#2016-44

The Salt Lake Tribune

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July 12, 2016

Nova Dubovik
State Records Committee Executive Secretary
346 Rio Grande
Salt Lake City, Utah 84101

To Whom it May Concern:

I am writing to appeal the denial of a records request on May 25. The request was:

- Copies of Spillman Case Access Logs for any sexual-related criminal investigation by Provo Police Department that was accessed by any employee of Brigham Young University, including its police department, from January 2010 to present.

Provo City denied my request on May 26, citing a statutory exemption to the Government Records Access Management Act under Utah Code Ann. 63G-2-305(10)(a): that the records could not be released because of an ongoing investigation conducted by the Department of Public Safety. The records that I have requested are the subject of the investigation, which was opened the day after the records request was submitted to Provo City Police.

I appealed this decision, and on June 14, Provo City's Chief Administrative Officer Wayne Parker denied the request again, citing a number of new claims, which I will address below. (I have also included copies of documentation of my GRAMA requests and subsequent denials for reference.)

ARGUMENT

I. Provo City does not show that the records reasonably could be expected to interfere with investigations per Utah Code Ann. 63G-2-305(10)(a).

1. GRAMA puts the burden on government agencies to prove a record is not public: Utah Code Ann. 63G-2-103(21): "Public record" means a record that is not private, controlled, or protected and that is not exempt from disclosure as provided in Subsection 63G-2-201(3)(b).

Utah Code Ann. 63G-2-201(2) A record is public unless otherwise expressly provided by statute.

2. The statute cited by the department imposes a standard of reasonableness: Records are protected only if they "reasonably could be expected to interfere with investigations." This language demonstrates the legislature recognized that not all investigations are automatically sensitive to interference by the release of related records, and not all expectations of interference are automatically reasonable.

90 South 400 West, Suite Lake City, UT 84101 Phone (801) 257-TRIB (8742) Fax (801) 257-8525

II. Provo City's concerns that releasing the information could jeopardize the investigation can be remedied through redactions.

1. The city states releasing the information could lead to the disclosure of witnesses' and subjects' identities. This can be remedied by simple redactions to the log. Access log data would not jeopardize the identities of those involved in the underlying criminal cases, because that information is not included in an access log. An access log contains fields for user ID, time of access, table being accessed, mode used, terminal name, and miscellaneous data.

III. A requester does not need permission from every entity before a public record can be released.

1. The city cites Utah Code 63G-2-202(4), saying the requester must obtain permission from all involved entities (in this case, the local law enforcement agencies who take part in the Utah Valley Law Enforcement Shared Data System) before a record can be released. However, the law states that permission must be given if the record is *private.* I am asking that the records committee find that these are public records, therefore, no permission should be required.

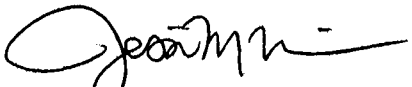
IV. The request can be amended to include all crimes, not limiting the results to sexual-related offenses.

1. The city argues that because the request specifically seeks "sexual-related offenses," it would have to create a records in order to fulfill the request, because access log data does not indicate the nature of type of case accessed. I limited the request to those types of crimes in an effort to not burden the city with a voluminous request. I am willing to amend the request to include all offenses if that makes it easier for the city to fulfill their obligation to provide public records.

In conclusion, I ask that the records committee find that the requested records are public and order that they be released. The city has offered no substantial argument that the release of these records could interfere with an investigation, much less that the expectation is reasonable.

Thank you for considering my appeal.

Sincerely,



Jessica Miller
Reporter
The Salt Lake Tribune
(801) 257-8785
jmiller@sltrib.com