

IN THE SECOND JUDICIAL DISTRICT COURT OF DAVIS COUNTY
FARMINGTON DEPARTMENT, STATE OF UTAH

ROGER BRYNER,	RULING AND ORDER ON PETITIONER'S MOTIONS FOR SUMMARY DISPOSITION
Petitioner,	
vs.	
CITY OF CLEARFIELD; UTAH STATE RECORDS COMMITTEE,	Case No. 150701062
Respondents.	Judge: John R. Morris

This matter is before the Court on the Petitioner's Motions for Summary Disposition under Utah Rules of Civ. Pro. 56. The parties have stipulated that the Court's ruling on this motion shall serve as the final determination of this case.

I.

Background

This matter came before the Court as an appeal of the Utah State Records Committee ("Records Committee") ruling in a Government Records Access and Management Act ("GRAMA") Utah Code Ann. § 63G-2 case. In its Decision and Order in case number 15-27, the Records Committee found:

[a]fter reviewing the arguments of the parties, the Committee finds that Clearfield's decision denying Mr. Bryner's request for a fee waiver was not an unreasonable denial. The total amount of the fee was \$33.75, Mr. Bryner was not the subject of the records, Mr. Bryner's legal rights were not directly implicated by the information in the records, and Mr. Bryner failed to demonstrate that he was impecunious. Additionally, the Committee finds that Clearfield was diligent in identifying all records responsive to Mr. Bryner's records request.

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Records Committee's Decision and Order 15-27 p. 4. Since the entry of that order and prior to any rulings in this case, the City of Clearfield (the "City") waived the fee and provided the associated documents to Mr. Bryner. Thus, the Court in a hearing on May 9, 2016, declared the issue of fee waiver moot.

In the same May 9, 2016 hearing the Court indicated that it did not have sufficient facts from the Records Committee's ruling to proceed with a decision de novo as contemplated under Utah Code Ann. § 63G-2-404. The Court therefore remanded the issue to the Records Committee for further findings.

After holding a second hearing on June 9, 2016, the Records Committee issued a new Decision and Order in case number 15-27. (Exhibit List Attachment A, 15-27(remand)Order, June 15, 2016). The order found that "Mr. Bryner did not contest the redactions, but claimed that Clearfield City held other responsive records which had not been provided." *Id.* at 4. In addition the Records Committee found:

[a]fter reviewing all written arguments made to the Committee including written materials submitted to the Committee of the October 8, 2015, hearing, and hearing all arguments presented by both parties, the Committee finds that all public documents responsive to Mr. Bryner's July 10, 2015, records request have been provided to him by Clearfield. The Committee is convinced that no other public documents exist that are responsive to his request based upon the declaration by affidavit of Ms. Dean.

Id. No further findings were made.

The Records Committee's ruling was not brought to the attention of the Court until late September at which time a Utah Code Ann. § 63G-2-404(6) hearing was promptly set for October 19, 2016.

In that hearing, the parties mutually agreed the Court should review and rule on the Mr. Bryner's pending motions for summary judgment. Mr. Bryner proposed to the City that the Court review the motions for summary judgment, including the reply which he planned

to enter shortly, and that the Court's decision on the motion would dispose of the case. The Court clarified if the Court proceeded on Mr. Bryner's proposal, it meant the Court would issue a written ruling, citing to the record, including affidavits, and that the case would then be disposed. 63G-2-404(6) Hearing at 10:38:43. The parties stipulated to this and the hearing was concluded.

Mr. Bryner's reply was filed on October 24, 2016. The Court has reviewed Mr. Bryner's two motions for summary judgment, the City's opposition, Mr. Bryner's reply, all accompanying exhibits and affidavits and is now prepared to enter a ruling on the matter.

II.

Analysis

Summary judgment is appropriate when, viewed in a light most favorable to the non-moving party, "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Utah R. Civ. P. 56(c); see also *Suarez v. Grant County*, 2012 UT 72, ¶ 18, 296 P.3d 688. "On a motion for summary judgment, a trial court should not weigh disputed evidence, and its sole inquiry should be whether material issues of fact exist[.]" so as to determine if judgment may be entered as a matter of law. *Draper City v. Estate of Bernardo*, 888 P.2d 1097, 1100 (Utah 1995).

Mr. Bryner asks the Court to make fifteen different findings with regards to his motion for summary judgment. Each will be addressed separately.

1. "The Court rule that as a matter of law and fact that an in camera inspection of unredacted documents must be performed as redacted documents were provided." (Pet'r's Mem. in support of Mot. for summ. Disposition pursuant to Rule 56 at 5, Sept. 30, 2016).

As a matter of law the Court finds that GRAMA does not require an in camera review of redacted documents but merely permits a reviewing court to conduct such a review. ("The district court *may* review the disputed records. The review shall be in camera." Utah Code Ann. § 63G-2-404(5) (emphasis added)).

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2. "That the court perform an in-camera inspection of documents and rule on the propriety of redactions." (Pet'r's Mem. in support of Mot. for summ. Disposition pursuant to Rule 56 at 5, Sept. 30, 2016).

GRAMA contemplates a "judicial review of an order or decision" from the Records Committee. Utah Code Ann. § 63G-2-404(1). GRAMA states that when such an appeal of a Records Committee ruling is brought before a district court the court shall "make its decision de novo, but, for a petition seeking judicial review of a records committee order, allow introduction of evidence presented to the records committee." Utah Code Ann. § 63G-2-404(6)(a).

When considering an appeal, the Court hearing the appeal may only consider those matters which were contemplated in reaching the original decision. (An appeal is "[a] proceeding undertaken to have a decision reconsidered by a higher authority" APPEAL, Black's Law Dictionary (10th ed. 2014).) As stated above, Mr. Bryner did not contest the redacted material in this June 9th hearing. As Mr. Bryner did not properly present the issue to the Records Committee, the Court cannot now rule on matter.

3. "The Court reject all hearsay stating that 'everything' has been provided and also rejects any testimony to that effect without the opportunity to cross examine any witnesses, whether in writing by subpoena by way of written questions or in person." (Pet'r's Mem. in support of Mot. for summ. Disposition pursuant to Rule 56 at 5, Sept. 30, 2016).

Hearsay is governed by the Utah Rules of Evidence Article VIII. Mr. Bryner points to no particular testimony to which he objects as hearsay, but rather objects in principle to anyone making such a declaration. As the Court has no particular testimony to review it cannot declare that such a statement is hearsay. The Court will in evaluating all affidavits or other forms of testimony review them under the Utah Rules of Evidence to determine whether or not they are admissible.

4. "For a finding that the contracts between Clearfield City and its public defenders materially impact my rights and the rights of all who have the defenders appointed for them,

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thus their free public availability is in the best public interest under UCA 63G-2-203(4)(a). I am specifically requesting this under the public interest exception to the mootness rule.” (Pet’r’s Mem. in support of Mot. for summ. Disposition pursuant to Rule 56 at 5, Sept. 30, 2016).

A declaration by the Court that contracts between Clearfield City and public defenders impact Mr. Bryner’s rights does not fall within the purview of a GRAMA request or a GRAMA appeal. (“In enacting [GRAMA], the Legislature recognize[d] two constitutional rights: (a) the public’s right of access to information concerning the conduct of the public’s business; and (b) the right of privacy in relation to personal data gathered by governmental entities.” Utah Code Ann. § 63G-2-102(1)).

5. “For a finding that the Clearfield City public defenders paragraph 7 is a conflict of interest obligating the attorney to both act as a defender and advocate for the best interest of their clients, and as a collection agent for the City advocating for the collection of fees from that same client even if that client is found innocent of some of the charges against them, and thus impacts the rights of any person seeking appointed counsel. Further for a finding that to qualify for appointed counsel, those person must qualify for a fee waiver under UCA 63G-2-203(4)(c) and the requirements that the Utah and US constitution place upon that provision of code to not deny a right to someone based upon the ability to afford a fee. I am specifically requesting this under the public interest exception to the mootness rule.” (Pet’r’s Mem. in support of Mot. for summ. Disposition pursuant to Rule 56 at 5, Sept. 30, 2016).

As stated above GRAMA was enacted for a specific purpose. The matter of whether or not there exists an inherent conflict of interest because of contract between Clearfield City and public defenders is not an appropriate matter for consideration by this Court on appeal from a GRAMA request.

The Court notes that the matter of a fee waiver in this case is moot, but will address the questions about the standard used under GRAMA in denying fee waivers. Inasmuch as the above request relates to fee waivers, Utah Code Ann. § 63G-2-203 states that “[a] gov-

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ernmental entity *may* fulfill a record request without charge.” (Emphasis added). First, the standard for waiving a fee is a permissive standard and the government agency, regardless of the impecuniosity of the individual, may chose not to waive it. Second, the standards for review in the case of a fee waiver in GRAMA and qualification for a public defender are different. Therefore, this Court will not make a finding that a fee waiver must be granted under GRAMA to anyone who qualifies for a public defender.

6. “As a matter of law that the ruling of the Utah State Records Committee upholding the fee waiver is a legal error and the incorrect standard was applied in analyzing fee waivers, and that under the public interest exception an order promogulating [sic] the actual law be prepared and published by this court.” (Pet’r’s Mem. in support of Mot. for summ. Disposition pursuant to Rule 56 at 6, Sept. 30, 2016).

The Records Committee found:

that Clearfield’s decision denying Mr. Bryner’s request for a fee waiver was not an unreasonable denial. The total amount of the fee was \$33.75, Mr. Bryner was not the subject of the records, Mr. Bryner’s legal rights were not directly implicated by the information in the records, and Mr. Bryner failed to demonstrate that he was impecunious.

Records Committee’s Decision and Order 15-27 p. 4. In reviewing a denial of a fee waiver the Records Committee considers the same factors the government agency would use in determining whether or not to grant the waiver. (*See* Utah Code Ann. § 63G-2-203(6).) The statute encourages agencies to waive fees when, “(a) releasing the record primarily benefits the public rather than a person; (b) the individual requesting the record is the subject of the record, or an individual specified in Subsection 63G-2-202(1) or (2); or (c) the requester’s legal rights are directly implicated by the information in the record, and the requester is impecunious.” Utah Code Ann. § 63G-2-203(4)(a)-(c). In its findings the Records Committee found that Mr. Bryner was not the subject of the record, Mr. Bryner’s legal rights were not

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directly implicated by the requested records, and that Mr. Bryner failed to show that he was impecunious. These findings are in accord with the statute.

Again, the statute contemplates that a government agency "may" grant a fee waiver but is not obligated to do so.

7-15. The remaining nine findings that Mr. Bryner requests revolve around his request for documents that he believes exist and have not been produced by the City. The Records Committee found, "that Clearfield was diligent in identifying all records responsive to Mr. Bryner's records request" and that "[t]he Committee is convinced that no other public documents exist that are responsive to his request based upon the declaration by affidavit of Ms. Dean." Records Committee's Decision and Order 15-27 p. 4; Exhibit List Attachment A, 15-27(remand)Order, at p. 4, June 15, 2016.

Mr. Bryner in his affidavit accompanying this motion stated that "On the morning of 6-3-2015 I personally witnessed police officers producing documents which have not yet been provided to me by Clearfield city as outlined in the second amended and supplemental complaint before the court." Aff. in Supp. of Mot. for Summ. J. at p. 1. Mr. Bryner also stated in his reply that while he did witness the production of documents while he was in custody he was not "close enough to see them, [and] cant testify that the papers I saw around the time of the blood draw or computer activity were anything specific." Pet'r's Reply at 6. Despite his lack of personal knowledge of the documents Mr. Bryner insists that more documents exist that would be responsive to his GRAMA request.

In addition to his affidavit, Mr. Bryner produced evidence that the City has a fax number, but no evidence either direct or circumstantial that any relevant faxes have not been produced by the City.

In response the City submitted affidavits from three different people: Nancy Dean, the Clearfield City Recorder; Sergeant Lee Potts of the Clearfield City Police Department; Officer Chris Ferreira of the Clearfield City Police Department. These affidavits were given to the Records Committee in consideration of their ruling.

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Ms. Dean testified in her affidavit as to several of the records that Mr. Bryner requested. First she testified that she had informed Mr. Bryner that public defender contracts were considered public record and that Mr. Bryner could come in a view them at any time. However, if he wanted a copy, a copy fee would be assessed. Dean Aff. ¶¶ 12-16.

Ms. Dean also testified that the City provided Mr. Bryner with the requested documents from UCJIS which the City could provide. *Id.* at ¶¶ 18-24. She further testified that UCJIS entries were not necessary for Clearfield City to perform its arrest, but that the Davis County Sherriff's Office may have entered information into the system related to their booking process. *Id.* The City does not control these records. *Id.*

In conclusion, Ms. Dean testified that she has "caused all City employees necessary (specifically including police department employees) to respond to Mr. Bryner's July 10, 2015 GRAMA request to search for any and all paper documents responsive to the ... request. The City has produced all known paper documents responsive to Mr. Bryner's ... request." *Id.* at ¶¶ 26-27.

Sergeant Potts and Officer Ferreira were both present at the time that Mr. Bryner alleges he saw the documents being produced. Sergeant Potts testified in his affidavit that Mr. Bryner had requested that all questions to him either be directed to his attorney or placed in writing. Potts Aff. ¶ 5(a). He further testified that he wrote down on a piece of paper which he attempted to give to Mr. Bryner asking him if he would like to sit up rather than laying down. *Id.* at ¶ 5(b). When Mr. Bryner refused the invitation to sit up Sergeant Potts then disposed of the written note in the garbage. *Id.* at ¶ 5(f). Sergeant Potts confirmed this through a review of the booking room video. *Id.* at ¶¶ 6-8. He further testified that he was "unaware of any additional paper documents related to the criminal investigation report that have not already been provided to Mr. Bryner." *Id.* at ¶ 9. Nor was he "aware of any additional paper documents other than the hand written note described in paragraph 5 created in relation to the investigation." *Id.* at ¶ 10.

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Officer Ferriera testified in his affidavit that he witnessed the writing and presentation of the hand written note referenced by Sergeant Potts. Ferriera Aff. at ¶ 5. He too confirmed the disposal of this hand written note with the booking room video. *Id.* at ¶¶ 6-8. He also testified that he is unaware of any other papers that have not been provided to Mr. Bryner that would be responsive to Mr. Bryner's request. *Id.* at ¶¶ 9-10.

While the Court is sympathetic to the fact that it can be difficult if not impossible for a petitioner to gain access to records the record holder denies exist and the petition cannot prove exist, the Court must make a determination based on the facts presented. The Court finds that Mr. Bryner has failed to present any evidence or a persuasive argument that there exist any other documents which would be responsive to his GRAMA request. The Court therefore affirms the Records Committee's Decision and Order.

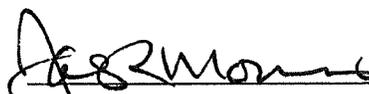
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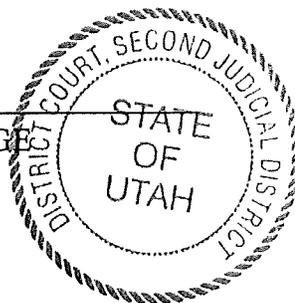
Order

The Court HEREBY DENIES Petitioner's Motion for Summary Disposition pursuant to Rule 56 of the Utah Rules of Civil Procedure.

As stipulated to by the parties, the findings of the Court in this motion are to be the final ruling on this matter and dispose of this case. THEREFORE it is HEREBY ORDER that this case is DISMISSED WITH PREJUDICE.

Date signed: May 11, 2017


DISTRICT COURT JUDGE
JOHN R. MORRIS



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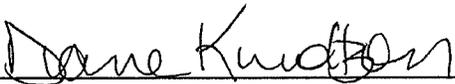
CERTIFICATE OF MAILING

I hereby certify that on the 11th day of May, 2017, I sent a true and correct copy of the foregoing **RULING AND ORDER ON MOTIONS FOR SUMMARY DISPOSITION** to the parties as follows:

Stuart E. Williams
Clearfield City Attorney
55 South State Street
Clearfield, Utah 84015

Paul H. Tonks
Utah State Records Committee
160 East 300 South 5th Floor
Salt Lake City, Utah 84114

Roger Bryner
General Delivery
Kaysville, Utah 84037
roger.bryner@yahoo.com



Deputy Court Clerk