



June 3, 2019

Gina Proctor
SRC Executive Secretary
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Re: GRAMA Appeal – records regarding murder of Karen Lee Jarvis (DOB 11/28/50)

Dear State Records Committee:

This letter is to appeal the denial of the Utah Cold Case Coalition's request for records relating to the murder of Karen Lee Jarvis (DOB 11/28/50) on or about February 8, 1998.

I. PROCEDURAL BACKGROUND

We submitted our initial request for records through the GRAMA portal. Our request was denied by letter dated February 12, 2019 (see attached). That letter stated, in its entirety:

We have received your GRAMA request dated, 2/10/19. This request for "All records relating to the murder of Karen Lee Jarvis on or about February 8, 1998" have been DENIED, 63G-2-305(10).

This is an ongoing investigation therefore we will not release the information. You may appeal this decision to Sheriff Cameron Noel within 30 days. His contact information is cnoel@bcsso.utah.gov.

See attached.

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We sent our appeal to Sheriff Noel, as directed. *See* attached. Sheriff Noel affirmed the denial in a letter dated March 28, 2019. (*See* attached.) The affirmance quotes 63g-2-305(10) and then states: “This case has ‘Private’ and ‘Protected’ information this is report [*sic*]. I am DENYING your request for these records.” The letter then states that an appeal may be taken to the County Clerk.

As an initial matter, we are a bit confused about the appeal process we have been directed to follow. Beaver County’s appeal process appears to contemplate that the initial appeal will be to the Chief Administrative Officer, defined by County policy as the County Clerk. (*See* policy attached.) As noted above, however, we were directed to submit our first appeal to Sheriff Noel. We assumed he had been delegated by the Chief Administrative Officer to resolve the first round of appeals. Accordingly, we thought the second round of appeals would be to the local appeals board. *Id.* Instead, Sheriff Noel’s affirmance appears to suggest that two more appeals must be completed at the local level, for which we are struggling to find language in GRAMA or the County’s policy.¹ We respectfully challenge a requirement by Beaver County that we complete three local GRAMA appeals. Meanwhile, because of the uncertainty, we directed our last appeal to both the County Clerk and the Appeals Board, i.e.:

Ginger McMullin
Beaver County Clerk
gingermcmullin@beaver.utah.gov

and

Beaver County GRAMA Appeals Board
c/o Ginger McMullin
Beaver County Clerk
gingermcmullin@beaver.utah.gov

(*See* attached.)

Our appeal was e-mailed on April 26, 2019. More than 10 days have elapsed without any response, which appears to constitute a denial. The Coalition is now appealing to this Committee. As a matter of due process, the Coalition respectfully requests that (when

¹ We have attached herewith a copy of the Government Records Access and Management Policy for Beaver County that we found online.

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affirmance is by non-response) the County should be limited to the grounds for denial stated in response to the first appeal(s) below.

II. DISCUSSION

We offered in our earlier appeal to “freeze” it in order to have discussions about our request. We reiterate that offer here, and would be happy to discuss with the County Clerk, County Attorney, or other authority mutually agreeable conditions for release of the records. On the (rare) occasion in which one of our requests has been denied, this process has worked well for both parties. A dispute may be resolved by mutual agreement, including terms that do not create binding precedent. (For example, the dispute can be resolved by an agreement that the records will not be shared by the receiving party.)

Meanwhile, however, GRAMA requires us to provide our reasoning for the appeal. We have several concerns with the denial and its affirmance by the County.

A. **The initial report (with statutorily authorized redactions) must be provided.**

Regardless of any claim by the County that a case is ongoing, both GRAMA and this Committee have made clear that initial contact report(s) must be provided. Certain private information may be redacted, but the report must be provided regardless. *See, e.g.*, Utah Code § 63G-2-301(3)(g) and *Miller v. Provo City Police Department*, Utah State Records Committee opinion 16-36, <https://archives.utah.gov/src/srcappeal-2016-36.html>; *Ramseth v. Murray City*, State Records Committee ruling 17-35, <https://archives.utah.gov/src/srcappeal-2017-35.html> (initial contact reports must be provided even if case is active/open).²

B. **The County has not shown that the records were properly withheld.**

GRAMA specifies that “all records are public unless otherwise expressly provided by statute.” Utah Code § 63G-2-201(2). It is the County’s burden to establish a factual and legal basis for withholding records. We respectfully submit that neither the denial nor the affirmance has established a basis for withholding the records relating to this murder.

² We recognize that redactions may be appropriate, if in accord with GRAMA and State Records Committee precedent. *See, e.g., Onysko v. Jordanelle Special Service District*, State Records Committee opinion 17-19 (phone numbers of persons who called the government entity must be provided; “A record may not be withheld merely because its contents invade personal privacy. Instead, the invasion must be clearly unwarranted.” (quoting Utah Supreme Court)).

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First, neither the denial nor the affirmance established that the record is properly categorized as “Protected”. Records created or maintained for criminal enforcement purposes may be protected if properly classified, but *only* if the agency demonstrates that release of the record: (1) Reasonably could be expected to interfere with enforcement proceedings; or (2) Would create a danger of depriving a person of a right to a fair trial or impartial hearing. Utah Code § 63G-2-305(10)(b) & (c).

Neither the original denial nor Sheriff Noel’s disposition of our first appeal provides any factual explanation, let alone one by which the claim of an “ongoing” investigation could be evaluated. As the Supreme Court has stated, a GRAMA request may not be denied based simply by pre-classifying a category of records as “protected.” *See, e.g., Deseret News Publishing Co. v. Salt Lake County*, 2008 UT 6 ¶ 24 (“When the County received the newspaper’s request, it assumed the statutory responsibility to determine the reports’ classification status by taking into account the entire scope of GRAMA, including its expressions of legislative intent, its presumptions favoring access, and its mandate that when competing interests fight to a draw, disclosure wins.... [T]he balancing analysis under GRAMA must be tethered to the specific interests of the parties and the particularized application of the relevant public policies at issue.”) *See also Schroeder v. Utah Attorney General’s Office*, 2015 UT 77, ¶ 51-57 (rejecting argument that agency could refuse disclosure based on general classification of records).

This Committee has similarly recognized that it is insufficient to simply state, without factual explanation or support, that an investigation is “ongoing.” *See, e.g., Carlisle v. Utah Attorney General*, State Records Committee opinion 15-17 (“Counsel for Respondent argued at the hearing that the records were properly classified as protected because they are related to a current ongoing investigation of Cameron Noel, Beaver County Sheriff. Counsel could not provide specifics concerning the investigation including what entity was investigating or the scope of the investigation, and then later stated that he could neither confirm nor deny if an investigation was ‘pending or ongoing.’”).

Neither the denial nor the affirmance demonstrates that, at the time of our GRAMA request, there was any reasonably expected enforcement action with respect to this 21-year-old murder, or that the case could reasonably be characterized as active at that time. For example, the denial does not state what activity, if any, had occurred recently prior to receipt of our GRAMA request. *See, e.g., Deseret News* ¶¶ 36, 45 (“[T]he County did not properly classify the investigative report as a protected record under [GRAMA], an exception that should properly extend only to reasonably expected investigations rather than hypothetical ones.”). *See also*

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Department of Arkansas State Police v. Keech Law Firm, P.A., 516 S.W.3d 265 (2017)
 (“Stapleton was murdered in 1963. The record on review reveals sparse activity by ASP from 1965 until 2014. In challenging the circuit court's ruling, ASP directs us to various documents in the case file that, according to it, show an active and ongoing investigation. Yet every action that ASP highlights as evidence of an ‘ongoing’ investigation took place after Keech filed the lawsuit in this case. Certainly an investigation could grow stagnant over a period of years and new information could reignite it. However, the circuit court reviewed the entire case file from 1963 through and including the renewed efforts by ASP in 2014 and concluded that these efforts were not sufficient to make this investigation ‘open and ongoing.’ We hold that this finding was not clearly erroneous.”)

Second, the County has not provided any factual basis for concluding that, even if an investigation were ongoing, releasing the record “*reasonably* could be expected to *interfere* with enforcement proceedings.” This seems especially true when no one has ever been charged with this terrible crime, and it appears that no prosecution is imminent.

Finally, even if the records had been properly classified as protected, the public interest favoring access to the records is greater than that favoring restriction of access. *See* Utah Code § 63G-2-403(11)(b); *Deseret News* at ¶ 24 (even if a report were properly classified as protected, Supreme Court “find[s] legitimate public interest in releasing the report”). There are significant public safety and health interests when a member of the public is murdered, particularly when there has been no resolution of the crime.

Thank you for your consideration of our appeal.



Karra J. Porter
Utah Cold Case Coalition