



Utah  
Cold Case Coalition

December 27, 2018

Utah State Records Committee  
c/o Gina Proctor  
SRC Executive Secretary  
346 S. Rio Grande  
Salt Lake City, UT 84101-1106  
[gproctor@utah.gov](mailto:gproctor@utah.gov)  
*Via email*

City of Moab  
c/o Chief Administrative Officer  
City Manager, David Everitt  
217 East Center Street  
Moab, UT 84532  
*Via Fax (435-259-4135)*

Re: Notice of Appeal of GRAMA Denial, Moab City Case No. 84-1068

Dear Utah State Records Committee:

This letter is to appeal the City of Moab's denial of our request for records relating to the 1984 disappearance of Robert G. Marvin. This appeal is on behalf of the Utah Cold Case Coalition, 257 East 200 South, Suite 1100, Salt Lake City, Utah 84111, (801) 386-6621.

**Procedural background**

The Coalition submitted a GRAMA request for all records relating to the 1984 disappearance of Robert G. Marvin (case no. 84-1068, according to Moab's denial). The request also asked that fees be waived because the Coalition is a non-profit organization, the request is in the public interest, and disclosure is for the benefit of the public and not for personal gain.

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By letter dated October 23, 2018, Moab denied the records request in its entirety. The denial stated as its justification:

The record request is an active case within Moab City Police Department. This case is under ongoing investigation. Therefore, the following request has been denied based on Utah State Code § 63G-2-201(10)(a) reasonably could be expected to interfere with investigations undertaken for enforcement, discipline, licensing, certification, or registration purposes.

The letter stated that an appeal of the denial could be directed to the Chief Administrator Officer, City Manager David Averitt. On Friday, November 9, 2018, the Coalition mailed an appeal to Mr. Averitt. No response has been received. Although the Coalition is not certain when its appeal letter was received, for purposes of this appeal it assumes the appeal was received the next business day, Tuesday, November 13, 2018. (November 12 was a holiday, Veteran's Day.) On that assumption, the City's deadline for responding expired on November 28, 2018 (excluding weekends and Thanksgiving). At that point, the non-response may be treated as an affirmance of the original denial. This appeal follows.

As a matter of due process and to effectuate the statute, by electing to affirm through non-response, Moab should be limited in this appeal to the grounds stated in the original denial.

#### **Statement of reasons and argument**

Pursuant to Utah Code §§ 63G-2-402 and -403, the Coalition offers the following statement of reasons and argument in support of its appeal of the denial of records.

As this Committee is aware, in Utah "all records are public unless otherwise expressly provided by statute." Utah Code § 63G-2-201(2). This statutory command is consistent with the State of Utah's recognized policy that "public records be kept open for public inspection in order to prevent secrecy in public affairs." *KUTV, Inc. v. Utah State Bd. of Education*, 689 P.2d 1357, 1361 (Utah 1984). It is Moab's burden to establish a factual and legal basis for withholding the records. *Deseret News Publishing Co. v. Salt Lake County*, 2008 UT 26, ¶ 53, 182 P.3d 372. For several reasons, the denial of our request violates this presumptive right of access.

First, the denial does not establish that the record is properly categorized as Protected. Records created or maintained for criminal enforcement purposes may be protected if properly classified by a governmental entity, but only if the agency demonstrates that release of the record: (1) Reasonably could be expected to interfere with enforcement proceedings; or (2)

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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).

As the Supreme Court has recognized, it is insufficient to deny a GRAMA request based simply on an agency's pre-classification of a category of records as protected. *See, e.g., Deseret News*, 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).

The denial does not demonstrate that, at the time of our GRAMA request, this 34-year-old disappearance was truly an “active” or “ongoing” case, as Moab claims, or that there was any reasonably expected enforcement action. 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 (“We further hold that the 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 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.”)

The denial also provides no basis for concluding that, even if an investigation were ongoing, releasing the record “reasonably could be expected to interfere with enforcement proceedings” or to deprive someone of a fair trial. This seems especially true when no prosecution has been initiated, and it has not even been established that a prosecutable crime has been committed.

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Finally, even if the records had been properly classified as protected, the public interest favoring access to the records is greater than the interest favoring restriction to 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”); *Schroeder* at ¶ 19. There are significant public safety and health interests when a member of the public goes missing in the state of Utah. That interest is heightened here, where the subject’s wife (Lola Marvin) was murdered only a few years earlier in Albuquerque, New Mexico. (Albuquerque, incidentally, is making reports of that crime available. Nearly all law enforcement agencies in Utah have done the same with respect to unsolved disappearances or murders in their jurisdictions.)<sup>1</sup>

**Conclusion and requested relief**

Moab’s denial does not establish a factual or legal basis for refusing to disclose the requested records. The Utah Cold Case Coalition respectfully requests that this Committee direct Moab to produce the records. While Moab did not address our request for fee waiver due to its blanket refusal, in order to avoid piecemeal appeals, the Coalition also requests the Committee direct Moab to waive fees associated with production of the records.



Karra J. Porter  
Utah Cold Case Coalition

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<sup>1</sup> The Coalition recognizes that some information within records may be protected on grounds not cited by Moab. For example, agencies often redact certain personal information, such as Social Security numbers. That is not at issue here, where the agency has issued a blanket denial.