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Gina Proctor
Executive Secretary
State Records Committee
346 S. Rio Grande
Salt Lake City, Utah 84101

Dear Ms. Proctor:

I am appealing a denial of a request I made under the Utah Government Records Access and Management Act (GRAMA). If you are not the correct person to receive such an appeal, please let me know.

Otherwise, please consider my appeal and grant me relief by ordering the records in question be disclosed to me. I also restate other aspects of my request, including that the records be provided in a common electronic format, if possible. I am a journalist working to benefit the public.

Feel free to refer to my contact information if you have any questions.

BACKGROUND

I am appealing the denial of a request I made to West Valley City on Sept. 20, 2019. The request sought the following:

"Any and all reports, records, lists or inventories generated when the University of Utah Police Department used West Valley City Police technology this year to do a phone download of Officer Miguel Deras' personal cell phone. Additionally, I request any emails sent between anyone at West Valley and the University of Utah to set up this phone download."

On Oct. 2, 2019, City Recorder Nichole Camac sent a reply through mail. She wrote:

"Although West Valley City assisted with the University of Utah's Police Department with our technology, the property of this information belongs to the University of Utah Police Department. At this time, your GRAMA request is being denied per Venue Agency Records."

I appealed that denial on Oct. 14, 2019, to City Manager Wayne T. Pyle, as instructed.

On Oct. 28, 2019, Mr. Pyle sent a letter notifying me that my request was again denied. He wrote:

"I am in receipt of your appeal referenced above. After careful review, I am denying your appeal under Utah Code Ann. §63G-2-305(10)(a)(b)."

ARGUMENT

State code supports that the records should not have been denied and should, in fact, be provided to me. West Valley City has confirmed that the phone download did take place at its facility. And the city does not deny that it has records of it.

Based on Administrative Rule 35-2-2(2), a petitioner may appeal a governmental entity's denial of access to records "for the reason that the record is not maintained by the governmental entity" if the individual believes "the record was maintained by the governmental entity at one time."

I understand West Valley is not the investigating agency in this matter; however, it should still have a copy of the information generated by its own technology, according to the law. Additionally, even if an agency did not create a report, if it hosts a copy, it is still subject to GRAMA for that.

That is also according to Utah Code Ann. §63G-2-103(22)(a): "'Record' means a book, letter, document, paper, map, plan, photograph, film, card, tape, recording, electronic data, or other documentary material regardless of physical form or characteristics: (i) that is prepared, owned, received, or retained by a governmental entity or political subdivision; and (ii) where all of the information in the original is reproducible by photocopy or other mechanical or electronic means."

I would like to emphasize where that says "prepared, owned, received, or retained."

In this case, West Valley City's technology was used, so in a sense it "prepared" the records. Additionally, since its technology was used it also "received" the information. And, it should have also "retained" a copy (or at least be able to get one or extract the information from the machine used).

In no part of state code regarding GRAMA does it say that an agency has to have "created" the record for it to be subject to a records request. In her original denial — which does not cite GRAMA code — Ms. Camac incorrectly states that "the property of this information belongs to the University of Utah Police Department." That is simply not stated anywhere in the law.

Rather, GRAMA code uses the word "custody" at least four times, which is to say that it matters which agencies have possession of the records in question. West Valley City's technology was used and it should possess a copy of the records.

This is supported by a previous case when a contractor gave a report to the Utah State Auditor's Office. When those records were requested from the state, the auditor's office released them even though it did not create them.

In his second denial, Mr. Pyle references Utah Code Ann. §63G-2-305(10)(a)(b). This section states that

records may be "protected" if they are: "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; (b) reasonably could be expected to interfere with audits, disciplinary, or enforcement proceedings."

I dispute this citation, as well.

West Valley City has claimed that it is not taking part in any investigative proceedings, but merely helping the University of Utah by allowing it to use technology. Therefore, the city should not be able to claim that the records should be "protected" because it could interfere with an investigation or discipline. West Valley City is carrying out no such thing.

Additionally, the officer at question here — Miguel Deras — no longer works at the University of Utah. So it is unlikely that any discipline against him is still ongoing. And the case it is in regards to — Lauren McCluskey's murder — is closed. So it is also unlikely any investigation is continuing.

Furthermore, regarding my request, I have heard that Officer Deras received a copy of what was downloaded. I have spoken to several individuals with knowledge of the situation (The Tribune would prefer to protect their identities at this time), who have told me that Officer Deras was provided both a printed out paper copy and a USB copy of what was downloaded from his phone.

If that is the case, why can that not be provided to me? That suggests there is a record and that it has been released previously.

Overall, this request is important to the public. I am looking for the information that came from the phone download of an officer who was involved in McCluskey's case. The phone download is said to have been related to that, though it happened in August 2019 — quite a long time following McCluskey's death.

I would like to know, fully, what the result of that was if the U. and West Valley City felt the need to do the download then, so long after.

The individuals I have spoken to said that information was downloaded from the phone that showed text messages Officer Deras had with other officers (possibly Mario Sellick) related to the explicit photos that student-athlete McCluskey shared with Deras when she reported that she was being extorted. Two of those individuals that The Tribune spoke to said Officer Deras personally told them that the university found evidence of that during the download.

Again, this officer worked on the McCluskey case. What was downloaded from his phone, particularly related to that, is of relevance to taxpayers who fund the University of Utah and West Valley City.

Additionally, based on the denial, it does not appear West Valley City considered the part of my request having to do with emails exchanged between the city and the University of Utah about the phone download as it makes no mention of that.

I would ask that part be examined again, too, and the responsive records be provided.

CONCLUSION

The denial of records from West Valley City goes against state law on GRAMA, which states that if an agency has a copy of the records it is still subject to provide those at request. It does not have to have created them.

West Valley City helped the U. in allowing it to use its technology to perform a phone download of an officer's phone. I request any and all information gleaned from that. And I request the emails I originally requested, as well.

This is a matter of great public concern.

Sincerely,

Courtney Tanner
The Salt Lake Tribune