



#2017-115
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November 3, 2017

Via E-mail and U.S. Mail

Nova Dubovik
Executive Secretary of Utah Records Committee
346 South Rio Grande
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Re: Appeal of the Kane County Water Conservancy District's erroneous denial of a fee waiver

Dear Secretary Dubovik,

My client, Western Values Project ("WVP"), filed a Request for Records from The Kane County Water Conservancy District (District) under Utah Government Records Access and Management Act (GRAMA), Utah Code Title 63G, Chapter 2. That request was filed with the District on September 11, 2017. A copy of that request is attached as Exhibit A. On September 12, the District's Executive Secretary Amanda Buhler denied Western Values Project's request for a fee waiver and instead charged WVP \$4500. A copy of her denial is attached as Exhibit B. WVP appealed the District's denial of the fee waiver with the District's Executive Director Mike Noel, who upheld the District's denial on October 6, 2017. His letter is attached as Exhibit C.

Western Values Project's specific records request includes:

- All Kane County Water Conservancy District Board of Trustees meeting minutes since January 1, 2007
- The annual budget for the Kane County Water Conservancy District for each year since and including 2007
- The Kane County Water Conservancy District's annual financial statement for each year since and including 2007

- Any publicly available audits of the Kane County Water Conservancy District conducted at any time since and including 2007
- All records of compensation including salary, bonuses and any other compensation for trustees and staff of the Kane County Water Conservancy District since and including January 1, 2017
- Any conflict of interest disclosure forms filed by Trustees or staff at any point since and including January 1, 2007

Exhibit A. We asked that the District provide the records electronically by e-mail. *Id.*

In its response, the District estimated it would cost \$4500 to search, compile, and otherwise prepare the records. The District's estimated costs include:

Activity	Estimated amounts and rates	Amount
Fees for photocopies or reproduction	950 copies at \$1.00 per copy	\$950
Staff time	\$23.50 staff salary/hour x 150 hours	\$3525
Mailing and shipping costs		\$25
Total:		\$4500

Exhibit B. The District estimated that it would take two months to disclose the records. Because of the long estimation of compiling the records, WVP decided to pay the fee while reserving its appeal rights, so that the District would not delay its compilation of the records.

Western Values Project hereby appeals the District's denial of the fee waiver and its estimated costs of compiling the records under Utah Code section 63G-2-403. WVP asks that the State Records Committee reverse the District and grant a fee waiver for all costs associated with compiling the requested records under Utah Code section 63G-2-203(4) and (6). The District should have granted a fee waiver because the purpose of the records request is to obtain information that will increase the public's understanding of its government workings. The records will exhibit government operations, how public funds are spent, and how public officials conduct the public's business. WVP is a non-profit organization, and it does not have a commercial purpose in obtaining or disclosing the government records.

Western Values Project also appeals the District's unreasonable charge of \$1.00 per copy. At most, \$0.10 per page for paper copies would be reasonable if a waiver was not granted and there should be no charge for scanned copies. The District attempts to charge for staff time in addition to a per page charge for copies with at the rates quoted constitutes a double charge. With today's modern technology, charging \$1.00 per page simply is not reasonable. The District appears to have made an ad hoc and vindictive decision to charge WVP this amount, especially when WVP had requested electronic rather than paper copies. Further, the District had not adopted a written formal policy under Utah Code section 23G-2-701(2). See Exhibit C (Director Noel never cited a written formal policy after Western Values Project's appeal asked whether one existed); *Special Service District Records Policies*, Utah Div. of Archives & Records Service, (Mar.6, 2017),

<https://archives.utah.gov/recordsmanagement/ordinances/specialdistrict.html>. The District appears to have adopted a policy only after the fact, apparently never applied to any other requester, in an attempt to add a veneer of legitimacy to its unreasonable fees. The District's agenda for its Board of Trustees General Meeting on September 14, attached as Exhibit D, shows that it addressed the \$1/copy fee just two days after charging WVP this amount.

The District has no justification for charging \$1.00 for copies, whether it is for paper copies or scanned images. The Records Committee has addressed this issue before and found that \$0.10 per page was a reasonable fee. *Onysko v. Utah State Tax Comm'n*, No. 11-15 (State Records Comm. 2011) (\$0.10 per page). The Washington State Legislature has addressed what is reasonable to charge for copying documents:

To the extent the agency has not determined the actual costs of copying public records, the agency may not charge in excess of:

- (i) **Fifteen cents per page for photocopies** of public records, printed copies of electronic public records . . . ;
- (ii) **Ten cents per page for public records scanned** into an electronic format or for the use of agency equipment to scan the records;
- (iii) **Five cents per each four electronic files** or attachment uploaded to email, cloud-based data storage service, or other means of electronic delivery; and
- (iv) **Ten cents per gigabyte** for the transmission of public records in an electronic format or for the use of agency equipment to send the records electronically. The agency shall take reasonable steps to provide the records in the most efficient manner available to the agency in its normal operations

....

Wash. Rev. Code § 42.56.120(2)(b) (emphases added).

Second, 150 hours is more time than what should reasonably be needed to compile the requested records. The request does not require the District to compile the records in an unusual format. The District will not need to extract materials from a larger document or source. The requested records are the type and format that any government would keep in the custom and ordinary course of performing its business. Further, it is the District's burden to establish that the request requires the compilation of the records in a form other than that maintained by the government entity. *Graham v. Davis Cty. Solid Waste Mgmt. & Energy Recovery Special Serv. Dist.*, 1999 UT App 136, ¶ 28, 979 P.2d 363.

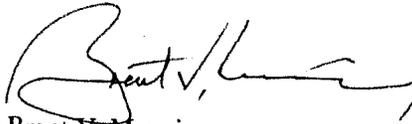
Because WVP has not yet received all the public records it has requested, it cannot yet determine whether to contest whether the District has complied with the substance of the request. WVP, therefore, reserves its right to supplement this appeal with respect to whether the disclosure complies with the request, the reasonableness of the actual charges, as opposed to the District's estimate and other issues that may arise.

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The Utah legislature has made it clear: "Every person has the right to inspect a public record." Utah Code § 63G-2-201(1). The communications and agreements subject to this request are public records. My client and all Utahans have a right to know the content of these requested records.

Thank you for your consideration of the issues raised in this appeal. If you have any questions, please contact the undersigned counsel.

Very truly yours,

A handwritten signature in black ink, appearing to read "Brent V. Manning". The signature is fluid and cursive, with a large initial "B" and a long horizontal stroke at the end.

Brent V. Manning

cc: Michael Noel (via email)
Chris Saeger (via email)

Encls.