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FILED DISTRICT COURT
Third Judicial District
NOV 23 2012
SALT LAKE COUNTY
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IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

DANIEL V. SCHROEDER,)	
Plaintiff,)	FINDINGS OF FACT,
v.)	CONCLUSIONS OF LAW,
)	AND JUDGMENT
UTAH ATTORNEY GENERAL'S OFFICE,)	
and THE UTAH STATE RECORDS)	Case No. 110917703
COMMITTEE,)	
Defendants.)	Judge Keith A. Kelly

This matter came before the Court for hearing de novo, pursuant to Utah Code Ann. § 63G-2-404, for judicial review of a Decision and Order made and entered by defendant THE UTAH STATE RECORDS COMMITTEE, on 19 October 2012. Plaintiff DANIEL V. SCHROEDER appeared in person, pro se. Defendant THE UTAH ATTORNEY GENERAL'S OFFICE was represented by Patrick B. Nolan, Assistant Attorney General. Defendant THE

UTAH STATE RECORDS COMMITTEE was represented by Paul H. Tonks, Assistant Attorney General. After hearing and considering the evidence and arguments presented by the parties, the Court overruled the State's Objections to Plaintiff's Exhibits, admitted them all into evidence, and then proceeded to rule, as follows:

FINDINGS OF FACT

1. Tina Minchey is a Special Agent for the Criminal Investigations Division of the Utah Attorney General's Office.
2. In her capacity as an investigator for the Utah Attorney General's Office, and acting under the advice and direction of the prosecutors of that Office, Special Agent Minchey was assigned to conduct a criminal investigation into the activities of Envision Ogden.
3. Pursuant to Utah Code Ann. § 77-22-2, a criminal investigation was opened, and various bank records were obtained by an investigative subpoena, Exhibit 12.
4. In the course of conducting the investigation, Special Agent Minchey prepared a "post-it note", Disputed Document Bates Stamped 0004, for her personal use, on which she made certain personal notes to remind herself to do certain things in connection with the investigation.
5. In the course of conducting the investigation, at the request of the prosecutors who were advising and directing her, Special Agent Minchey prepared a summary of the financial transactions, Disputed Documents Bates Stamped 000011-16, compiled from the bank records which she had obtained by way of the investigative subpoena. That summary was

prepared by Special Agent Minchey, using the "Quicken" program on her computer at the Attorney General's Office, and is hereafter referred to as the "Quicken Summary."

6. The criminal investigation undertaken by the Attorney General's Office was done so in anticipation of litigation.

From the foregoing Findings of Fact, the Court now makes and enters its:

CONCLUSIONS OF LAW

1. The 2012 amendments to the Government Records Access and Management Act ("GRAMA") do not affect the analysis of the Court.

2. In S. Utah Wilderness Alliance v. Auto. Geographic Reference Ctr., 2008 UT 88, the Utah Supreme Court held that the provisions of Utah Code Ann. § 63G-2-305 are intended to protect attorney work product, including the mental impressions and legal theories of an attorney or agent concerning litigation, and records prepared in anticipation of litigation.

3. Both the "post-it note" and the "Quicken Summary" constitute records prepared in anticipation of litigation, and contain mental impressions and legal theories of an attorney or agent of the Attorney General's Office, and are therefore protected records under GRAMA.

4. In State v. Thompson, 810 P. 2d 415 (Utah 1991), the Utah Supreme Court held that bank customers have a right of privacy in their bank records under the Utah State Constitution, Article I, § 14.

5. The bank records obtained by Special Agent Minchey by way of the investigative subpoena, including the "Quicken Summary" of those bank records, Disputed

Documents Bates Stamped No. 00131-140, and 00149-441, were properly obtained by the Attorney General's Office pursuant to a lawful criminal investigation, which thereby permitted Special Agent Minchey to obtain access to those bank records. It would be a constitutional violation for the Attorney General's Office to disclose those bank records to the plaintiff in this case. *See Utah Constitution, Art. 1, § 14. KAK*

6. Pursuant to Utah Code Ann. § 63G-2-404(8), the Court finds that the State Constitutional right to privacy of bank customers in their bank records outweighs the interest favoring access to the bank records in this case. *See Utah Constitution, Art. 1 § 14. KAK*

7. *Objections to this form of order are overruled, except to the extent that this order has been modified by interlineation. KAK*

JUDGMENT

IT IS, THEREFORE, HEREBY ORDERED, as follows:

1. The "post-it note", Bates Stamped 0004, and the "Quicken Summary", Bates Stamped 00011-16, are protected attorney work product of the Attorney General's Office under GRAMA, and will not be disclosed.

2. The "Quicken Summary", and the bank records, Bates Stamped 00131-140 And 149-441, are protected by the State Constitutional right to privacy, and will not be disclosed.

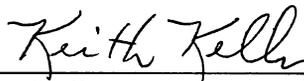
3. The Declaration of Records of Regularly Conducted Business Activity, Bates Stamped 00144-145, is not protected, and shall be disclosed *within 5 business days of the date of this order. KAK*

4. Plaintiff's remaining claims for relief are hereby DENIED.

This constitutes the final order and judgment in this matter, and no further form of order is required. KAK

DATED this 23 day of November, 2012.

BY THE COURT:



Keith A. Kelly
District Court Judge



APPROVED AS TO FORM:

Daniel V. Schroeder
Plaintiff Pro Se



Paul H. Tonks
Assistant Attorney General
Attorney for Defendant Utah State
Records Committee

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT was served by electronic mail, and first class postage prepaid, this 2nd day of November, 2012, to:

Daniel V. Schroeder's
1444 Binford Street
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dvs1444@gmail.com

/s/ Lori Noe

Legal Secretary