this is similarly a concern for this committee, remedies such as limited redactions can be made to protect the alleged victim's identities. Concerns over victim privacy are present in nearly every police case, especially those involving accusations of sexual assault. But police departments can't deny every request for release of records on that basis alone, or no records would ever be made public.

In conclusion, the Murray Police Department has offered no reason that shows releasing the requested records could *reasonably* interfere with any active investigation or would deprive a person a right to a fair trial. We would ask that you find that these documents are public and order that they be released.

Thank you for considering this appeal.

Sincerely,

Luke Ramseth, Jessica Miller
Salt Lake Tribune reporters
801-257-8796, 801-257-8785
lramseth@sltrib.com, jmiller@sltrib.com