The Salt Lake Tribune
Utah's Independent Voice Since 1871

Courtney Tanner
Reporter
The Salt Lake Tribune
801-257-8788
ctanner@sltrib.com

October 15, 2019

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 response on a request I made Sept. 18, 2019, and submitted through the University of Utah Records Center. The request sought the following:

"I am asking for any and all specific records/reports that resulted from the download of University of Utah police Officer Miguel Deras's phone this year (2019) at the West Valley City Police Department. That would include what was discovered on his phone, including messages, emails and other items he may have shared inappropriately."

On Sept. 23, 2019, Renee Bay sent a reply through the Records Center. She wrote:

"The University has performed a thorough search of its files and has been unable to locate any records responsive to your request."

I appealed that denial on Oct. 4 to Greg Thompson, the records officer at the University of Utah.

On Oct. 11, Mr. Thompson sent a letter notifying me that my request was again denied. He wrote:

"I have confirmed with the department that the University does not have any record responsive to your request. Although an effort was made to download certain information from a backup of Officer Deras' personal phone, that effort did not result in any readable/usable data. The University did not retain a copy of the corrupted and unusable data.

Therefore the University simply does not have any records responsive to your request. This is the University's final response to the request."

ARGUMENT

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, or that the governmental entity has concealed, or not sufficiently or improperly searched for the record."

That is the reason I am appealing this decision from the university.

Accordingly, I will provide as much evidence as possible to support my belief that the university is or should be retaining the records.

First, I have spoken to West Valley City, which has confirmed that the phone download did, in fact, take place at their facility. The spokeswoman for the police department, Roxeanne Vainuku, has told me that the download occurred and the university left with a report from the machine used to download the information.

Additionally, 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.

(The university also confirms in its denial that a phone download did take place.)

That suggests strongly to me that records do exist. And, additionally, that the records were "maintained" by the university and possibly "concealed," as administrative rule notes in allowing this appeal. It is particularly worrisome that the university suggests it tried to download the contents of Officer Deras' phone but "that effort did not result in any readable/usable data" and the university "did not retain a copy of the corrupted and unusable data."

To me, that seems like a possible effort to conceal the records or an excuse not to provide them. Either way it is distressing.

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 Lauren 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.

I do not believe that the entire phone download effort resulted in only "corrupted" data as the university posits.

I also fear that the university has "not sufficiently or improperly searched for the record." Were emails looked at where the information might have been sent as an attachment? Why would the university not keep a copy? Why would the university give Officer Deras a printed out copy of so-called "corrupted" data? What would be the purpose of the phone download if there was no conclusion?

I believe the University of Utah should have kept some record of the information generated from the phone download, according to the law.

Utah Code Ann §63G-2-103(22)(a) states: "'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. But the university should be the "owner," the one who "received" the records and the one who "retained" them.

This information is important to the public. I am looking for the information that came from the phone download of an officer who was involved in the Lauren McCluskey case. The phone download is said to have been related to that. But it happened in August 2019 — quite a long time after McCluskey's death. I would like to know, fully, what the result of that was if the U. and West Valley felt the need to do the download then.

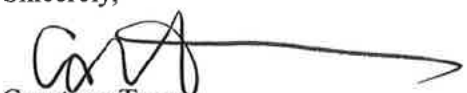
What was downloaded from his phone, particularly related to the McCluskey case, is of relevance to taxpayers who fund the University of Utah.

I would like to note, too, that it is particularly unusual that the university's police department chose to do the phone download at West Valley City's facility. The U.'s department has several personal connections to West Valley City, and I worry using that facility was an attempt to obscure the download and what was found during it. It is customary for police agencies to use state technology — not another police agency — to download an officer's phone in the case of an internal investigation.

CONCLUSION

I have reason to believe that such records as I requested on the phone download do, in fact, exist and I would like to ask that another, more thorough search be performed and those reports be provided to me.

Sincerely,



Courtney Tanner
The Salt Lake Tribune