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OCT 23 2014

4TH DISTRICT  
STATE OF UTAH  
UTAH COUNTY

IN THE FOURTH JUDICIAL DISTRICT COURT  
IN AND FOR UTAH COUNTY, STATE OF UTAH

MORGAN FIFE,  
Petitioner,

vs.

STATE RECORDS COMMITTEE, and  
OREM CITY,

Respondents.

RULING ON CROSS MOTIONS FOR  
SUMMARY JUDGMENT

Civil No. 140400007  
Judge SAMUEL D. MCVEY

The Court has reviewed the parties' motions for summary judgment along with the related memoranda and exhibits. The case involves a request to access records on file with respondent Orem City ("Orem") which Orem classified as exempt from disclosure. Orem claims the Court has no jurisdiction in this matter because of a late-filed petition and argues in the alternative the records sought by petitioner were properly classified as protected under the Government Records Management Act, Utah Code Annotated section 63G-2-101 et .sec. ("GRAMA"). Petitioner Fife ("Fife") argues his petition relates back to the original dismissed petition which was timely filed and Orem improperly classified the records as private.

**Timely Filing**

The Court concludes Petitioner Fife's ("Fife") petition was timely filed. Although Fife's amended petition was not filed within 30 days of the date of the final administrative denial of Fife's GRAMA request, the original petition in this matter was. After the Court dismissed the original it granted leave to amend to substitute in the correct party. Fife filed his amended petition within the time frame allowed by the Court. Under Rule 15( c) of the Utah Rules of Civil Procedure the amended petition relates back to the date of the original filing. Orem argues Rule 15 does not apply but points to no alternate rule or other authority for this proposition. Accordingly, the amended petition was timely and the Court has jurisdiction.

## Classification of the Records

Fife requested records Orem possessed which were filed with it in response to an RFP for employment benefits. Businesses filing the records were Wells Fargo, MillerWade Group, Moreton & Company and GBS.

There does not appear to be a material dispute the records Fife requests fit under the commercial trade secrets exception of GRAMA. The question is whether the entities submitting them made the proper claim of privacy for exemption from disclosure by qualifying their submission with: “(A) a written claim of business confidentiality; and (B) a concise statement of the reasons supporting the claim of business confidentiality” under section 63G-2-309(1)(a)(i) of GRAMA when they submitted them to Orem. If there was not a proper claim, there is no dispute the records cannot be private.

The Court, having reviewed the requested records *in camera*, concludes Wells Fargo, MillerWade Group and Moreton & Company provided their records to Orem with a proper claim of confidentiality. There is no material ground for disputing Orem properly withheld the records of those entities. The other entity in question, GBS, did not include such a claim in its submission. Over two months after the submission, it did provide a claim after Orem notified it of its failure to include the qualification in its documents. Of note, Orem only notified GBR of its deficiency two weeks after Orem had already received Fife’s GRAMA request. GBR then submitted its confidentiality claim on July 1, 2013. Orem classified the records as private the next day.

Orem argues to gain protection from disclosure, GBS only had to add a confidentiality claim at a later time before Orem classified the records as private. Fife at least implies the combination of Orem notifying GBR of its deficiency only after the GRAMA request and then holding off on classification until GBR had a chance to submit its confidentiality claim is fishy, in that the sequence of Orem’s actions indicates improper collaboration between Orem and GBS to circumvent GRAMA by getting the records classified only after it should have released them due to a proper request by Fife. The Court, however, does not need to address this issue.

Section 309 of GRAMA, Utah Code Annotated section 63G-2-309(1) states:

Any person who provides to a governmental entity a record that the person believes should be protected under Subsection 63G-2-305(1) or (2) . . .shall provide with the record:

- (A) a written claim of business confidentiality, and
- (B) a concise statement of reasons supporting the claim of business confidentiality.

*Id.* (emphasis added) The undisputed fact is GBS failed to “provide with the record” a claim of confidentiality and the justification therefore. It only did that a couple of months afterward.

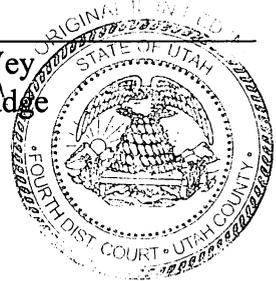
The verb “shall” which was operative in the section just quoted means in statutory construction “that an action is required or mandatory.” *Id.* at §68-3-12(1)(j). This construction fits in with the legislative commitment to transparency and the presumption attached to GRAMA: “favoring access, and its mandate that when competing interests fight to a draw, disclosure wins,” *Deseret News Publ. Co. v. Salt Lake County*, 2008 UT 26, ¶¶ 14, 24, 182 P.3d 372. Orem bears the burden of demonstrating a proper classification. *Id.* at ¶ 53. Because GBS did not provide its claim to confidentiality with the record it did not cloak itself with the legislative privilege. Orem thus improperly classified the GBS record as private. Fife is entitled to the record upon complying with any fee requirements.

### Conclusion

In conclusion, Fife may obtain a copy of the GBS records only. Orem may retrieve the documents it submitted for review by the Court from the clerk. Counsel for Fife may submit an order consistent with the ruling and note thereon whether the order resolves all issues in the case.

Dated this 22nd day of October, 2014

  
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Samuel D. McVey  
District Court Judge



CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 140400007 by the method and on the date specified.

EMAIL: JAMIS M GARDNER jmg@rsalawyers.com  
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10/22/2014  
Date: \_\_\_\_\_

/s/ CALLI STEPHENSEN  
\_\_\_\_\_

Deputy Court Clerk