



October 1, 2019

VIA ELECTRONIC MAIL

Gina Proctor
Executive Secretary to the
Utah Records Committee
346 S. Rio Grande
Salt Lake City, UT 84101 -1106
gproctor@utah.gov

RE: Fee Waiver Denial Appeal: Seven County Infrastructure Coalition Communications

Dear Ms. Proctor:

On behalf of the Center for Biological Diversity (“the Center”), and pursuant to the Utah Government Records Access and Management Act, Utah Government Code section 63G § 2 (“GRAMA”), I appeal the Seven County Infrastructure Coalition’s (“SCIC”) August 26, 2019 denial of the Center’s fee waiver request, as part of its May 29, 2019 GRAMA request for records (“GRAMA Request”).

For the reasons set forth below, SCIC improperly denied the Center’s request for a fee waiver pursuant to its GRAMA request. The Center now defers to the Utah Records Committee (“URC”) in this matter.

FACTUAL BACKGROUND

On May 29, 2019 the Center submitted to SCIC via email a request pursuant to GRAMA. Attachment A (The Center’s May 29, 2019 GRAMA Request). In that request, the Center sought:

From January 1, 2018 to the date SCIC conducts this search all records of communications: (1) between SCIC and the Utah Department of Transportation; and/or (2) between SCIC and the TYR Energy, as alluded to in Attachment A (March 8, 2019 SCIC Meeting Minutes); (3) containing the phrases “Transportation Infrastructure Finance and Innovation Act” and/or “TIFIA.”

Id. That same day, SCIC sent the Center an email acknowledging receipt of the Center’s GRAMA request and another request submitted by the Center that day. Attachment B (SCIC’s May 29, 2019 Receipt Email).

On August 26, 2019 SCIC sent the Center a letter stating:

Your claim for a fee waiver is based on the assertion that that the SCIC operations and projects are largely obscured from the public domain and therefore your request is in the public interest. The SCIC disagrees that its operations and projects are largely obscured from the public domain. Records between public bodies, such as the SCIC and the Utah Department of Transportation have never been obscured from the public domain and are even a matter of open and public meeting minutes. Similarly, records of the SCIC related to federal public funding through TIFIA has never been obscured. And, even efforts to coordinate with TYRE Energy have been reported in public meetings, as referenced in your request. Your request for a fee waiver is denied.

Attachment C (SCIC's August 26, 2019 Fee Waiver Denial Letter).

On September 18, 2019 the Center sent via email to SCIC a letter appealing SCIC's fee waiver denial pursuant to the Center's GRAMA request. Attachment D (The Center's September 18, 2019 Fee Waiver Denial Appeal).

On September 25, 2019 SCIC sent the Center via email a response to the Center's fee waiver denial appeal, thereby upholding its decision. Attachment E (SCIC's September 25, 2019 Appeal Denial Letter).

Accordingly, the Center is providing the Utah Records Committee with ample evidence that it meets all of the criteria for a full waiver of fees associated with its request for records pursuant to GRAMA.

I. THE CENTER QUALIFIES FOR A FEE WAIVER.

The Center properly demonstrated in its GRAMA Request that it qualifies for a fee waiver.

As defined in GRAMA, a public record is a record that is not private, controlled, or protected and is prepared, owned, received or retained by the governmental entity. 63G §2-103(21). GRAMA encourages waiving the fee when the request benefits the public rather than a specific individual. 63G §2-203(4)(a). A person who requests a record to "obtain information for a story or report for publication or broadcast to the general public" is presumed to be acting to benefit the public. 63G §2-204(4). Furthermore, a governmental entity cannot routinely deny requests for fee waivers, but must consider the merits of a request. 63G §2-203(4).

For the reasons described below, SCIC wrongly denied the Center's request for a fee waiver, and the Center fully qualifies for a waiver of fees associated with the processing of its GRAMA request.

A. The Records That The Center Requested Are Not Publicly Available.

As stated in the Center's GRAMA request, the records the Center requested from SCIC are not publicly available, and accordingly, the requested records will provide new information to the public about SCIC's implementation of the Uinta Basin Railway project. If the records were already publicly available, the Center would have them in its possession.

In its GRAMA request the Center specifically requested "all records of communications" between SCIC and Utah Department of Transportation and/or TYR Energy containing the phrases "Transportation Infrastructure Finance and Innovation Act" and/or "TIFIA." Attachment A. The Center went on to define "records" as:

For this request, the term "records" refers to, but is not limited to, documents, correspondence (including, but not limited to, inter and/or intra-agency correspondence as well as correspondence with entities or individuals outside the state and/or federal government), emails, letters, notes, recordings, telephone records, voicemails, telephone notes, telephone logs, text messages, chat messages, minutes, memoranda, comments, files, presentations, consultations, biological opinions, assessments, evaluations, schedules, papers published and/or unpublished, 2 reports, studies, photographs and other images, data (including raw data, GPS or GIS data, UTM, LiDAR, etc.), maps, and/or all other responsive records, in draft or final form.

Id.

In its Final Response Letter, SCIC asserted that the Center's "claim for a fee waiver is based on the assertion that that the SCIC operations and projects are largely obscured from the public domain." Attachment C. Although you admitted at the November 2018 Community Impact Board ("CIB") meeting that SCIC "[goes] into closed session frequently,"¹ the SCIC further argued that its operations and projects are not "largely obscured from the public domain" because the records between public bodies, meeting minutes, records SCIC's federal public funding through TIFIA, and efforts to coordinate with TYR Energy" have "never been obscured." *Id.*

While the Center did assert that SCIC's actions have "largely obscured from the public domain," the Center was not referring to the public meeting minutes or federal funding that SCIC noted in its Final Response Letter. Attachment C. The Center seeks to understand more about the behind-the-scenes decision-making of SCIC. Responsive records to the Center's GRAMA request will include emails, letters, telephone records, voicemails, telephone notes, telephone logs, text messages, and chat messages of SCIC concerning the Transportation Infrastructure Finance and Innovation Act, which have previously not been made available within the public domain.

¹ Utah Permanent Community Impact Board, November 2018 Minutes Meeting, <https://jobs.utah.gov/housing/community/cib/documents/110818cibminutes.pdf> (last viewed Oct. 1, 2019).

Thus, the information that the Center requested is not publicly available.

B. The Records Will Benefit the Public Rather Than A Specific Individual.

As shown in the Center's original GRAMA request and as described below, the records that the Center requested will significantly contribute to the understanding of a reasonably broad segment of persons, not just a specific individual, interested in SCIC's communications concerning the proposed Uinta Basin Railway.

Disclosure of the records that the Center requested will increase the level of public understanding of SCIC's decision-making activities, including those that concern the Transportation Infrastructure Finance and Innovation Act and the Uinta Basin Railway project. Responsive records will provide the public with information that will lead to important public oversight of SCIC's implementation of "infrastructure elements that span across county lines."² Furthermore, the requested records are certain to shed light on whether SCIC is complying with its mission and applicable environmental laws. Such public oversight of agency action is vital to our democratic system and clearly envisioned by the drafters of the GRAMA.

Moreover, the records will allow for significant contributions to public understanding of SCIC's operations and activities because will shed light on SCIC's decisions and priorities. The Center intends to digest the new records that it receives, and disseminate the information in order to educate the public about the Uinta Basin Railway project's potential environmental impact. As demonstrated in more detail in Section C below, the Center is a non-profit organization that informs, educates, and counsels the public regarding environmental issues, policies, and laws relating to environmental issues.

Thus, disclosure of the requested records and information contained in those records will increase the level of public understanding of the operations or activities of SCIC that existed prior to disclosure.

C. The Center Has A Demonstrated Ability To Disseminate The Requested Information Broadly.

The Center intends to fulfill its well-established function of public oversight of agency action. The Center is not requesting these records merely for their intrinsic informational value.

Public oversight and enhanced understanding of SCIC duties is absolutely necessary. As thoroughly discussed in the Center's GRAMA request, the Center's track record of active participation in oversight of governmental agency activities, and its consistent contribution to the public's understanding of agency activities as compared to the level of public understanding prior to disclosure are well established. The Center has been substantially involved in the management activities of numerous government agencies for years, and has consistently displayed its ability to disseminate information granted to it through GRAMA.

² SCIC, *About: About the Coalition*, <http://www.scic-utah.org/about> (last visited Oct. 1, 2019).

In consistently granting the Center's fee-waivers, agencies have recognized that (1) the Center's requested information contributes significantly to the public understanding of the operations or activities of the government, (2) the Center's requested information enhances the public's understanding to a greater degree than currently exists, (3) the Center possesses the expertise to explain the requested information to the public (e.g. the Center has several staff biologists and staff attorneys), (4) the Center possesses the ability to disseminate the requested information to the general public, (5) and that the news media recognizes that the Center is an established expert in the field of imperiled species, biodiversity, and impacts on protected species.

In addition, our informational publications supply information not only to our membership, but also to the memberships of most other conservation organizations, locally and nationally. Our informational publications continue to contribute information to public media outlets, as well.

II. OBTAINING THE INFORMATION IS OF NO COMMERCIAL INTEREST TO THE CENTER.

Access to government records, disclosure forms, and similar materials through GRAMA requests is essential to the Center's role of educating the general public. Founded in 1994, the Center is a 501(c)(3) nonprofit conservation organization (EIN: 27-3943866) with more than 1.6 million members and online activists dedicated to the protection of endangered and threatened species and wild places. The Center has no commercial interest and will realize no commercial benefit from the release of the requested records.

III. CONCLUSION.

For the reasons set forth in the Center's GRAMA request and above, the Center has sufficiently demonstrated that disclosure of the requested records will significantly contribute to public understanding of government operations or activities.

I hope that this letter has demonstrated that the Center qualifies for a full fee waiver. If you have any questions, please contact me at (971) 717-6409 or foia@biologicaldiversity.org. All records and any related correspondence should be sent to my attention at the address below.

Sincerely,



Margaret E. Townsend
Open Government Staff Attorney
CENTER FOR BIOLOGICAL DIVERSITY
P.O. Box 11374
Portland, OR 97211-0374
foia@biologicaldiversity.org