

Patrick Sullivan
Petitioner, Pro Se



BEFORE THE STATE RECORDS COMMITTEE
STATE OF UTAH

PATRICK SULLIVAN,
Petitioner,

vs.

UTAH DEPARTMENT OF CORRECTIONS,
Respondent.

NOTICE OF APPEAL TO THE STATE RECORDS
COMMITTEE

CASE NO

On September 2, 2019, I submitted a GRAMA request for records related to an inmate in the custody of the Utah Department of Corrections, Talon Hamann. (See Exhibit A). Mr. Hamann is a very close friend of mine and has given me Power of Attorney. I attached a copy of the notarized Power of Attorney along with the GRAMA request, (see Exhibit B). On September 17, 2019, Ms. Kara Kummer responded and denied the GRAMA request citing the Power of Attorney was in some way insufficient, (see Exhibit C).

On September 19, 2019, I sent an appeal to Director James Hudspeth (Exhibit D) and on September 26, 2019, Director Hudspeth responded and denied my appeal, (see Exhibit E). He provided citations to cases that related to trusts and have no relevance here. UDC has completely and totally failed to read or comprehend the actual statute on Power of Attorney's, see Utah Code Ann. § 75-9. Based on that statute the Power of Attorney I've submitted is more than sufficient.

This is further reiterated by the requirement in GRAMA which says: “a governmental entity: (a) *shall*, upon request, disclose a private record to: (iv) any other individual who: (A) *has a power of attorney from the subject of the record;..*” Utah Code Ann. § 63G-2-202(1). This statute does not say “has a power of attorney from the subject of the records that specifically states he/she may have access to private records regarding that individual” as UDC seems to imply by their denial. The word *shall* is instructive and leaves no room for interpretation. The legislature was clear. As long as an individual has a power of attorney from the subject he *shall* be granted access. So why is UDC denying me access? It should also be told that UDC sent an investigator to talk to Mr. Hamann about the power of attorney and this request specifically. Mr. Hamann informed this UDC investigator that he knew about this GRAMA request and had no issues with it. He also told the investigator that he willingly gave me power of attorney because we are very close friends. The investigator tried to get Mr. Hamann to rescind the power of attorney, but Mr. Hamann declined to do so.

If you read the actual power of attorney it leaves little room for interpretation. See Exhibit B, Paragraph 5 says “My Attorney-in-fact has authority to do *anything* on my behalf that I may lawfully do by an attorney-in-fact (the “General Power”).” This means that I can do anything on Talon’s behalf that he can do himself. The power of attorney doesn’t need to specifically state that I should be allowed access to “private” records, because I have a *general power of attorney*. Further under the “Specific Powers” (paragraph 6, which don’t restrict the general power) states in Paragraph 6(f) that I have the power to “*institute, maintain, defend, compromise, arbitrate or otherwise dispose of, any and all actions, suits, attachments or other legal proceedings for or against me*. The power includes, but is not limited to, the power to: appear on my behalf, and the power to settle any claim against me in whichever forum or manner my Attorney-in-fact deems prudent, and to receive or pay any resulting settlement.” (A GRAMA request is essentially instituting an action on Mr. Hamann’s behalf is it not?)

Clearly from the language of the power of attorney, I have the authority to receive private records of which Talon Hamann is the subject. Utah Code Ann. § 75-9-105(1) provides that a power of attorney: "shall be signed by the principal or in the principal's conscious presence by another individual directed by the principal to sign the principal's name on the power of attorney before a notary public or other individual authorized by the law to take acknowledgments. A signature on a power of attorney is presumed to be genuine if the principal acknowledges the signature before a notary public or other individual authorized by law to take acknowledgments." Mr. Hamann complied with this statutory requirement when he had the power of attorney acknowledged by a notary (at the prison) and had witnesses to it. Further under Utah Code Ann. § 75-9-106 the power of attorney I've submitted is valid and must be construed the same as the original (which is in my physical possession). When a power of attorney is submitted to a person they have limited options which are outlined in Utah Code Ann. § 75-9-119(4). But a person only has 7 business days after receipt of the power of attorney to request those things. Utah Code Ann. § 75-9-120(1)(a). UDC did not request any of those things within 7 days; therefore, they "shall ... accept [the] acknowledged power of attorney..." Utah Code Ann. § 75-9-120(1)(a). This section also places liability upon UDC for refusing to accept the power of attorney. Utah Code Ann. § 75-9-203 further addresses the requirements under the statute.

For these reasons I respectfully request that the Committee reverse the denial of my request and order that the records be provided to me as soon as reasonably possible. As you can see, I foresee no legitimate reason nor argument which could possibly be used to argue in favor of the nondisclosure of these records.

SUBMITTED this 25th day of October, 2019.

By: /s/ Patrick M. Sullivan
Patrick Sullivan, Petitioner.