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 August 5, 2019 I submitted a GRAMA request to the Utah Department of Corrections (UDC) (See Exhibit A) for records related to the prison telephone surcharge account. I also requested a fee waiver as the records will benefit the public. The request was received on August 6. On August 22, 2019, Ms. Kara Kummer responded and denied my request for a fee waiver and asked that I pre-pay $50 before UDC would process my request (see Exhibit B).

On August 26, 2019 I emailed my appeal of this denial to Director Hudspeth (see Exhibit C). I then received a response from him on August 30, 2019 in which he denied my appeal and upheld the fee waiver denial (see Exhibit D). I now wish to appeal the denial of my request for a fee waiver to the State Records Committee. I respectfully request a hearing to address the denial of this fee waiver.

The records I have requested are for a restricted account known as the prison telephone surcharge account. There is a big interest in prison phone rates. The prison earns a 78.2% commission (kickback) from every phone call an inmate makes. UDC does nothing to earn this kickback other than sign a contract with a telephone company. These exorbitant phone rates are then passed on to the friends and families of inmates. A typical local call costs $0.10 cents a minutes. UDC gets over $0.07 of that per minute charge and the remainder goes to CenturyLink. Long distance calls cost $0.19 cents a minute. UDC gets over $0.14 of that per minute charge with the remainder going to CenturyLink. CenturyLink pays for the phones, equipment, service, and recording/storage of all phone calls. UDC has no overhead for which their portion goes to. UDC doesn't even pay the inmate phones representatives. CenturyLink pays for them out of their modest 21.8% cut of the contract.

This contract is up for renewal in the next few months. If UDC wanted to they could lower the phone rates and take a more reasonable commission (or preferably no commission). Utah Code Ann. § 64-13-42(2) specifically governs the revenue earned from phone commissions. Per this statute money from this account may only be used for education and training programs for inmates and offenders. The records I've requested will help show what the money has been spent on and also the current balance of the account. This will help see what amount UDC would actually need to fund this account and what this money has historically been used for.

Year over year the prison is making more and more from the phones. For the most recent fiscal year (2019) this came to a total of $1,882,303.28. (Fiscal year 2018 it was $1,438,113.63, fiscal year 2017 $1,082,928.63, fiscal year 2016 $1,050,837.04, fiscal year 2015 $790,486.87 and fiscal year 2014 it was $737,064.77). (See Exhibit E). As you can see there has been a HUGE jump in these commissions earned from 2015 to 2016, then from 2017 to 2018, and again from 2018 to 2019 (during those gaps there was a year-over-year increase of $200,000 to $400,000). Do the people who are paying into this account (inmates and their friends/families) not have a right to see exactly how this money has been spent? To demand that this group of people pay to see what UDC has spent this money on is an insult.

This information is not available on the Utah Transparency website, so obtaining it directly from UDC is the only option (Exhibit F). Clearly the records I've requested will benefit the public rather than myself so it is only logical that UDC would grant a fee waiver. In fact, I can see no logical argument to explain why UDC would deny a fee waiver. Perhaps other than that they may not want the public to see what is contained within these records. In an effort to show how big the public interest in prison phone rates is I have attached copies of articles from various local and national outlets about prison phone rates (see Exhibit G). The records provided to me will be used to publish an article for the Utah Prisoner Advocate Network (UPAN) at https://utahprisoneradvocate.org/, an article for the blog Utah Campaign for Prison Phone Justice at https://www.utahcampaignforprisonphonejustice.org/. The files provided to me will also be posted in electronic format on these websites for all interested members of the public to view. In addition they will be posted on a website maintained by the Prison Phone Justice at https://www.prisonphonejustice.org/state/UT/ (see Exhibit H) which already has publicly posted UDC rate and contract information. And they have personally expressed interest in posting the records provided to me in response to this GRAMA request.

It is further unclear what “compilation” UDC is claiming justifies a fee. I am requesting records which should contain nothing but public information. See Utah Code Ann. § 63G-2-301(3)(e). I do not see any redactions being necessary. If redactions are necessary they will likely be minor. I have not requested that they provide the records in a format other than that which they already exist. I assume they can provide them in Excel, PDF, or Access formats without needing to change or alter the format. The Utah Court of Appeals has said, “governmental entities may not charge for merely assembling documents. That is, an agency may not charge for a request under section 63-2-203(2) if the agency is only required to retrieve a single document or set of documents from a readily available source and provide them to the requestor for inspection…” See Graham v. Davis County Solid Waste Mgmt. and Energy Recovery Special Serv. Dist., 1999 UT App 136, ¶ 26 (Exhibit I).

For these reasons I respectfully request that the State Records Committee grant me a hearing to address the denial of this request for a fee waiver and that they order UDC to provide the requested records without charge.

Patrick Sullivan
September 1, 2019