

2016-101

The Salt Lake Tribune

Utah's Independent Voice Since 1871

Nov. 18, 2016

Alex Stuckey
The Salt Lake Tribune
90 S. 400 West, Suite 700
Salt Lake City, 84101
(801) 257-8723
astuckey@sltrib.com

State Records Committee
c/o Nova Dubovik
Utah State Archives and Records Service
346 S. Rio Grande
Salt Lake City, UT 84101-1106

Dear Ms. Dubovik,

The Salt Lake Tribune is appealing a denial from Utah State University (USU) for:

- Any written findings or reports from the inquiry referenced in USU's Aug. 24 news release
- All records—including but not limited to notes and summaries—used to aid in any oral presentation of the inquiry, its findings and recommendations
- All records that resulted in the recommendations and inquiry summary released Aug. 24, referenced above.
- Any and all video or audio recordings of the oral presentation of the inquiry, its findings and recommendations.

History

In July 2016, The Salt Lake Tribune published a story detailing four women's reports of being sexually assaulted in 2015 by Torrey Green, who at that time was a USU student and a member of the school's football team. Three of the alleged victims were also USU students.

According to police reports and what the women told The Tribune, one student reported to both her resident assistant and to the dorm supervisor, who are both mandatory reporters under Title IX; another student reported directly to Title IX; and a third student reported to someone at the school who she believes was in the Title IX office. From what we can tell, none of those complaints resulted in full investigations as required by Title IX, a federal law that protects students from gender-based discrimination.

Green told The Salt Lake Tribune that the school talked to him about one accusation. He played in every football game in 2015.

Following the story's release, USU announced that its in-house legal counsel would do a "thorough examination of the events reported recently in the Salt Lake Tribune," looking "closely at a number of issues including: communication between the various offices that deal with sexual assault, current training for mandatory reporters, how USU handles anonymous or confidential reports of sexual assault and how the university addresses allegations of sexual assault when witnesses choose not to file a complaint or choose not to pursue a university investigation."

On Aug. 24, USU released a list of recommendations based on the inquiry, saying it "has identified areas for improvement in our institution's comprehensive approach to responding to and preventing sexual assault."

The Salt Lake Tribune

Utah's Independent Voice Since 1871

Also published on its website were three findings from the inquiry:

- No one at any level covered up evidence of university wrongdoing in these cases.
- No athlete received preferential treatment from anyone in athletics or from any office at the university.
- No one at Utah State discouraged any victim from reporting an incident of sexual assault, and no one at Utah State discouraged any victim from pursuing an investigation into any incident of sexual assault.

Despite these findings, USU carried out its inquiry without talking to the three students who say they reported Green to the school in 2015.

USU denied The Tribune's request for the inquiry, first saying in an August email that it did not exist as a document, and then citing FERPA in its official denial in September. The Tribune appealed the decision on Oct. 13.

USU denied the appeal on Oct. 20, saying "the requested records are not subject to disclosure because they include attorney-client communications, attorney work product, investigative records, private student education records protected by FERPA, and the disclosure of the records would constitute a clearly unwarranted invasion of personal privacy of USU students who are survivors of sexual assault."

Argument: The requested records are not protected under the Family Educational Rights and Privacy Act (FERPA)

To call the results of an inquiry into university operations an "education record" is an over-broad interpretation of the Family Education Rights and Privacy Act, which defines education records as those "directly related to a student; and maintained by an educational agency."

USU's inquiry, as described publicly by the university itself, focused on its policies, training, and how its employees handled serious allegations that reflected on the safety of its campus. To apply FERPA in this case would suggest that universities are immune from scrutiny because all of their operations are related in some way to students.

The Tribune would accept a redacted document that omits the names of any students interviewed or discussed in the report. Again, our interest is in the university's operations.

USU also has the obligation to segregate records. If student education records are included in its inquiry, USU may redact those records. Based on the university's own description of the inquiry and its scope, some of the records are likely policy documents to which FERPA would not apply.

The school also argues in its denial that because the identity of specific students is known to The Tribune, their identities would still be "easily traceable" through a redacted document and therefore no information may be released. But USU's earlier public statements about its inquiry contradicts this and other arguments, as it has already made public some of the inquiry's information involving specific students.

Argument: USU has already made part of the requested information public

USU has failed to meet the standards of the Government Records Access and Management Act outlined in 63G-2-201(2): "A record is public unless otherwise expressly provided by statute."

In announcing the inquiry's completion, USU publicly provided details from the inquiry about the three female students and Green, saying that "no athlete received preferential treatment" and "no one at Utah State discouraged any victim from reporting."

The Salt Lake Tribune

Utah's Independent Voice Since 1871

USU consciously made the decision to release that information, apparently deeming it to be not protected under attorney-client communication, work product, FERPA or GRAMA. Information such as "Some mandatory reporters did not follow policy" or "Mandatory reporting guidelines were unclear" (both hypothetical) would be no more invasive or identifying than what has already been released. USU has essentially already opened up its inquiry to the public.

A governmental entity cannot claim that information is not subject to disclosure and that its release is "a clearly unwarranted invasion of personal privacy" when the governmental entity has already released such information in a public forum.

What USU chose to release describes how the school performed well. It's possible that what USU has not released is not favorable to the school. We think this is possible based on arguments USU submitted to the State Records Committee in October, saying that its policies "fell short" in responding to allegations made against Green.

Argument: The interests favoring the release of these records outweigh privacy interests

It is the public's right to know how this taxpayer-funded institution is handling student safety.

Torrey Green was a student on USU's Logan campus from 2011 through 2016. He has been charged in seven sexual assaults that are alleged to have occurred during that time period, at least four of them against other students.

At least three of those women have since left USU. Based on interviews with The Tribune, they left because of the hostile environment created by the attack and the school's apparent lack of response.

Police say they investigated 14 separate allegations as of Nov. 18. It is unknown how many of those alleged victims were also USU students.

Green is now in jail awaiting a bail hearing, but he has been there only since October — months after he graduated and left campus, and more than a year after the first USU student — that we know of — reported Green to the school, according to interviews and police reports.

Federal law requires that all colleges respond to complaints of sexual violence and "take immediate and appropriate steps to investigate or otherwise determine what occurred. ... If an investigation reveals that sexual violence created a hostile environment, the school must then take prompt and effective steps reasonably calculated to end the sexual violence, eliminate the hostile environment, prevent its recurrence, and, as appropriate, remedy its effects."

The public needs to know whether USU is living up to this mandate, and acting responsibly in the interest of its students and the citizens of Utah who support its operations.

Request

We argue that nothing in Utah Code 63G-2-201 prevents USU from releasing this inquiry. However, we would be willing to accept a redacted copy of the inquiry.

We would also be willing to engage in mediation to allow our attorney to review the inquiry, and then receive a comprehensive summary of the inquiry and its findings from USU. This solution would be similar to an agreement reached between The Tribune and Ogden police in 2014, when The Tribune under GRAMA requested the police agency's internal review of a January 2012 drug raid that resulted in the death of an Ogden officer.

Sincerely,
Alex Stuckey