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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 response on a request I made Oct. 7, 2019, and submitted through the University of Utah Records Center. The request sought the following:

"I am requesting copies of any text messages sent and/or received by Miguel Deras from October 1, 2018 to December 31, 2018 containing, referring to and/or referencing photos sent to him by Lauren McCluskey."

On Oct. 21, 2019, Melissa Walker 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. 23, 2019, to Greg Thompson, the records officer at the University of Utah.

On Oct. 23 2019, 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' cellphone, that effort did not result in any readable/usable data. The University did not retain a copy of the corrupted and unusable data. There, the University simply does not have any records responsive to your request."

ARGUMENT

As there is no GRAMA code cited here, I will argue that the records — which do exist, to my knowledge — should be found and delivered to me. I have spoken to several individuals who have confirmed that such text messages as I have requested were, in fact, sent on Officer Deras' phone.

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."

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 know that student-athlete Lauren McCluskey did, in fact, text Officer Deras on his cellphone. That has been established both by the university and by an independent investigation into the university.

When Ms. McCluskey first reached out to Officer Deras, who was looking into her concerns, she reported that she was being extorted for money in exchange for her harasser to not releasing explicit and compromising photos of her.

She sent those photos to Officer Deras.

In a separate GRAMA, The Salt Lake Tribune has similarly requested from the university emails Officer Deras and Ms. McCluskey exchanged about the photos. That request was fulfilled.

In one of those responsive emails, Ms. McCluskey sends the original photos to Officer Deras that she is worried about. "Attached are those photos," she says.

In the responses from Officer Deras, it says at the bottom of his messages, "Sent from my iPhone." That is to say that Officer Deras was, in fact, using his cell phone and corresponding with Ms. McCluskey there, so it follows that there would also be text message conversations between the two of them (again, that has been documented by the U. that the two exchanged texts). And this further proves that.

Therefore, it is unclear why the university is saying there are no records of those cell phone/text conversations when it knows they happened. They acknowledged this from the beginning of the investigation of the case.

In his denial, Mr. Thompson says a phone download was done on Officer Deras' phone but "that effort

did not result in any readable/usable data." However, the fact that these texts existed was known and well established before that phone download took place in August 2019.

Ms. McCluskey was murdered in October 2018 and an independent review finished in December 2018 makes note of the texts. So it is likely the university had seen the conversations before the "unusable" phone download done nearly a year later. This request should not be contingent on that unsuccessful phone download. In fact, it truly is not relevant to the phone download at all.

This officer was communicating with a student via texts. And those texts were looked into as part of the investigation in 2018 — not 2019 with the phone download. It should have had records well before that.

I do believe the university has those text messages related to the pictures Ms. McCluskey sent.

Additionally, I would like to note specifically that this request is not limited to only the conversations that Officer Deras and Ms. McCluskey had about the pictures. In fact, this request is any and all text messages that Officer Deras sent or received about the photos, in whole, including talking about them or sending them to anyone else (particularly anyone else in the department).

Some individuals I have spoken with — whose identities The Tribune would prefer to protect at this time — said that Officer Deras texted about the photos with other officers (possibly Mario Sellick).

That information and those exchanges are pertinent because it shows how evidence in this case was handled, as well as how an officer dealt with sensitive photos. That is why the request is inclusive of all conversations and people, but limited to those dealing with the photos.

My request asks for "any text messages sent and/or received by Miguel Deras … containing, referring to and/or referencing photos sent to him by Lauren McCluskey." It is important that that be noted.

Furthermore, Officer Deras may have been using a personal cell phone, but he was conducting work on it.

What he sent on that phone, then, is important to the public. This case ended in the death of a University of Utah student. And the conversations with an officer that happened before that is relevant to taxpayers who fund the University of Utah and its police department.

CONCLUSION

I have reason to believe such records as I have requested related to Officer Deras' text messages do, in fact, exist. The university has failed to provide evidence — beyond mere conjecture — that it does not have copies.

Sincerely,

Courtney Tanner
The Salt Lake Tribune