#2017-56

Matthew Winters, Appellant, Pro Se

Notice of Appeal to the Utah State Records Committee of GRAMA Request Denials by West Jordan City

Whereas West Jordan City (*"City", "the City"*) has denied both a GRAMA request and an appeal made in accordance with Utah Code §63G-2 401 - both in violation of Utah law and without cause - the requester now appeals to the State Records Committee as an appellant pursuant to Utah Code §63G-2-403. The continued denials by West Jordan City compromise matters of public safety and are an affront to public interest. On such basis in the least, the appellant believes this matter must be pursued further at this time.

BACKGROUND

On April 11, 2017, two juveniles each stole a van from Joel P. Jensen Middle School in West Jordan during spring recess for Jordan School District in which allegedly the vans belonged to contractors who left both vehicles unattended with the keys left in the ignition of each One of the juveniles, while evading law enforcement, fled into the appellant's neighborhood, traveling at high speeds likely in excess of 55 miles per hour in a residential area. The appellant was sitting immediately next to a street-facing window of his home when he first heard repeated screeching of tires from a distance, which caused him to look up and out the windows. He then witnessed a van come into view and attempt to make the turn from 8070 South to Partridge Run Way in the residential neighborhood. Presumably the turn could not be made because of the excessive speed and did not successfully make the left turn (*facing southward*) onto Partridge Run Way.

Instead, the van crashed into a neighbor's car (*west side of the street*) parked in the driveway (*house immediately next to appellant's on the north side*); then a city street light; and then a green power box (*power company*). Thereafter, the van still had enough momentum to run into the appellant's cinder brick wall, disintegrating an approximately 8 foot section into hundreds or thousands of pieces, some of which was later found more than 50 feet away. The van finally came to rest on the appellant's property after it destroyed a portion of the appellant's labyrinth (*meditative pathway*) created with natural materials including drought resistant that was part of the complete xeriscaping of appellant's front yard to reduce city water consumption, etc. The driver of the van then got out of the vehicle, hesitated momentarily, and then fled the scene, first across part of the appellant's front yard. The appellant, reacting immediately, did not complete a call to 9-1-1 whereas a West Jordan Police Department (*"WJPD"*) vehicle pulled up to the scene.

This appeal does not contain all background items related to the WJPD Incident #17H005408, including the many hours the area was without power, etc. However, it is relevant that during the hour or two the police were in the area, in an incident involving a dozen or more police officers, the Fire Department, and others, both juvenile suspects were brought to and kept in the neighborhood for some time while in police custody. The juvenile who crashed into the appellant's property was at one point walked along the street by a police officer; placed into a

police vehicle parked on the street directly in front of the appellant's front door; and kept there for some time, generally unattended in the back of the police vehicle.

The appellant's initial purpose in making a GRAMA request was based on a presumption it would likely be needed to deal with the aftermath of the crime involving property damage, something for which no entity has yet taken responsibility. The appellant's home had recently been placed on the market needing to be sold; the appellant did not have means to cover cost of rebuilding a wall and landscaping. It was in the course of reading the first installment of written material the appellant received from his GRAMA request that additional issues first became known. At that time, the appellant discovered the juvenile had a gun; that it was not discovered by WJPD officers who allegedly searched the juvenile; and that the gun was on the juvenile's person even while said juvenile was at times unattended in front of the appellant's home. At such time, due to the hearing-compromising decibels of alarms inside the appellant's home, his daughter was in the front yard with him, there being an implied state of safety by police presence who did not encourage residents nearby to remove themselves from the area.

The appellant expressed written concern to WJPD via email on April 13, 2017. That night around 10 pm he received a call from Lt. Motzkus (*WJPD*). The next day on April 14, 2017, the appellant went to WJPD requesting more information for the incomplete GRAMA request from April 12, 2017 and was made to fill-out a second GRAMA request form. After careful consideration of the conversation with WJPD administration, the materials received from the GRAMA request, material missing from the GRAMA request, and various factors, the appellant became convinced that there were unexplained, disconcerting, and suspicious matters unaddressed and that there was insufficient reason to maintain faith or trust WJPD was adequately addressing or would address the serious and substantial compromise of public safety. Generally on such basis, the appellant accepted a request early in the evening of April 14, 2017 leading to the story aired on KUTV that same night.

Since that time, the appellant has continued to try to encourage compliance and gather information to fully understand the particular incident. Although initially presuming and favoring conclusions of error by WJPD rather than more serious issues including malicious conduct or reckless disregard for public safety at an institutional level, the behavior of WJPD, the refusal to provide lawfully requested information, and various other factors have increased the imperative for further investigation in the interest of public safety. While it was and still would be more convenient for the appellant to ignore issues, he is burdened by concerns for the safety and welfare of his community.

After contacting WJPD again about records not received from his GRAMA request and filling out a 3rd request form, the appellant received a call from the records supervisor for WJPD. Based primarily on the outstanding issues and lack of progress in receiving lawfully requested records, the appellant attempted to deliver a letter to the City Attorney's office of West Jordan City to indicate the presence of issues that might require further action if status quo did not change. In so doing, a representative of the City Attorney's office, Shaylene Mayer, who not having even read the letter, argued with and harassed the appellant, repeatedly demanding he take it to some other office that was obviously not applicable for a letter addressed to the city's attorneys. The

appellant finally in understandable frustration after repeated harassment, had to more emphatically state the matter pertained to a potential lawsuit, that he was leaving the letter on the counter, and that he needed to leave immediately to pick up his daughter. Later, it seems Ms. Mayer made false accusations about the appellant instead of taking responsibility for her own inappropriate and irresponsible actions.

Given the baseless behavior of Shaylene Mayer and having no assurance she would properly deliver the letter to attorneys for the city in accordance with her public duty, the appellant determined it necessary to file a Notice of Claim against the West Jordan City in the morning on April 27, 2017, which the West Jordan City summarily denied without investigation or corrective action in a letter dated May 8, 2017 and received some days later. In the early evening on April 27, 2017, the city records supervisor called the appellant indicating additional records were ready for pick-up; the appellant picked up a DVD that night along with a denial letter of 4 records (*"GRAMA Denial"; Appendix C*). In the third installment the appellant found 2 videos and some photos had been provided, with other records neither given to him or referenced in any way that were part of his request for records for Incident # 17H0054508 and specific types of records requested in communications and at least on the 3rd GRAMA request form. As far as he knows, the appellant does not have copies of any of the GRAMA request forms.

Promptly after receipt of West Jordan City's denial of records in the evening of April 27, 2017, the appellant submitted an appeal on April 28, 2017 to City Manager Mark Palesh in accordance with Utah Code §63G-2-401 (*"GRAMA Appeal"; Appendix A*). West Jordan City responded with a letter denying the appeal on May 8, 2017 (*"GRAMA Appeal Denial"; Appendix B*).

On May 2, 2017, the appellant, upon a request received that day, met with with Internal Affairs (*"IA"*) for WJPD at their headquarters in which a conversation was recorded by WJPD. Said conversation, which was described by WJPD as an attempt to answer questions and explain misunderstandings, in the end seemed to focus more on getting recorded statements about particular sources of information for the appellant and his anticipated further actions.

Despite the appellant's lack of initial assumption of any malicious conduct, it currently appears there are inconsistencies and incompleteness with written reports on Incident # 17H005408; a lack of accurate information surrounding the gun on the juvenile in police custody; a lack of surety the matter has, is, or will be sufficiently addressed by WJPD; a lack of demonstration of responsible support of public safety; and a series of suspicious actions and activities surrounding appellant's voicing of concerns and requests for information. From the appellant's perspective, if written reports of the incident and additional explanations of police administration are accurate, the records from which WJPD continues to try to deter the appellant from access or interest ought to exonerate the actions of police officers and the City. Instead, West Jordan City's actions simply increase concern about public safety. When a city makes so much effort to prevent and deter access to public records that it has an obligation to provide under the law, it is exceedingly difficult to not conclude records contains substantive material that will demonstrate falsehood in claims and written reports approved by WJPD administration. What began as an individual effort to deal with property damage at a time the appellant could least afford such has now turned into a serious concern of matters in the public interest.

Police and municipal accountability, transparency, and trust are not simply matters of law; they are an integral part of the welfare of a people who have entrusted civil entities with particular responsibilities. These entities are responsible to the people. It is of utmost importance to public interest for the people of West Jordan and the entire Salt Lake Valley that matters "landing in the appellant's lap" be fully addressed.

The appellant's engagement in civic responsibility has been met by the West Jordan City with lies, intimidation, harassment, and abuse. Such violations of fiduciary duty continue to escalate. West Jordan City made false and offensive accusations (*defamation or false light in the very least*) against the appellant on May 8, 2017 in its GRAMA Appeal Denial. The appellant made them aware the defamatory statements had to be made part of his next appeal since they inserted it into a GRAMA appeal denial letter, which he expected would be published and disseminated. He responded to the baseless defamation of character and behavior, even welcoming a specific discussion of alleged behavior if the city truly believed its accusations. To these attempts, the West Jordan City responded on May 9, 2017 by forbidding lawful contact and making a veiled threat of filing illegal criminal charges against the appellant.

On May 12, 2017, the appellant submitted an additional GRAMA request (*"New GRAMA Request"; Appendix D*) to West Jordan City for a considerable list of items that became necessary based on West Jordan City's actions, including various denials of records false statements. Such is a taxation of appellant's time and resources made necessary by West Jordan City. Expenditure of the city's time and resources is its own responsibility, made necessary by its many problematic choices. The appellate willingly offered and allowed some time for complete processing. As of today, June 7, 2017, the appellant has received three installments of records from his new GRAMA request. The third such installment being picked up on the afternoon of the 6th (*yesterday*) shortly after a call from the police record supervisor. At this time, the appellant has not been able to form an opinion on the status of completion of his new GRAMA request. It was indicated to the appellant that there would be a very substantial charge to furnish the appellant with particular purchase records, something that is currently difficult to understand in an age of digital records with search capabilities. This appeal is not of such matters in progress, but they do substantively relate to this appeal.

Thereafter, the appellant sought a meeting with the West Jordan City Councilmember Burton (*representing appellant's district*) to at least ensure his representative was made aware of a situation causing a constituent to feel he may not be able to live in the city and partake of services as any citizen ought to be able to do; to seek further attention on the inappropriate statements in and actions surrounding the GRAMA appeal denial and other matters; and to work to see if there might be away to help the city avoid causing more problems for itself. In the lengthy meeting with Councilmember Burton on May 15, 217, he unequivocally agreed about the inappropriateness of the GRAMA appeal denial letter, indicating he would act further and attempt to get a more appropriate denial letter. The appellant indicated he would delay filing a GRAMA appeal to the State Records Committee for an indefinite period of time. Although the appellant courteously and without obligation has now delayed the appeal until the end of the 30 day deadline, West Jordan City has not responded further about the denial letter. Even given the opportunity to remove defamatory material from a GRAMA appeal denial letter and request for

discussion of the alleged claims by the city, West Jordan City has not acted, further demonstrating its gross irresponsibility and hostility.

That the appellant now has reason, due to the hostile and unbalanced behavior of West Jordan City, to be concerned for his own welfare or continued residence in the city is not the States Records Committee's responsibility. The appeal here is not for matters beyond that of GRAMA denials specifically. But the surrounding facts and background seems essential to note because this matter is not one of legitimate disagreement or a city's exercise of duty. The West Jordan City has continued to respond and act in an unbalanced, hostile, threatening, and alarming manner. This State and its people cannot afford to allow such unsound overreaction and abuse of power. It is highly problematic when a citizen engaged in the responsible business of public accountability is met with lies, harassment, and abuse of power as a response to responsible inquiry and lawful requests for public records.

West Jordan City appears to have forgotten or chooses to ignore the very basis for government. West Jordan City has demonstrated itself to be a municipality which thinks not only that it is above the law but that it is the law. The rule of law cannot allow such behavior of a municipality that harasses its own citizen engaged in civic responsibility. The appellant's pursuit of conviction of public interest continues at great personal cost. The appellant has chosen to pursue his lawful request despite personal cost and risk. And under these conditions, the appellant offers his analysis of the facts and the law.

STANDARD OF REVIEW

A. Purpose and Legislative Intent of GRAMA

"Our primary goal when interpreting statutes is to 'evince the true intent and purpose of the Legislature.' Duke v. Graham, 2007 UT 31, ¶ 16, 158 P.3d 540 (citation omitted). And it is legal dogma that the best evidence of legislative intent is 'the plain language of the statute itself.' State v. Martinez, 2002 UT 80, ¶ 8, 52 P.3d 1276" (Truck Insurance Exchange v. Rutherford, 2017 UT 25 ¶ 7). In this particular case, legislative intent of the entire Government Records Access and Management ACT ("GRAMA")(Utah Code, Title 63G, Chapter 2) has been rendered explicitly clear and specifically stated as part of the "plain language" clarified and codified in an entire section on "Legislative intent" (Utah Code §63G-2-102).

Through GRAMA, the Legislature recognized as a constitutional right *"the public's right of access to information concerning the conduct of the public's business"* (Utah Code §63G-2-102(1)(a)). Potential rights of privacy are also recognized, subject to clearly stated legislative intent *"favor public access **when**, in the application of this act, **countervailing interests are of equal weight**"* (emphases added) (Utah Code §63G-2-102(3)(e)). Part of the legislative intent when recognizing constitutional rights of access to information is to *"promote the public's right of easy and reasonable access to unrestricted public records"* (Utah Code §63G-2-102(3)(a)).

Legislative intent for GRAMA is abundantly clear that the public has a general right to access information in the public interest; that reasonable access should not be made difficult; and that there are conditions under which there may be reasonable and lawful restriction of access to records. Further, the legislative intent in situations where there are opposing interests of access

vs. restriction of "equal weight", access to the record is favored. But whether there are opposing interests in disclosure and what weight can be given to it, were already contemplated since further intent of the Legislature includes "*provid[ing] guidelines for both disclosure and restrictions on access to government records*" (Utah Code §63G-2-102(3)(d)).

Therefore, *the standard of review under GRAMA should be evaluation with constitutional rights and clearly articulated legislative intent in mind.* In so doing, unless there is explicit or weighty reasons for exception, the public's right of access to information about the public's business should not be infringed.

B. Default Classification of Records Is That They Are Public

In keeping with both the legislative intent for and provisions of GRAMA, the standard for classification and disclosure of records is that they are public and accessible by default. This standard for review is clear when coupling codified legislative intent with the very definition given for public records that they are those that do not meet specific criteria for nondisclosure. Under GRAMA, a public record is "*a record that is not private, controlled, or protected and that is not exempt from disclosure as provided in Subsection 63G-2-201(3)(b)*" (Utah Code §63G-2-103(21)). Inclusive of the foregoing reference to Utah Code §63G-2-201(3)(b), Utah Code §63G-2-201 on the "[r]ight to inspect records and receive copies of records" states as follows:

"*(3) The following records are not public:*

(a) a record that is private, controlled, or protected under Sections 63G-2-302, 63G-2-303, 63G-2-304, and 63G-2-305; and

(b) a record to which access is restricted pursuant to court rule, another state statute, federal statute, or federal regulation, including records for which access is governed or restricted as a condition of participation in a state or federal program or for receiving state or federal funds."

There are essentially two categories of records that are non-public: a) ones by definition and specifically articulated as non-public under GRAMA and b) those that are non-public by some other legally-binding mandate. The latter category is restricted by the context including the maintainer and channel of request of a record. For example, non-public records by court rule apply to records requested through a court; such would not universally and "magically" apply to all other maintainers of a record.

Therefore, *the standard of review under GRAMA should recognize that records are public and mandated to be disclosed as the default action until it is sufficiently demonstrated that it must be otherwise.* Any entity claiming to have grounds to refuse or be prohibited from disclosing a record always bears the burden to so demonstrate. And any entity claiming such grounds to deny a GRAMA request must necessarily provide a legitimate, proper, and accurate reason at the time of first denying access to the record.

C. Grounds for Denial of Records Should Always Be Truthful and Factually Accurate

When denying access to a record, whether in whole or in part, an entity subject to GRAMA is required by law to provide citation to a specific GRAMA provision or other legally authoritative

mandate pursuant to Utah Code §63G-2-205(2)(b). Quite clearly, a reason for denial should be the authority cited; the authority cited should clearly be the actual reason for denial. Therefore, *the standard of review under GRAMA should include the expectation that an entity denying a GRAMA request has provided a truthful, accurate, and real reason for denial.*

D. Duties to Provide Records Should Be Taken Seriously

All entities subject to GRAMA have a duty to properly disclose or accurately deny records. It is a duty the Legislature expects to be taken very seriously. This is evidenced within GRAMA itself whereas pursuant to Utah Code §63G-2-801(3), the intentional failure to provide a record required by law is a crime under Utah law. Therefore, *any standard of review under GRAMA should keep in mind the seriousness with which the Legislature expects entities to adhere to the provisions of GRAMA*; support legislative intent; and assist the general right of the public to obtain records pertaining to the public's business and public interest.

E. Evaluation of Denials Under Utah Code §63G-2-302(2)(d)

The appellant suggests Deseret News Publishing Company v. Salt Lake County, 2008 UT, 182 P.3d 372 should be referenced as the standard of review for Utah Code §63G-2-302(2)(d) as authoritative and relevant. In that unanimous opinion of the Utah Supreme Court in which Chief Justice Durham, Associate Chief Justice Wilkins, Justice Durrant, and Justice Parrish concurred with the opinion issued by Justice Nehring, the Court stated: *"[o]ur interpretation of the phrase 'clearly unwarranted invasion of privacy' finds support in the United States Supreme Court's interpretation of identical language contained in the federal Freedom of Information Act. E.g., U.S. Dep't of State v. Ray, 502 U.S. 164, 177, 112 S.Ct. 541, 116 L.Ed.2d 526 (1991)".* Further of relevance in the opinion for a standard of review includes:

1. *"We therefore hold that section 63-2-302(2)(d) necessarily demands an expansive and searching evaluation of the interests that might make an invasion of personal privacy warranted"* (Id. ¶ 33).

2. *"GRAMA's private and protected classification of records that 'constitute[] a clearly unwarranted invasion of personal privacy' does not sanction denying access to a record merely because it invades personal privacy. To qualify for nonpublic classification a record must not only invade personal privacy, it must do so in a 'clearly unwarranted' manner"* (Id. ¶ 33).

3. *"It would be incompatible with a governmental entity's responsibilities under GRAMA to apply to a record request a review methodology which presumes that a requested record has been properly classified and then proceed to canvass GRAMA for statutory language that confirms its designation"* (Id. ¶ 24).

4. *"GRAMA does not contemplate adversarial combat over record requests. It instead envisions an impartial, rational balancing of competing interests. To be sure, a requesting party may disagree with the governmental entity over the classification of a record, but the overriding allegiance of the governmental entity must be to the goals of GRAMA and not to its preferred record classification"* (Id. ¶ 25).

The Supreme Court has cleared established a standard of review for Utah Code §63G-2-302(2)(d), one that is consistent with SCOTUS on the Freedom of Information Act. Therefore, the *standard of review under GRAMA should additionally include the expectation that any government entity claiming the necessity to deny a record on the basis of a "clearly unwarranted invasion of privacy" has done so in a manner considering the specific record and context rather than a categorical denial without due diligence or consideration.*

ISSUES

A. West Jordan City Has Improperly Denied Access to Public Records

I. West Jordan City's Categorical Denial is Invalid

West Jordan City has denied a GRAMA request for records that are public. The stated reason for denial is not valid. The records requested are not and cannot be properly classified as non-public on a categorical basis which is what it appears West Jordan City has done. Further, it appears from information received more recently pursuant to the appellant's new GRAMA request that an active directive is in place for West Jordan Police Department personnel to categorize records contrary to GRAMA, and the appellant now feels he has to presume that city employees incorrectly processing GRAMA requests are doing so under orders from the city.

II. West Jordan City's Denial on an Individual Basis Would Also Be Invalid

Even if presuming West Jordan City's denial was not done on a categorical basis and one in which the City actually reviewed the GRAMA request and records on an individual basis, such a denial would still be completely improper. West Jordan City has neither furnished a valid reason for denial on an individual basis, nor has a valid reason for denial not even cited by West Jordan City been found by the appellant.

B. West Jordan City Has Failed to Provide Other Records

West Jordan City has failed to provide other records for the appellant's GRAMA request. Initially unaddressed in the GRAMA denial letter, the City subsequently, in the meeting with Internal Affairs, stated that certain records do not exist: in particular that 1) neither Officer McMullin nor Officer Ranney wear body cameras and 2) that Officer Ranney did not engage the camera(s) in her police vehicle. Further, the City has refused to obtain and provide officer communications related to the incident claiming that it is maintained by another organization. Such might be technically permissible under GRAMA to require the appellant to direct a request elsewhere. However, West Jordan City claimed it could not obtain records of communications between officers of West Jordan Police Department (dispatch, radio, or the like). It is very difficult to fathom how a police department truly cannot obtain those records. Having denied such records on the basis of being *unable* to obtain them, which is difficult to see how such could be true, it seems most appropriate that West Jordan City should do so and provide those records.

C. West Jordan City Has Lied or Negligently Misrepresented Redaction Capabilities

West Jordan City has falsely represented its capabilities to redact video and audio records (*when redaction is actually necessary*). In addition to various similar verbal statements from a number of city employees, the GRAMA denial letter contains 4 statements of a claim of inability

to redact records that are patently false or otherwise seriously misrepresented.

The claim of inability to redact body camera footage appears to be blatantly false. The West Jordan Police Department uses body-worn cameras from Axon (*formally re-branded from TASER International on April 5, 2017*). The claim of inability to redact police vehicle-mounted camera footage appears to be misrepresented in a manner that constitutes some degree of negligence. (*Both of these are discussed further in the Analysis section of this Appeal.*)

D. West Jordan City Did Not Properly Review or Respond to the GRAMA Appeal

West Jordan City summarily denied the GRAMA Appeal. In so doing, City Manager Mark Palesh failed to address various concerns and arguments raised in the GRAMA Appeal. There is no indication West Jordan City considered matters of law under GRAMA, and the city failed to substantiate its stated reason for denial. While the city did fail its obligations under GRAMA as clarified under authoritative case law, it appears possible the city affirmed its denial of public records based on policies and procedures including an errant directive from Chief of Police Douglas Diamond (*"GRAMA Review Directive"; Appendix E*).

In light of the totality of issues, it becomes increasingly difficult to condone aspects of the directive from Chief of Police Douglas Diamond regarding processing of GRAMA requests, that is essentially being upheld directly or as applied to particular records by City Manager Mark Palesh, and that failure to overturn false record denials under the law supported and transmitted through Deputy City Attorney Duncan Murray. What seems best to the appellant at this time is that the city correct unlawful policies and work diligently to properly handle public record requests in the future to the benefit of public interest.

E. West Jordan City Is Obstructing Efforts To Ensure Public Accountability

West Jordan City has not simply denied public records unlawfully. They have also taken a number of additional steps to inappropriately deter and obstruct efforts made in the public interest. In addition to a meeting requested by West Jordan Police Department's Internal Affairs which appears to be have been more about deterring lawful activity than addressing concerns, West Jordan City has taken further steps to harass, intimidate, and threaten the appellant. The affirmative effort West Jordan City has made to avoid responsibility and potential discovery of wrongdoing became even more clear with the City Manager Mark Palesh's May 8th denial letter of appellant's GRAMA appeal and thereafter. Said denial letter contained a paragraph (*unrelated to GRAMA matters*) making defamatory (*or false light in the least*) statements and accusations against the appellant – baseless and patently false assertions intended to derail lawfully inquiry and request for public records in the pursuit of public interest.

When the appellant objected and requested conference to discuss the matter if there truly was a belief of wrongdoing, Deputy City Attorney Duncan Murray's only response was to make unethical, unlawful, and unconstitutional demands about further contact with various City employees. West Jordan City has refused to discuss the so-called wrongdoing and accusations or identify city employees beyond Shaylene Mayer who have allegedly claimed to be harassed and threatened. It is truly a sad and deplorable action that a municipality seems to think it can so casually toss out hurtful, offensive, and false statements and then "shut down" communication.

Furthermore, such actions to prohibit communication are multiple constitutional violations against the appellant.

F. West Jordan City Has Falsely Justified Itself With a Facade of Duty

West Jordan City has claimed it is following the law; provided all records it is allowed to provide; provided all records within its capabilities; and provided all records that exist. But such claims are a mere facade of duty, at best, a showing or claim of duty that is only a pretense of duty. False and misrepresented capabilities with redacting video records casts a long shadow, naturally calling into question other statements. If West Jordan City was "merely" doing its duty, there would be no reason to make claims of inability to redact video. If West Jordan City legitimately had reason to deny records, it would or should provide valid reasons instead of giving a mere recital of statute that is inapplicable and unsubstantiated. If West Jordan City was actually engaged in duty, it would have actually addressed the appellant's arguments in its response to his GRAMA appeal instead of merely affirming a previous denial that completely disintegrates under analysis.

G. West Jordan City Is Violating Its Fiduciary Duty To Its Citizens

In the course of responding to the appellant in various forms and instances, West Jordan City is violating its fiduciary duties to its citizens. Refusal to follow GRAMA; harassing a citizen engaged in the business of public accountability; failing to properly review an appeal or remove defamatory material; making false or misrepresented statements; causing avoidable costs to be incurred; and various other actions taken by West Jordan City are directly opposed to the fiduciary duty it has to its citizens collectively. Matters of public safety are a fundamental part of that duty; and what the appellant has experienced strongly suggests it is not taken seriously.

H. West Jordan City Has Violated the Constitutional Rights of the Appellant

It may be necessary at a later time to pursue action for the city's constitutional violations, but whether such action is taken or not, the fact remains that West Jordan City has violated multiple constitutional rights of the appellant. A city engaged in its GRAMA and fiduciary duties does not or ought not to violate constitutional rights including ones recognized by GRAMA and under the United States Constitution such as free speech, petitioning, and equal protection.

I. So What Actually Happened?

Did Officer Ranney remain in radio contact with the department and other officers as she followed the suspect where she allegedly did not engage her vehicle cameras? Did Officer Ranney actually cease engagement in WJPD Incident # 17H005408 immediately after pursuing a suspect with Officer McMullin? Did Officer Ranney actually not engage in a search of the suspect? Was it actually Officer McMullin who first missed the gun on the suspect taken into custody? Was that suspect actually wearing multiple layers of clothing at the actual time of being taken into custody (*rather than donning more clothing later*), playing a role in failures to discover a gun with bullets on a juvenile taken into custody as explained by Lt. Motzkus? What did Officer McMullin actually indicate to the next officer about conducting a search of the suspect? Did the next officer in the custody chain actually search the suspect again? Or have one or more other officers been pushed to take responsibility for others? Was Officer McMullin

truly not wearing a body camera? Is wearing a body camera actually optional for this non-patrol officer under current WJPD policy?

Did Officer Ranney and potentially others file a complete incident report? And why was her report in particular not filed until the next day? Has West Jordan Police Department truly addressed the potentially disastrous issue of law enforcement not finding a gun with bullets on a suspect in custody; kept around the public, often unattended; who was around other law enforcement officers and Fire Department personnel with an unknown dangerous weapon; and who went into hospital facilities with a gun? Has WJPD administration held the correct people responsible? Or are they protecting particular people at the expense of other law enforcement officers and the public? Have they specifically tried to deter the appellant from discovering information they do not want found? Is there retaliation for the appellant being interviewed by KUTV News?

These and other things remain to be seen. But the denial of public records and the alleged unavailability of other public records certainly makes it more difficult to know. And this is the public's business. It is about public safety. They are important matters of accountability, transparency, and public interest. They need to be taken seriously.

ANALYSIS

A. West Jordan City Has Failed To Provide a Valid Reason For Denying Records

The West Jordan City has yet to provide a single valid reason for its repeated denial of the appellant's GRAMA request for public records.

I. Denial Under Utah Code §63G-2-302(2)(d) Is Invalid

West Jordan City' denial under Utah Code §63G-2-302(2)(d) of an alleged *"clearly unwarranted invasion of personal privacy"* is completely without merit. The City has neither demonstrated how it is an "invasion of privacy" nor how such would be "clearly unwarranted". On its face, it would appear to be nothing more than an abuse of a statute as a "catch all" denial to avoid producing a records it has already determined, through unspoken reasons, that it does not wish to produce. The burden of proof for West Jordan City to be able to validly deny the records for their state reasons is to show:

1. How the request is an invasion of personal privacy; then
2. How it is unwarranted if it is an invasion of privacy; then
3. How it is clearly so – as in indisputably – if it can be demonstrated to be an invasion of personal privacy that is unwarranted.

And the above would still not be sufficient for West Jordan City to properly deny the records whereas to succeed in such a denial, West Jordan City would necessarily have to demonstrate how such outweighs disclosure for public interest. The appellant suggests such a burden would be a tall order for West Jordan City, and the city has declined to make such demonstration.

II. Denial Under Utah Code §63G-2-302(2)(d) Is Unsubstantiated

What West Jordan City did do instead of providing any sound basis for claiming denial under

Utah Code §63G-2-302(2)(d), is repeatedly reference juveniles as subject matter of the records. It would appear that the West Jordan City considers the presence of juveniles in any record to be an automatic reason for non-public classification of records. This further appears to be the situation at this time based on information received recently from the appellant's new GRAMA request. According to West Jordan Police Department General Directive No. 111, issued on April 4, 2016 by Chief of Police, Douglas Diamond: "*...Private/Controlled/Protected information includes, but is not limited to the following: Incident Reports, Audio/Visual documentation, or Documentary Material that contain: .....Juvenile information to include ..... photos of juveniles*". While the particular list does not include videographic depictions specifically (vs. photographic), it seems reasonable to presume West Jordan City employees following the General Directive No. 111 are additionally considering videographic depictions of juveniles to be automatically a non-public record rather than engaging in any actual evaluation of whether such disclosure would "*constitute[] a clearly unwarranted invasion of person privacy*".[1]

Unfortunately, as further discussed in this appeal, the personal privacy invasion argument for non-public record classification requires a careful case-by-case evaluation under GRAMA, and the General Directive No. 111 from Chief of Police Douglas Diamond fails to be a standard or replacement for such careful, individual analysis. Put another way, a directive from West Jordan Police Department administration to city employees processing GRAMA requests to make an automatic non-public designation of a record contrary to what is allowed by GRAMA is effectively an instruction to city employees to violate GRAMA.

The presence of juveniles alone simply does not constitute grounds for claiming a "clearly unwarranted invasion of privacy". Therefore, with nothing further provided by the City as a reason for denial, West Jordan City's claims under Utah Code §63G-2-302(2)(d) remain unsubstantiated. Further, by linking a "presence of a juvenile" argument to its "clearly unwarranted invasion of privacy" groundless basis for denial, West Jordan City has essentially asserted that all depictions of a juvenile in every context, in every situation, and at all times is a so-called "clearly unwarranted invasion of privacy (See Deseret News Publishing Company v. Salt Lake County 2008 UT).

III. The Presence of Juveniles in a Record Does Not Automatically Constitute Non-Public Classification

To best understand classification of a record under GRAMA in which there is the presence of a juvenile, it may be best to consider the suggested standards of review under GRAMA. In so doing, any claim of presence of juveniles in a record alone as a basis for denial falls far short. Legislative intent clearly favors disclosure of records; articulates bases for non-public classification; and guides evaluation in situations of legitimate competing interests.

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1 The actual document referenced has not been included in appendices due to insufficient time to evaluate the law and a footnote in the document which states that "*[t]he contents of all West Jordan Police Department directives, policies and procedures are confidential and for the WJPD use only. The contents shall not be viewed by, or distributed by any method to, anyone outside the WJPD unless prior approval is given by the WJPD Chief of Police or designee*". The appellant has found several instances in which the WJPD makes prohibitions against dissemination of records and the like which seems suspicious, even the headers of the cover pages of police incident reports. However, due to the impeding deadline for this appeal; having allowed West Jordan City much time to correct their GRAMA appeal denial; and the appellant's for careful review of law, he has chosen to not include the full document at this time.

In all these areas, using the presence of juveniles in a record as a basis for denial of a record fails completely as it is contrary to legislative intent; is not known to be a basis for automatic non-public classification; and does not meet the criteria to be reviewed as a competing interest. Again, there are two primary categories under which a record might be classified as a non-public record: within the provisions of GRAMA itself or upon some other legal basis that accurately applies to the record, maintainer, and avenue of request.

There are no statutory provisions under GRAMA allowing a record containing the presence of a juvenile to be automatically classified as non-public. There are no known applicable laws, orders, or rules under which such classification could be made in this instance. Denial on the basis of invasion of privacy fails tests of reason and the law; no other reason was given for denial.

B. West Jordan City's Denial Implies Legislative Incompetence

Considering clearly stated legislative intent for GRAMA and all the articulation of various classification of records, it is reasonable to ask: "*if the Legislature expected the presence of juveniles in a record to automatically constitute non-public classification, why is such not found in any list of non-public record definitions*"? The answer is quite simple: it was never intended that the depiction of a juvenile allow for automatic non-public record classification.

I. Utah Code §63G-2-302(2)(d) is Generally a Criterion for Case-by-Case Evaluation

It is legal dogma to consider the plain language of a statute. Utah Code §63G-2-302(2)(d) by its plain language implies it is generally a criterion for non-public record classification that is contextual and intended for evaluation on a case-by-case basis when there may be a potential invasion of personal privacy. While it is not necessarily impossible that there exists a categorical basis of application under Utah Code §63G-2-302(2)(d), the plain language of the rest of the statute should be carefully considered as part of clear intent and plain language standards of review. In so doing, it becomes rather nonsensical to apply Utah Code §63G-2-302(2)(d) other than in a case-by-case manner in most scenarios when numerous specific and categorical reasons are given for non-public classification of records.

II. "Presence of a Juvenile" is a Categorical, Blanketed Criterion

Making a record non-public for reason of "presence of a juvenile" is by definition a categorical application rather than an individual, case-by-case treatment. That differs significantly from a basis of the presence of a particular juvenile or a juvenile in a particular context. West Jordan City's denial of records references the presence of individuals in a record who happen to be a juveniles, and such is a wholesale, categorical application.

III. It is Unreasonable to Conclude Categorical "Presence of a Juvenile" is Intended to be Applied Under Case-by-Case Evaluations of Personal Privacy Arguments

The presence of juveniles would be too large a basis to not be specifically articulated as a reason for non-public classification. Such would not be an isolated scenario. Juveniles comprise a significant portion of the population. It would be a rather substantial omission in the statute if the presence of juveniles was ever intended to be a basis for non-public record classification where such is not articulated when so many other criteria are specifically articulated. In fact, it

would be onerous to expect every entity subject to GRAMA to treat Utah Code §63G-2-302(2)(d) as categorically including records in which a juvenile is present. By sheer probability alone, application would be inconsistent. And if the presence of juveniles in a record was intended to make such a record non-public in every case, the lack of articulation of such substantially compromises adherence to such a mandate. *Simply put, the expectation that all records containing the presence of a juvenile be treated as a non-public record without clearly listing such an expectation within GRAMA would be rather irresponsible legislation.* Maintaining such an expectation implies incompetence of the Utah Legislature in these particular matters that utterly contradicts the totality of diligence present in GRAMA. The appellant does not believe such is the case and considers GRAMA to be clearly a thoughtfully contemplated piece of legislation with well-expressed statement and codification of legislative intent.

C. West Jordan City has No Basis for Denial Under Utah Code §63G-2-201(3)(b)

Had West Jordan City actually provided and correctly maintained a reason for denial pursuant to Utah Code §63G-2-201(3)(b), such a denial of appellant's GRAMA request might be sustainable in theory. But West Jordan City has neither provided such a reason nor has one been identified by the appellant. Nonetheless, despite lack of citation of another basis for denial, it may be more efficient to examine further legal analysis in advance of a hearing to deter "grasping at straws" by West Jordan City in wasteful defense of baseless, ultimately defenseless denials of public records and as further contained in this appeal.

I. The Salt Lake County District Attorney's Office Did Not Pursue a Delinquency Action

A delinquency action involving the juvenile whose presence is alleged to be contained within some of the requested public records would not automatically constitute valid grounds for denial of the GRAMA request. But that the Salt Lake County District Attorney's office did not pursue and has stated it is not going to pursue a delinquency action makes such especially the case. Where there is no delinquency action being pursued against an individual whose presence is contained within public records, however erroneously it might otherwise be argued, there simply are no due process issues that can be raised (*Reference: ACLU v. Salt Lake City Police Department, State Record Committee, January 2017*).

II. Court Rules Apply to Court Records Maintained by a Court

Even if a delinquency action had been filed and records subject to appellant's GRAMA request made part of discovery in a Juvenile Court action, such still would not constitute valid basis for denial of the GRAMA request. That records maintained by a government entity may also become part of court records filed as discovery is happenstance that does not automatically mean other maintainers of records must or may circumstantially apply court rules for court records to records maintained elsewhere. It is imperative to distinguish between orders of a court with jurisdiction and rules for court proceedings. Court rules apply to court proceedings. They may not be arbitrarily applied to other contexts.

III. FERPA Does Not Apply to Appellant's GRAMA Request

The Family Educational Rights and Privacy Act ("FERPA") does not apply here either. And

West Jordan City did not cite a FERPA claim. But especially considering West Jordan City's apparent penchant for a juvenile-subject-as-omnipotent-GRAMA-denial stance against their duty to provide public records, it seems most efficient to consider FERPA not simply in relation to the school surveillance record but also as instructive in general on how to evaluate records which depict a juvenile. Additionally, since a 2016 amendment to FERPA via H.B. 288, GRAMA does now specifically call out FERPA separately via §63G-2-107(2), it is further pertinent. [2]

Generally, FERPA applies (*or should be applied*) only to actual education records about a student that are maintained by an educational entity and that relate to a student's educational performance. Generally speaking, the memorialization of an event in public is not a confidential record. And FERPA does not or ought not to apply to records pertaining to the physical safety of a school building such as surveillance videos on the exterior of a school building.

With West Jordan Police Department Incident # 17H005408, the denied record from the middle school is understood to be surveillance footage from the exterior of the school. In this particular case, before examining potentially informative aspects of FERPA and depictions of juveniles generally, there are at least 4 specific and indisputable reasons the surveillance footage from the middle school constitutes public record and cannot be denied by citation of FERPA:

1. The record was not requested from an educational entity, it was requested from West Jordan Police Department;

2. If the surveillance footage was protected by FERPA, Jordan School District would have violated FERPA when they provided it to the West Jordan Police Department;

3. The surveillance footage was taken during spring recess for Jordan School District in which no record creation should be considered an educational record if school is not in session; and

4. It is complete happenstance that the juveniles depicted in the record are students of the particular school (*based on WJPD's reports*).

Since FERPA pertains to records maintained by certain educational entities and their partners, it does not apply to the request made of the West Jordan Police Department and does not provide West Jordan City with any protections for their denial of the public record. Where the surveillance footage might have potentially applied under FERPA, in theory before closer examination, was while it was solely in the possession of Jordan School District and before a copy was given to the West Jordan Police Department. There are really only two possibilities related the record classification of the surveillance footage at this stage:

1. Either it was classified as a law enforcement record or some other classification that is not an educational record under FERPA or

2. It was classified as an educational record under FERPA and given to the West Jordan

2 While the current wording of Utah Code §63G-2-107(2) may suggest greater application than the scope of FERPA than is presumed to be the legislative intent, the appellant would suggest it not be applied in any manner other than as a codified recognition of applying FERPA to GRAMA when FERPA actually does apply according to its separate codification from GRAMA. The appellant has already made initial contact with Representative Craig Hall and Senator Todd Weiler on some recommended clarifications to Utah Code §63G-2-107(2) for the 2018 legislative session.

Police Department illegally. In order for the surveillance footage to be both an educational record under FERPA and be given lawfully to the West Jordan Police Department, with incredibly limited exceptions there would have had to have been either a judicial order or lawfully issued subpoena; notifications to both the juveniles and their parents; and such notification after an order of a court or lawfully issued subpoena would have necessarily had to occur before a copy of the surveillance footage was given to the West Jordan Police Department. *It seems safe to presume that these things did not occur in the span of a few minutes* as reported in Incident # 17H005408. Therefore, unless Jordan School District illegally disclosed information, it seems safe to also presume the surveillance footage was not classified by Jordan School District as an educational record.

Surveillance footage from cameras mounted on the exterior of a school building has the seeming characteristics of what would generally be considered a law enforcement record under FERPA. Technically, it does not appear the footage could be formally considered a law enforcement record under FERPA based on an understanding from a conversation with Jordan School District that it does not currently appear to have an actual law enforcement unit. But it does seem nonsensical that exterior surveillance footage recorded during the designated spring recess of a school district would be intended to create educational records at a time when school is not in session and presumably no students are present for any actual school-related activity or purpose.

Instead, the particular actions captured during a period when school was not in session – including theft of vehicles on middle school property – were those committed in public and potentially publicly viewable by others in the vicinity. It seems logical to presume that such surveillance footage during a time when school is not in session would pertain to securing the integrity of the school facilities; documentation in the event of crime; or other physical security-related matters including potential incidents involving persons on the property when school was not in session. Even the idea of considering such video footage as an educational record seems rather far-fetched (*although the Utah Court of Appeals did so with internal surveillance footage as discussed subsequently*), even if it so happens that what it captured was crime committed by juveniles who also happened to be students of the very school where they initiated their criminal activity. The latter is happenstance and not likely a sound basis for any classification of the surveillance footage. FERPA was created for a specific purpose, and applying it to completely circumstantial and happenstance situations would seem completely contrary to its purpose and fundamental legislative intent. (*Unfortunately, as discussed subsequently, some appellate courts seem to have failed to recognize that purpose and intended scope of FERPA, interpreting it in a manner that leads to results that are far beyond reasonable or sustainable in the public interest.*)

Having themselves obtained the surveillance footage under conditions that did not call upon privacy protections of FERPA, it is mind-boggling for West Jordan City to sincerely believe they can subsequently classify the record as private. Furthermore, the alleged depiction of a crime and circumstances surrounding the alleged negligence of contractors leaving unattended vehicle with keys in the ignition of two vans on Jordan School District property, one of which resulted in causing property damage at the appellant's home is a pertinent record for a private cause of action. The automotive insurance company providing a policy for the van causing property

damage, Cincinnati Insurance Company, has now twice denied any liability, appearing to now argue irresponsibility in bad faith, leaving property damage for which no restitution has been made. West Jordan City's refusal to provide this, and potentially other records, may be an explicit hindrance and obstruction to dealing with the after math of property damage, given that, if nothing else, the refusal to provide documentation of circumstances expected to establish liability of Cincinnati Insurance Company is utterly contrary to judicial economy. With their actions lacking any foundation, West Jordan City has interfered with and thwarted efforts to obtain proper restitution for property damage without the full costly, time-consuming, energy-wasting, and resolution-delaying efforts of a full lawsuit and jury trial.

D. Limited Lessons from Bryner v. Canyons School District (Utah Court of Appeals, 2015) and the Current Quagmire Known as FERPA: Towards an Essay on Visual Depictions of Students, Inherent Deficiencies, and Oft Forgotten Purpose of the Family Educational Rights and Privacy Act

While the school surveillance footage in this instance appears to not be one to be treated as a private record under FERPA, it may be further instructive to consider depictions of juveniles as it relates to FERPA to better understand how records depicting juveniles in general should be handled under GRAMA. As can often happen with case law over time, with different jurisdictions, differing circumstances, or different presentation of argument by parties, appellate courts do not always reach or appear to reach the same conclusions of law. As best as this appellant can research and engage in any legal shepherding given the typical pro se party's lack of access to the more robust tools of legal professionals, there is only one appellant case in Utah that appears to be sufficiently directed to the topic of GRAMA, FERPA, and juveniles: Bryner v. Canyons School District, Court of Appeals, 2015.

A full analysis and critique of case law such as Bryner v. Canyons School District; the myriad of deficiencies within FERPA and corresponding 35 CFR Part 99; case law around the country; letters from the United States Department of Education; and various other interactions stemming from FERPA are beyond the scope of this appeal despite the fact that there is incredible need for Congress and other entities to fix FERPA. However, a limited examination of Bryner v. Canyons School District and some aspects of FERPA ought to serve to at least be further informative regarding depictions of juveniles generally, a topic at least of importance consider West Jordan City's various actions to incorrectly classify and evaluate such.

I. Two Substantial Failures in Bryner v. Canyons School District (2015 UT App)

The point of analysis here is not to cast blame on the Utah Court of Appeals. Indeed, that appellate court had to travel through heavily muddied waters to make sense of a situation under FERPA --- a presumably well-intended piece of legislation that is too full of holes to effectively accomplish the purpose for which it was intended. Additionally, reliance upon appellate cases around the country which can most generously only be labeled as inconsistent, naturally creates jeopardy to sound jurisprudence when some such other cases are themselves based upon flawed information. Finally, the changing and faulty clarifications from the United States Department of Education itself over time has created issues for diligent inquiry and actions of numerous entities. This appellate defaults to presumption of good intentions and diligence. But diligent

efforts to explain, clarify, or interpret FERPA does not change the fact that courts, educational entities, and even the United States Department of Education has erred over time regarding FERPA. That challenge for the latter is evidenced beyond attempts to decipher and clarify through letters, etc., appearing to struggle even within 34 CFR Part 99 (*corresponding administrative/rule-making portion of FERPA*) which borders on, if not crosses into, new legislation potentially beyond the scope of rule-making authority. Regardless, too often the provisions, purpose, and legislative intent of FERPA has been forgotten or ignored by many.

Trying to see what lessons can be learned by examining Bryner v. Canyons School District is pertinent to the task at hand. While this appellant believes the Committee should not ultimately yield deference to the conclusions of that case for reasons stated in a previous section, it seems prudent to give it some space herein as directed to the topic given the dearth of case law in Utah concerning records, GRAMA, FERPA, and juveniles.

Unfortunately, despite numerous reasons it might be understandable, it remains that Bryner v. Canyons School District is problematic case law. Two particular issues with the case stand out because they are the very things in reverse that make GRAMA strong as legislation and a guide for government entities looking for a clear path to diligent application rather than trying to circumvent public duty: 1) the importance of legislative intent and 2) properly understanding the relationship of definitions and parts of a statute to the whole.

If FERPA was better legislated, pitfalls in Bryner v. Canyons School District could have been avoided. But since it wasn't, the first and most fundamental thing the Utah Court of Appeals might have done would have been to employ a more accurate standard of review. Again, criticizing the Court is not the point, but the case well demonstrates what can happen with the intersection of poor legislation; poor interpretation from others; and a standard of review that doesn't catch such deficiencies.

When the apparent "plain language of a statue" results in conclusions that conflict with other parts of a statute or conclusions with a potentially unbearable burden upon public interest, it can be highly compromising to ignore considerations of legislative purpose and intent. At times, the way to see such potential is through examination of case law in other jurisdictions. When such examination demonstrates consistently conflicting and inconsistent jurisprudence, legislative purpose and intent should not be forgotten or ignored.

And actually, the court seems to have focused narrowly on one tiny part of FERPA which is not synonymous with legal dogma that looking at the plain language of a statute means the entire statute. *"When interpreting a statute, this court looks first to the statute's plain language to determine the Legislature's intent and purpose. Lovendahl v. Jordan Sch. Dist., 2002 UT 130, ¶ 21, 63 P.3d 705. We read the plain language of the statute as a whole, and interpret its provisions in harmony with other statutes in the same chapter and related chapters." State v. Schofield, 2002 UT 132, ¶ 8, 63 P.3d 667; State v. Maestas, 2002 UT 123, ¶ 54, 63 P.3d 621 (Regarding ;whole statute; interpretation, the court stated: "A statute is passed as a whole and not in parts or sections and is animated by one general purpose and intent. Consequently, each part or section should be construed in connection with every other part or section so as to produce a harmonious whole." (quoting Norman J. Singer, 2A Sutherland, Statutory Construction § 96:05 (4th ed.1984))). We*

follow "the cardinal rule that the general purpose, intent or purport of the whole act shall control, and that all the parts be interpreted as subsidiary and harmonious to its manifest object." Faux v. Mickelsen, 725 P.2d 1372, 1375 (Utah 1986) (quoting Sutherland, supra, § 46.05)" (Miller v. Weaver, 2003 UT ¶ 17 66 P. 3d 592).

If the Utah Court of Appeals had included legislative intent within its standard of review of Bryner v. Canyons School District and also considered the entirety of FERPA instead of narrowly focusing on one small part defining education records, it could have properly concluded that the video footage in the case was not an education record under FERPA. And from what can be surmised from the court's opinion, the amici curiae invited by the trial court correctly tried to advise the court to help avoid erroneously concluding the records to be private under FERPA.

This leads to the second issue with Bryner v. Canyons School District that particularly stands out (*and the two particular observations about the decision are actually quite related*): failing to properly understand the relationship of definitions and components of a statute. (*Time is running out for the appellant to submit this appeal, so this analysis is abridged.*)

One of the ways in which the opinion in Bryner v. Canyons School District fails to handle the relationship of statutory components is in a seeming assumption that there are only two types of records that could be generated by a school: educational and law enforcement; and that any record created by a school is an educational record by default. In regards to the former, it is simple to see that a school may generate a wide variety and volume of records that are neither education or law enforcement records under FERPA. A simple example should suffice: a school would likely have janitorial staff who at some intervals clean school restrooms. Perhaps they follow a specific schedule, which would be a record. Obviously, a record of a schedule for cleaning restrooms would not be deemed to be a law enforcement record or a student's educational record. Unfortunately, at one point the court incorrectly concluded that a particular record was not a law enforcement record and was therefore an educational record – and such reasoning inherently implies there are only two types of records generated by a school.

Further, the intended application and scope of education records under FERPA can be seen in at least two additional ways: the allowance for directory information and the handling of disciplinary matters. First, if literally every single piece of data in any way connected to a student even if it has nothing to do with education were intended to be an education record, the directory information portion becomes highly suspicious, something that under FERPA is considered to not be an invasion of privacy. (*Some false and irresponsible assumptions are a core failure of FERPA, but that is another matter entirely.*) Instead, FERPA treats a considerable amount of information about a student as being public information, which makes it highly problematic to very broadly define records as education records. (*That becomes a lot of keeping and eating a cake at the same time.*)

Second, FERPA gives some coverage to disciplinary matters and specifically references the inclusion of disciplinary matters into an education record. Although it is not completely specific at that particular point, a better understanding of insertion into a student's education record on disciplinary matters can be analyzed from a portion of 34 CFR Part 99 as well as from some specific information given about similar matters in post-secondary situations.

While FERPA fails to be sufficiently specific and clear on the matters above, careful analysis will reveal that there would be very limited instances with a very limited amount of information stemming from disciplinary matters that would legitimately make into any given student's education records. There appears to be nothing to suggest that a videographic record of an incident, even if it led to disciplinary actions against certain students depicted in the record, would result in that videographic record itself becoming an education record. And further, there is even less to suggest that it would an education record for depicted students against whom disciplinary action was not taken. So even temporarily setting aside whether there was formal disciplinary action as contemplated by FERPA and whether the video footage could ever be properly considered part of the disciplinary record inserted into the education record in the Bryner v. Canyons School District case, there is simply nothing left by which to properly consider the footage to be an education record for students not involved in an alleged incident. [3]

II. Where GRAMA Succeeds is Where FERPA Fails

The single biggest problem with FERPA is how it defines educational records. Even in Bryner v. Canyons School District, the appellate court relied on what it considered to be the "plain language" of the definition of education records. The problem is, FERPA's definition of education records gives a mere facade of "plain language" that is actually utterly ambiguous as soon as one reads the rest of FERPA. For a statute to have "plain language", generally speaking a person of average intellect should be able to understand its meaning. In the case of 20 U.S. Code § 1232g(a)(4)(A)(i), it is not plain. And if an entity were to apply that definition in a manner as far-reaching and unfettered as some suggest, it leads to absolutely preposterous ramifications. It's an easy assertion to make given that highly educated members of the judiciary have failed to reach consensus throughout the country. Overly broad interpretation of education records under FERPA has led repeatedly to ridiculous and unbearable conclusions.

On the other hand, GRAMA is exemplary, especially compared to FERPA, in carefully and specifically defining classification of records. In the case of FERPA, any legal analysis of an educational record under FERPA must necessarily demonstrate a record to be properly categorized as an educational record before calling upon any potential protections of private record classification. It is most improper under FERPA to automatically define any record generated by a school as an educational record if it is not specifically and explicitly listed as

3 20 USC § 1232g(h): "*Disciplinary records; disclosure Nothing in this section shall prohibit an educational agency or institution from — (1) including appropriate information in the education record of any student concerning disciplinary action taken against such student for conduct that posed a significant risk to the safety or well-being of that student, other students, or other members of the school community*". 20 USC § 1232g(b)(6)(C): "*For the purpose of this paragraph, the final results of any disciplinary proceeding — (i) shall include only the name of the student, the violation committed, and any sanction imposed by the institution on that student*". From 34 CFR § 99.3: "*Directory information means information contained in an education record of a student that would not generally be considered harmful or an invasion of privacy if disclosed. (a) Directory information includes, but is not limited to, the student's name; address; telephone listing; electronic mail address; photograph; date and place of birth; major field of study; grade level; enrollment status (e.g., undergraduate or graduate, full-time or part-time); dates of attendance; participation in officially recognized activities and sports; weight and height of members of athletic teams; degrees, honors, and awards received; and the most recent educational agency or institution attended*". Also from 34 CFR § 99.3: "*Disciplinary action or proceeding means the investigation, adjudication, or imposition of sanctions by an educational agency or institution with respect to an infraction or violation of the internal rules of conduct applicable to students of the agency or institution*".

another type of record. *What is proper is the opposite. The proper classification of a record as an educational record under FERPA is a record that is actually defined as an educational record under FERPA.* Unfortunately, in the case of Bryner v. Canyons School District, the court appears to have erred in part by not recognizing that very thing, instead incorrectly concluding that Bryner's or Amici's alleged failure to demonstrate a record as a law enforcement record meant that it was an education record.

III. Current Quagmire of Matters Concerning Juveniles

If time permitted further analysis of issues stemming from FERPA, it would become increasingly apparent that where juveniles are concerned, too many entities are confused and giving inconsistent information. From school to school and court to court, interpretations of FERPA varies over and over again. That fact alone makes FERPA highly deficient legislation. Time will tell if FERPA will be fixed. But for what is most pertinent with this appeal, even despite all the issues, is that it can be concluded that under FERPA a depiction of a juvenile automatically and always constitutes a private record.

IV. Despite the Plethora of Problems Stemming From FERPA, It Still Remains: There is No Automatic Non-Public Classification of Depictions of Juveniles

Even with the inherent deficiencies and contradictions within FERPA; the severely problematic nature of some case law and school district actions around the country; the United States Department of Education's own struggles with properly understanding and interpreting FERPA; and some of the grossly over-stepping applications and failures of entities to remember the purpose and legislative intent for FERPA, such federal legislation that is one of the most far-reaching and subject matter-applicable guides on the topic of juveniles, records, and depictions, **even then still does not** recognize an automatic and consistent right to non-public record classification related to depictions of juveniles.

In fact, if anything, FERPA, associated rule-making, and the application by some educational entities take too many liberties with dissemination of information about students and fail to recognize privacy invading and compromising "permissions" under color of federal authority. So when this appellant makes particular statements herein, they are not casually or lightly made.

E. Body Camera Records Are Public Except in Very Limited Instances

Records generated by body-worn cameras of law enforcement officers were already contemplated in the context of GRAMA and are public records by default. Utah Code §63G-2-302(2)(g) defines very limited circumstances in which footage from body cameras may be properly classified as a private record. None of those exceptions to public record classification apply to the records appealed here.

F. Police Vehicle Camera Records Are Public Records by Default

Simply put, police vehicle camera footage are not recognized categorically as being a non-public record. And given that police vehicles are far more limited physically in where they can go compared to law enforcement officers wearing body cameras, footage from vehicles is far less likely to have legitimate scenarios for non-public record classification. If footage from a police

vehicle is to be properly classified as non-public, it would have to be on a basis other than the source of the footage. Such footage is public record by default until demonstrated to be a non-public record for some other specific reason.

G. Redaction of Records is Completely or Mostly Unnecessary

The appellant believes that redaction of audio and video to comply with his lawful GRAMA request is either completely or mostly unnecessary. It is difficult to conclude if any redaction is necessary since the appellant has not been allowed to review the records. Based on the information that the appellant has been able to gather, the only potentially necessary redaction of which he is aware would be if there are sensitive pieces of data of innocent parties such as those of witnesses that are visible, which, if applicable, would require very minimal effort by West Jordan City to redact. Such effort, if truly necessary, would be far less than the effort West Jordan City has already made to deter the appellant and avoid its responsibilities under the law.

H. West Jordan City Is Completely Capable of Redacting Records When It Is Needed

It was the appellant's early understanding that WJPD uses Axon body cameras, and that was later verified through his new GRAMA request. According to information published by Axon and found within seconds from an internet search, Axon provides very robust tools and options for both manual and technology-assisted video redaction. [4] Despite this, West Jordan City has repeatedly denied it has an ability to redact video records.

In the conversation with WJPD IA on May 2, 2017, Lt. Sanders stated the police department used Panasonic cameras, which the appellant presumes was in reference to the cameras mounted on police vehicles and not the body cameras. Pursuant to the appellant's direct conversation with the Arbitrator 360 team for Panasonic before making his new GRAMA request, they stated their SafeServ software does not include redaction tools. While it is currently perplexing that Panasonic, who markets solutions directly to the law enforcement community, would offer such an incredibly deficient solution, and it is unclear why West Jordan City selected this solution, it does appear video redaction tools are not available from Panasonic directly. The 148-page Panasonic back-end administration manual received via the appellant's new GRAMA request also does not mention redaction.

However, a lack of a solution directly from Panasonic is not a lack of ability to redact video. There are numerous third-party solutions available for video redaction. Further, it is unclear why West Jordan City could not, in the least, simply upload video needing redaction into Axon's Evidence.com solution. As of June 7, 2017, the appellant does not yet have written documentation of West Jordan City's subscription and access to Axon's Evidence.com. However, it is understood that West Jordan City has redacted video records in the past with that specific solution. And pursuant to material received the afternoon of June 6, 2017 from his new GRAMA request, part of a more recent quote given by Axon to West Jordan City includes various Evidence.com subscriptions. Given a plethora of solutions, West Jordan City's statements and actions are still some false, misrepresented, or both:

4 A quick new search on 6-7-17 while editing this appeal yielded results such as: https://help.axon.com/hc/en-us/articles/221368528-Redacting-videos and https://www.axon.com/company/news/redaction-tools.

1. Numerous software solutions are available to the West Jordan City for video redaction, even if none are available directly from Panasonic.

2. On May 2, 2017, the WJPD explicitly stated it strongly desires to be able to simply furnish videographic material in response to GRAMA requests. And yet, West Jordan City has not taken very simple and feasible steps to do so.

3. As a matter of due diligence to ensure expectations of West Jordan City are not unfair, the appellant did a simple test. It took approximately 30 minutes to A) Conduct an Internet search to find a free software program; B) Download it; C) Install it; and D) Do a simple video redaction of a video received from WJPD. If the appellant can do such so quickly, surely one of the largest municipalities in the State of Utah can do so.

Therefore, whether GRAMA or any other law requires a municipality to have video reaction capabilities appears completely irrelevant to the appellant. That West Jordan City has expressed a preference to do so in a manner suggesting it is not feasible when the opposite is true is at best negligent and incongruous with reality. And it is currently difficult to avoid concluding that at least some of West Jordan City's statements of inability to redact video records is anything less than a blatant lie.

The costs the city has incurred thus far in denying and creating obstacles to the appellant's GRAMA request would be more responsibly spent on obtaining and installing sufficient, easily-used software with robust, cost-effective options and tools for video redaction. If West Jordan City truly wishes and prefers to be able to better accommodate GRAMA requests pertaining to video, it is a complete mystery why the city has failed to do so when options are simple and many.

I. West Jordan City's Belated Explanations of Omissions are Suspicious

While explanations of allegedly unavailable records given through WJPD IA could be appreciated if true, they are difficult to believe at this time. The records that allegedly don't exist are likely more pertinent to the appellant's investigation in public interest than the denied records. That Officer Ranney supposedly did not engage her police vehicle camera is very difficult to understand. In the list of current officers who use body cameras obtained through the appellant's new GRAMA request, Office McMullin does not appear on that list. IA indicated WJPD has 10 body cameras, but the list shows 13 officers wear body cameras. The appellant has not yet been able to fully review materials from his new GRAMA request to see if all directive material on body camera assignments are included. Therefore, the understanding Officer McMullin does or should be wearing a body camera necessarily remains at a speculative state.

J. Evaluation of Competing Interests Only Pertains to Non-Public Records

Evaluation of competing interests would potentially be an important consideration if records could be classified in more than one way. But if records are public under GRAMA, consideration of competing interests is not part of the standard under GRAMA to be applied to an entity's duty to provide public records. Records must first be properly classified as non-public before it becomes appropriate to consider competing interests. Indeed, under GRAMA, it is necessary to *"favor public access when, in the application of this act, countervailing interests are of equal weight"* (Utah Code §63G-2-102(3)(e)).

K. West Jordan City Added Further Constitutional Violations as its Way of Fighting Against a Citizen's Exercise of Civic Duty

West Jordan City may not like that the appellant is investigating a public interest matter. They may not like that he expects them to speak truthfully to him. And they may not like the he has "called them out" on particular matters that are the public's business. But what West Jordan City may not like does not give the city a right to violate constitutional rights. *"'The policy supporting an absolute privilege for criticism of the government is to allow the free communication of ideas, a concept at the core of First Amendment liberties.' (City of Long Beach v. Bozek (1982) 31 Cal.3d 527, 535, 183 Cal.Rptr. 86, 645 P.2d 137; see also Rosenblatt v. Boer (1966) 383 U.S. 75, 85, 86 S.Ct. 669, 15 L.Ed.2d 597.) The right of citizens to petition their government must not be chilled merely because it is discommoding to public employees"* (People v. Stanistreet, 113 Cal. Rptr. 2d 529 - Cal: Court of Appeal, 2nd Appellate Dist., 6th Div. 2001).

West Jordan City's attack on the character and reputation of the appellant is not just an issue on its own. *"Society has a pervasive and strong interest in preventing and redressing attacks upon reputation"* (Gomes v. Fried, 136 Cal. App. 3d 924 - Cal: Court of Appeal, 1st Appellate Dist., 3rd Div. 1982). It is an even greater issue that West Jordan City made such an attack within awful due process specified through GRAMA. Actions to create a chilling effect on due process are highly problematic. And a still even greater issue is that when the appellant generously provided West Jordan City with an opportunity to remove inappropriate material from its GRAMA appeal denial before submitting further appeal to the State Records Committee (*further due process*), the city refused to do so.

And still further, after West Jordan City disseminated its attack on the appellant to at least the city employees specified in the letter, and then the appellant responded to the same people through the same method, defending his character and inviting discussion of any real concerns, Deputy City Attorney Duncan Murray ordered the appellant to cease communication through a number of methods, including a method used by the city to give and disseminate its attack. West Jordan City refused to address the issue; refused to allow discussion; and retaliated against the appellant's objection to falsely having his character attacked.

These are not small things. Whether any city employee finds an objection to an attack comfortable or not is inconsequential. West Jordan City, in denying constitutional rights to records of the public's business, has further stomped on the constitutional rights of the appellate to free speech, petitioning government, and equal protection. The People West Jordan City likes and dislikes are not lawful classes of people to restrict, infringe, or prohibit the exercise of constitutional rights. And Deputy City Attorney Duncan Murray, as a legal representative of the city, has disallowed or severely infringed on efforts to resolve or settle a matter of great concern to the appellant. The appellant would suggest that West Jordan City's legal representatives should reflect back on the standards of ethics and professional conduct required by the State of Utah of all attorneys admitted to the bar, especially as they relate to interactions with pro se parties.

L. Requested Records Pertain to Matters of Public Safety and Public Interest

Without analysis, explanation, and specificity, linking statements to legitimate reasons for classifying a record as non-public, the West Jordan City's stated reasons for denial are empty,

being an insufficient "threadbare recital" of a standard for record classification. It is not West Jordan City's prerogative to decide what records it does and doesn't want to be seen. It is their duty to classify records – in advance or upon demand – and then provide them in accordance with GRAMA. Refusing access to records about the public's business is a constitutional violation and an assault on public interest.

I. Police Accountability is an Integral Part of Public Safety and Public Interest

"Law enforcement officers carry upon their shoulders the cloak of authority to enforce the laws of the state. In order to maintain trust in its police department, the public must be kept fully informed of the activities of its peace officers" (New York Times Co. v. Superior Court (1997) 52 Cal.App.4th 97, 104-105, 60 Cal.Rptr.2d 410.). The appellant's pursuit of particular public records related to WJPD Incident # 17H005408 substantively pertain to law enforcement conduct; actions and conduct leading to failure to discover a dangerous weapon on a suspect in police custody who was kept within proximate distance of the public; the reporting of various aspects of such incident; and of West Jordan Police Department administration's various stories of the incident, circumstances, and follow-up. Instead of providing public records to allow the public to be informed about these public safety matters, West Jordan City has continued to deny such records that are an integral part of public interest and public safety.

II. Trust Comes From Transparency

While all the various ramifications for increased usage of body cameras by law enforcement officers, including potential increased emotional labor, potential deterrence to reporting certain crimes, and other potential issues not yet even contemplated have yet to be studied thoroughly and comprehensively, generally much of the advocacy for using body cameras is based on theories of increased transparency as a support for public interest and safety. It is generally held that transparency helps build trust and that lack of transparency often compromises trust. This very notion seems to be a foundational concept of the stated legislative intent of GRAMA including that the right of access to information about the public's business is considered a constitutional right and that failing to disclose records outside of the guidelines of GRAMA is labeled as a prevention of government abuse (Utah Code §63G-2-102).

III. Municipalities Have Fiduciary and Other Duties to Their Citizens

It is a general and necessary principal of government within the United States that government, including municipalities, have a fiduciary duty to their citizens. *"All political power is inherent in the people; and all free governments are founded on their authority for their equal protection and benefit..."* (Article I, Sec. 2, Constitution of Utah). Inherently, municipalities, deriving their power from the People of Utah through the State of Utah, owe a fiduciary duty collectively to the citizenry. West Jordan City is not sovereign. Public safety is part of its duty as a municipality, with its law enforcement authority delegated by the state. *"The exercise of the police power is an attribute of state sovereignty, a portion of which it may delegate, but not relinquish, to municipalities, which have none of the elements of sovereignty"* (Salt Lake City v. International Association of Firefighters, Etc., 563 P.2d 786, Utah: Supreme Court 1977). As a non-sovereign entity, West Jordan City has been entrusted with certain responsibilities, ultimately beholden to the people it serves with a fiduciary duty towards them. Various actions

described within this appeal are a direct compromise and violation of their various duties to the People of West Jordan, Utah.

RELIEF

The Appellant seeks relief at least in the form of being furnished all records previously denied – whether by outright denial or omission – without cost, including but not necessarily limited to the following items or their specified alternatives:

- All 4 records denied in the letter on April 27, 2017;
- Body Worn Cam footage from Officer Ranney – alternatively an affidavit under penalty of perjury from the officer that she does not wear a body camera if such is the case;
- All camera footage from the patrol vehicle of Officer Ranney beginning with the time of the incident report for #17H005408 (WJPD) and ending only after full completion of engagement in said incident – alternatively, if the officer did not engage vehicle-mounted cameras during said incident as she should have done , an affidavit under penalty of perjury stipulating that there truly is a lack of such footage;
- Body Worn Cam footage of Office McMullen – alternatively, an affidavit under penalty of perjury from the officer that he does not wear a body camera if such is the case; and
- Officer communications during the incident on bases already specified in this appeal.

CONCLUSION

The government of West Jordan City appears to take a very illegitimate view of duty, power, and authority that has created a dysfunctional and alarming dynamic, a dynamic that can be very frightening for a citizen when it becomes a tool of coercion against public accountability, transparency, and public interest. West Jordan City does not have the right to create two classes of people – those who have not challenged them and those who have lawfully given voice to violations of the public interest – trying to deter and silence the latter even through actions like falsely attacking a citizen's character in a GRAMA appeal denial and then shutting down objections to or efforts to resolve such.

Any citizen has the right fundamentally to speak through the same channels as another, without being restricted simply because government administrators do not like the message or the fact that they are being held accountable to the People. Those in positions of authority must exercise added restraint to ensure they are not engaging in abuse against any Voice of the People.

By making themselves above the Utah Legislature by refusing to follow GRAMA, a recognition of a constitutional right of the People, West Jordan City has violated a fundamental aspect of the rule of law. And any citizen who feels he or she must succumb to actions intended to shut down lawful engagement in the public interest is a threat against the People that must be stopped. This appellant then, while technically appealing an individual matter, is asking for no less than the upholding of the Rule of Law. Transparency and accountability are two necessary

pillars of our American government. Refusal to provide information about the public's business is an encroachment on civil liberty, that is inherently forged in the social contract, that is the fabric of our system of government, and that is explicitly defined in GRAMA. West Jordan City tasked in part with the enforcement of the rule of law, must not be allowed to itself continue railing against that very rule of law.

Dated: June 7, 2017

/s/Matthew Winters
Appellant, Pro Se

To: Ms. Nova Dubovik, Utah State Records Committee (via email)
Cc: Mr. Mark Palesh, City Manager, West Jordan City (via email)