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State Records Committee: 11-2-18

Re: GRAMA Appeal, Request for Hearing - UDC

On 9-15-18 I submitted a GRAMA request to UDC/LEB for all records and files related to a specific incident wherein I've been accused of trying to bring drugs into the prison. This is based on a report prepared on 8-22-18 wherein I was charged with a prison write-up and subsequently found guilty on a charge for which I am innocent and where there is no evidence to suppor it. It is also important to note that these reports contain factual inconsistencies which could've been verified by oth evidence in the record. It's also important to note that this 8-22-18 report (and associated write-up) were prepared after I had submitted an internal grievance (which UDC has refused to open) challenging the tactics, legality and reasonability of the investigation.

On 9-26-18 Ms. Kelli Foulger responded and denied my requ saying no records or report was found at this time. But how is that possible? I was interviewed on 7-26-18 (which LEB recorded). LEB Investigator Bjarnson says in his report (Exhibit A) that I was viewed "on camera" picking up a "decoy package" which he had, in fact, planted there. Again this was on 7-26-18. So how did no records exist on 9-26-18? Or did the records exist on that date, but LEB didn't want me to have them because they show its investigator was dishonest?

I then submitted an appeal to Director James Hudspeth on 10-3-18. On 10-15-18 he responded and said the LEB has opened an investigation since my request and they

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are part of that investigation. They're being classified as protected per UCA § 63G-2-305(10)(a). So how did the records for an incident and interview which happened on 7-26-18 not exist on 9-26-18, but all of a sudden on 10-15-18 they magically now exist?

I would like to clarify, the LEB has provided records, like "Exhibit A" where Investigator Bjarnson lies, or at best mischaracterizes the truth. He says I was seen "unburying the decoy package, and having the package in his hands..." The truth is that he had planted a decoy package near, or under, or around a rock. It was not buried, at least not in any traditional sense. And the video, which Bjarnson claims to have, will prove this. So why would UDC/LEB not want to release the video? The decoy package wasn't in my hands for more than 2-3 seconds (the time between when I picked it up and placed it in a garbage bag (given to me by an officer, and doing as I was instructed)).

Another inconsistency is "Exhibit B" where Bjarnson claims "criminal charges are being screened with the Sanpete County Attorney." I want to remind that the date of this report is 8-22-18. I submitted a GRAMA request to the Sanpete County Attorney. On 10-15-18 Kevin L. Daniels responded and informed me he was unabe to find any record of me. So if Investigator Bjarnson was truthful in his 8-22-18 report, why does the County Attorney allegedly screening me for criminal charges have no record of me almost 2 months later, on 10-15-18?

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For the sake of context, I wish to provide background around this incident in question. On 6-21-18 I received an employment opportunity with UDC. My job was to go to the landfill and pick up loose trash which had blown outside of the fenced-in area of the landfill. Items we pick up are typically paper, Styrofoam, bags (plastic and paper), and etc. On 7-26-18 I was doing the same as any other day. I started picking up trash where our officer escort directed us to collect trash. About 30-40 minutes after we started, officers from prison SWAT drove up in a truck, told us to put our hands behind our backs, and cuffed us. (Two of us were working at the landfill.) It was at that point I noticed at least 3 to 4 Snipers armed with rifles in full camoflauge, which had obviously been watching us the entire time.

I was then interviewed (interrogated) by Investigator Bjarnson. I still, at that point, had very little clue as to what was happening. I consented to our interview being recorded (which on 9-26-18 Ms. Kelli Fouiger claimed didn't exist). I complied with and answered his questions. I denied any involvement in any attempt to bring anything into the prison. (Although I didn't know, at that point, what I was even being accused of - weapons, cell phone, drugs, etc. - I had no idea until later when I got the report and found it was drugs (meth).) I was then put in segregation for almost 3 weeks, I wasn't allowed out of my cell for more than 15 minutes, 3 times a week. I wasn't allowed to use the phone. For the first 6 days, I was housed in a cell with no privacy. There were giant windows across the front of the cell and cameras in the corners. The light was kept on 24 hours a day. There was no window or natural light. I wasn't even allowed a pen and pap

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to write my family and let them know what's going on. UDC call this TRO (Temporary Restriction Order). Per policy TRO is non-punitive. And restrictions imposed are not to be used as punitive (meaning punishment) measures. But it sure felt as though I was being punished. Even though I'd done nothing wrong, and at that point I hadn't even received a prison write-up. After 19 days, on August 14, 2018 I was taken off TRO and returned to a regular housing unit.

Shortly before that I wrote a grievance. After I'd returned to a regular housing unit the Grievance was sent and the Grievance DTO returned it to me and refused to open and have anyone consider my complaint. I was told I can't grieve an ongoing investigation, even though Prison Policy does not say that. Prison policy FD02/01.05 Definition for "grievance" says that it is "a written inmate complaint within the jurisdiction of the Department alleging personal injury, loss, or harm caused by the application or omission of a policy or practice, and seeks to correct the personal injury, loss or harm It further says you can't grieve "disciplinary decisions" - meaning a finding of guilty for a write-up, but says nothing about investigations or the like. I wrote the DTO several times re-explaining how my grievance conformed to this. Each time she refused to open it (and has still refused to open it).

In that grievance I challenged the entire investigation and actions of UDC (LEB and MCIRT/SWAT). I questioned whether they even had the jurisdiction and authority to run such a mission off prison property. I asked who had approved it. I asked what precautions were taken to ensure no one was accidentally shot (by the armed snipers). I questioned whether they had an ambulance on call in case something

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went wrong. Again the DTO refused to open that grievance. I am attaching a copy of these grievance-related records to this appeal as "Exhibit D." It was not until after that grievance was sent that Bjarnson prepared the reports Exhibits A and B on 8-22-18 and charged me with a prison write-up. It is for that reason I believe Bjarnson was doing so as a way to retaliate for my attempted grievance.

During the hearing for the write-up I explained my side of what happened. I asked Capt Mason the (Hearing Officer) to review the video and compare it to Bjarnson's report. Capt Mason refused to do that, or anything else. He never talked to Bjarnson or anyone else who was present. He instead relied on the reports which are Exhibits A and B. Based on those alone he found me guilty. Those are the same reports in which Bjarnson lied, or at best mischaracterized the truth. I now want to clear my name and have the guilty finding reversed. These records are the only way in which I can see that will be possible. Capt Mason is a cop, he works for UDC, he is not independent. It stands to reason that he would find me guilty, even if there is no evidence to support that finding. Especially when other prison staff are encouraging him to find me guilty.

The prison controls the access to the very records which will prove my innocence. These records may, or may not be properly classified as protected. If they are properly classified as protected they should be ordered to be released per UCA §§ 63G-2-403 (11) (b) and 63G-2-406(1). These records will also show that UDC may have

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acted outside its jurisdiction and authority, and failed to take reasonable steps to protect the life and safety of those involved.

In addition, UCA § 63G-2-308 requires an entity to release portions of a record (or records) which I'm allowed to inspect, and redact portions I'm not allowed to inspect. UDC has failed to do this. A video or audio recording of our interview is private to me. A picture of the landfill, rock, fence, etc where LEB planted the decoy package are public. The picture of a rock was shown to me during the interview by Bjarnson and his supervisor. What is so "protected" about a picture of a rock? Report with my name should all be released, only if the portions not redacted are my name, dates, etc. There are still portions which should be released. UDC is obligated to review all records and redact and release those portions of the records. I have a right, to at least know, to a limited degree, what records exist and in what format.

I would like to request a hearing before the State Record Committee to address the denial of my request for access to these records.

Sincerely,

Patrick Sullivan #210357
Central Utah Corr Facility
PO Box 550
Gunnison, UT 84634