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May 9, 2018

State Records Committee  
SRC Executive Secretary  
346 S. Rio Grande  
Salt Lake City, UT 84101-1106

**RE: APPEAL OF GRAMA DENIAL BY BRIGHAM YOUNG UNIVERSITY POLICE**

**COMES NOW** the undersigned Requester Corbin T. Volluz, and pursuant to Utah Code 63-G-403, hereby respectfully appeals the GRAMA denial by the Brigham Young University (BYU) Police Department to his GRAMA requests, and in support thereof would show the Records Committee the following:

**PROCEDURAL HISTORY**

March 30, 2018—Requester sent a GRAMA request to the Custodian of Records at the BYU Police Department requesting “any and all records relating to Incident Report 17BY05023 relating to your investigation of Joseph Bishop in November and December of 2017.” A true and correct copy of this letter is attached hereto as **Exhibit A** and incorporated by reference.

April 10, 2018—BYU Police Department Records Custodian Lt. Steven Messick mailed a letter to requester stating, “Here is the information that is being released on this case. A less redacted report will not be issued.” A true and correct copy of this letter is attached hereto as **Exhibit B** and incorporated by reference.

Attached hereto as **Exhibit C** is the nine-page BYU Police Department Report mailed me by Lt. Messick, which contains substantial redactions.

April 18, 2018—Requester sent a two-page GRAMA appeal to Chief Larry A. Stott of the BYU Police Department, specifically identifying the sections of the police report that remain redacted and requesting a less redacted copy. A true and correct copy of this letter is attached hereto as **Exhibit D** and incorporated by reference.

April 18, 2018—On the same date, requester sent a GRAMA request to the BYU Police Custodian of Records requesting “any and all audio recordings of interviews conducted

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pursuant to the above referenced investigation.” A true and correct copy of this letter is attached hereto as **Exhibit E** and incorporated by reference.

April 30, 2018—Chief Larry A. Stott of the BYU Police Department sent requester a letter denying my GRAMA appeal, asserting “*the requested recordings and redacted information* are private records under UTAH Code 63G-2-302, because disclosure of the information would constitute a clearly unwarranted invasion of personal privacy of individuals involved in the case.” (Emphasis added.) A true and correct copy of this letter is attached hereto as **Exhibit F** and incorporated by reference.

It is apparent by this letter that Chief Larry A. Stott has now issued his GRAMA denial on both my requests for an unredacted copy of the police reports, as well as my request for “any and all audio recordings of interviews conducted pursuant to the above referenced investigation.”

#### **APPEAL TO RECORDS COMMITTEE**

Accordingly, pursuant to Utah Code 63-G-403, the undersigned requester hereby appeals the GRAMA denial by Chief Larry Stott of the BYU Police Department to the Utah State Records Committee.

#### **LAW AND ARGUMENT**

The Government Records Access Management Act is designed to ensure accountability and transparency in government. See, e.g., Deseret News Pub. Co. v. Salt Lake County, 2008 UT 26, ¶ 13, 182 P.3d 372. The legislature enacted GRAMA as a framework for balancing constitutionally-protected interests in access to information about public affairs, and constitutionally-protected interests in individual privacy in government records. Id. at ¶ 13. While public policy at times requires records to be inaccessible, the presumption under GRAMA is that government records are public. Id. at ¶14. Particularly when the actions of public officials are documented in records, the records are to be open for public scrutiny of the officials’ actions. Cf. id. at ¶¶ 47-52 (finding that public interest in investigative report of sexual harassment involving government employees outweighed individual privacy interests of those discussed in reports). Those who are the subject of government records and those with power of attorney for the subject of government records generally have a right of access to those records under GRAMA. Utah Code Ann. § 63G-2-202(1)(a) and (1)(d)(i).

There are three tiers of records with descending levels of secrecy: private, controlled and protected. Id. at ¶ 15. When GRAMA does not specify the tier to which a type of record belongs, the act permits government agencies to classify their records. Id. at ¶ 16. Agencies may also designate types of records as generally falling within one of the tiers. Id. at ¶ 22. However, the existence of general policy classifying or designating a report as non-public does not foreclose release of particular reports; upon request for records, agencies must consider whether particular reports truly contain information that merits the non-public designation or classification. Id. at ¶ 18-22. When faced with a request for a record which has been designated or classified as non-public, an agency has an ongoing obligation to perform a “conscientious and neutral” evaluation of the individual documents, which does not turn on the agency’s classification or designation, and which

must be periodically reassessed to determine whether the factors which required secrecy of a record at one point no longer exist. Id. at ¶ 24. Agencies conducting this review process are to do so with allegiance to the purpose of GRAMA, rather than to the agency's classification or designation of records. Id. at ¶ 25.

When agencies decline to release records, they are required to describe the reports or portions of reports not provided, and cite to whatever legal authority upon which the denial of access is based, without disclosing restricted information. § 63G-2-205(2)(a).

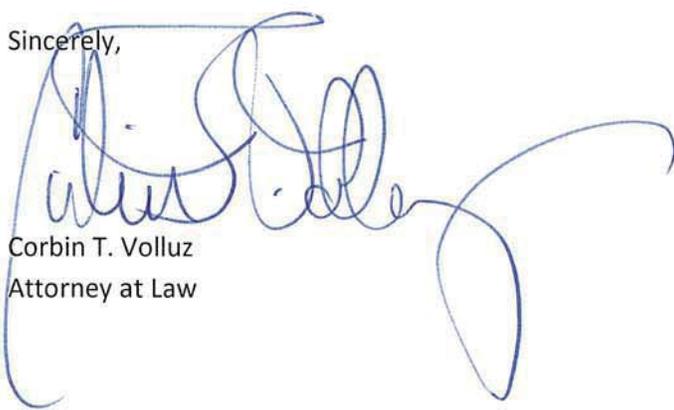
Requester is aware that a legitimate reason for redacting police reports in GRAMA requests is to redact names and identifying information of witnesses and victims. But the redactions of the police reports at issue constitute entire sentences and even paragraphs. In short, it seems clear that the redactions in these reports are being used for more than simply obscuring names and identifying information of witnesses and victims.

Additionally, the BYU Police Department claims to not be subject to GRAMA. It is my understanding a court ruling in an unrelated case should be issued on May 14, 2018, which should give the Records Committee some guidance in this area. For purposes of this appeal, I will state that the granting to the BYU Police Department of state-wide jurisdiction, together with the police power to bear firearms, would tend to negate that claim.

## **CONCLUSION**

Requester respectfully asks the State Records Committee to grant my appeal and order the BYU Police Department to provide me a properly redacted copy of the police reports, together with a properly redacted copy of the audio recordings of interviews related to this investigation.

Sincerely,



Corbin T. Volluz  
Attorney at Law