

James S. Jardine (1647)
Samuel C. Straight (7638)
RAY QUINNEY & NEBEKER P.C.
36 South State Street, Suite 1400
P.O. Box 45385
Salt Lake City, Utah 84145-0385
Telephone: (801) 532-1500
Facsimile: (801) 532-7543
Email: jjardine@rqn.com
ssstraight@rqn.com

Steven M. Sandberg (12421)
David M. Andersen (16352)
Office of the General Counsel
BRIGHAM YOUNG UNIVERSITY
A357 ASB
Provo, Utah 84602
Telephone: (801) 422-3089
Facsimile: (801) 422-0265
Email: steve_sandberg@byu.edu
david_andersen@byu.edu

Attorneys for Brigham Young University

**IN THE FOURTH JUDICIAL DISTRICT COURT,
UTAH COUNTY, STATE OF UTAH**

<p>BRIGHAM YOUNG UNIVERSITY, Plaintiff, vs. The UTAH STATE RECORDS COMMITTEE; and ETHAN DODGE on behalf of TRUTH AND TRANSPARENCY FOUNDATION, Defendants.</p>	<p>SUMMONS Case No. 180401368 Judge Thomas Low TIER 2</p>
---	---

THE STATE OF UTAH TO THE ABOVE-NAMED DEFENDANT:

**ETHAN DODGE on behalf of
THE TRUTH AND TRANSPARENCY FOUNDATION
Registered Agent: Ryan C. McKnight
109 CASCADE MEADOW CT
Henderson, NV 89011**

You are hereby summoned and required to file an Answer in writing to the attached
Complaint for Judicial Review of an Order by the Utah State Records Committee within thirty

(30) days after service of this Summons upon you with the Clerk of the above-entitled Court, 125 North 100 West, Provo, UT 84601, and to serve upon, or mail to James S. Jardine and Samuel C. Straight, attorneys for the Plaintiff, of Ray Quinney & Nebeker P.C., P. O. Box 45385, Salt Lake City, Utah 84145-0385.

If you fail so to do, judgment by default will be taken against you for the relief demanded in said Complaint, which has been filed with the Clerk of said Court and a copy of which is hereto annexed and herewith served upon you.

DATED this 21st day of August, 2018.

RAY QUINNEY & NEBEKER P.C.

/s/ Samuel C. Straight

James S. Jardine
Samuel C. Straight

Attorneys for Plaintiff

James S. Jardine (1647)
Samuel C. Straight (7638)
RAY QUINNEY & NEBEKER P.C.
36 South State Street, Suite 1400
P.O. Box 45385
Salt Lake City, Utah 84145-0385
Telephone: (801) 532-1500
Facsimile: (801) 532-7543
Email: jjardine@rqn.com
sstraight@rqn.com

Steven M. Sandberg (12421)
David M. Andersen (16352)
Office of the General Counsel
BRIGHAM YOUNG UNIVERSITY
A357 ASB
Provo, Utah 84602
Telephone: (801) 422-3089
Facsimile: (801) 422-0265
Email: steve_sandberg@byu.edu
david_andersen@byu.edu

Attorneys for Brigham Young University

**IN THE FOURTH JUDICIAL DISTRICT COURT,
UTAH COUNTY, STATE OF UTAH**

<p>BRIGHAM YOUNG UNIVERSITY, Plaintiff, vs. The UTAH STATE RECORDS COMMITTEE; and ETHAN DODGE on behalf of TRUTH AND TRANSPARENCY FOUNDATION, Defendants.</p>	<p style="text-align: center;">COMPLAINT FOR JUDICIAL REVIEW OF AN ORDER BY THE UTAH STATE RECORDS COMMITTEE</p> <p style="text-align: right;">Case No. _____ Judge _____ TIER 2</p>
---	---

Brigham Young University (“BYU”), by and through undersigned counsel, files this complaint pursuant to Utah Code § 63G-2-404, for judicial review of the July 23, 2018, Decision and Order (“Order”) of the State Records Committee of the State of Utah (“SRC”) concerning the request of Ethan Dodge on behalf of Truth and Transparency Foundation (“TTF”) for access to records from BYU’s University Police pursuant to the Government Records Access and

Management Act (“GRAMA”). A true and correct copy of the Order is attached hereto as Exhibit 1.

INTRODUCTION

BYU and its University Police is a private, nongovernmental entity. Nevertheless, TTF issued University Police a GRAMA request. Consistent with its internal policies, University Police voluntarily provided some documents in response to the request. University Police denied the request for an audio recording because (1) University Police is an internal department of a private university, not a governmental entity subject to GRAMA; and (2) even if GRAMA applied to BYU, the audio recording TTF requested from University Police would be a private record not subject to disclosure under GRAMA in any event. SRC determined that the recording was not a private record and deferred its determination of whether University Police was a governmental entity subject to litigation in the Third Judicial District Court concerning that issue. BYU seeks judicial review to overturn SRC’s erroneous decision.

PARTIES AND JURISDICTION

1. BYU is a private university located in Utah County, Utah. University Police is an internal department within the Division of Student Life at BYU. The mailing address of University Police is 2120 Jesse Knight Building, Provo, UT 84602.
2. SRC is a public body within the Utah Department of Administrative Services, and its duties include hearing GRAMA appeals. SRC is a necessary party to this action. Utah Code § 63G-2-404(1)(b).

3. The Truth and Transparency Foundation is a Nevada non-profit corporation located in Nevada. Ethan Dodge is the Technical Director, Secretary and a Director of the Truth and Transparency Foundation and resides, upon information and belief, in either Utah or Nevada.

4. Jurisdiction and venue are proper pursuant to Utah Code §§ 63G-2-404, 78B-3-307(1)(a). This complaint is timely filed “no later than 30 days after the date of the order,” which was dated and entered on July 23, 2018.

GENERAL ALLEGATIONS

5. On or about April 10, 2018, TTF requested “all files, videos, audio recordings, or any other kind of documentation related to Joseph L. Bishop” from University Police. A true and correct copy of TTF’s request is attached hereto as Exhibit 2.

6. Earlier, on March 20, 2018, in following up on a request from a separate media organization, University Police contacted SRC’s ombudsman to request SRC’s understanding concerning a similar request on when a record is properly classified as private and how to apply Utah Code § 63G-2-202(1)(a) (to “the subject of the record”) and Utah Code § 63G-2-202(3) (“[i]f there is more than one subject of a private . . . record”).

7. University Police, consistent with its internal policy and practice, and following the guidance provided by SRC’s ombudsman, voluntarily provided certain records to TTF, including additional information after TTF petitioned the chief of University Police for fewer redactions on certain records.

8. Upon information and belief, TTF independently received copies of or was made aware of records University Police had provided to the subject of the records, which were not provided to any other requester of the records.

9. TTF was unsatisfied with the records it had been provided and specifically sought a copy of an audio recording between University Police officers and Joseph L. Bishop.

10. University Police responded to the request by informing TTF: “Brigham Young University and its University Police are not subject to GRAMA. However, as a matter of internal practice, upon proper request, University Police releases law enforcement records that would not be classified under GRAMA as private (Utah Code 63G-2-302), controlled (Utah Code 63G-2-304), or protected (Utah Code 63G-2-305), or that would not otherwise be protected from disclosure under GRAMA. University Police also does not disclose FERPA-protected records or any records protected from disclosure under any other federal or state laws or privileges.” A true and correct copy of this correspondence is attached hereto as Exhibit 3.

11. University Police further explained: “In this case, the requested recording is a private record under Utah Code 63G-2-302, because disclosure of the recording would constitute a clearly unwarranted invasion of personal privacy of individuals involved in the case.” *Id.*

12. On or about April 24, 2018, TTF filed a notice of appeal with SRC. A true and correct copy of TTF’s notice is attached hereto as Exhibit 4.

13. On April 25, 2018, in response to a further request for the recording, University Police again contacted SRC’s ombudsman to find out how SRC counsels governmental entities regarding investigative records, expectations of privacy, and clearly unwarranted invasions of personal privacy. SRC’s ombudsman provided further guidance that, even if GRAMA applied, the classification of the recording as a “private record” was correct.

14. University Police’s conclusion that, even if GRAMA applied, the recording would be classified as “private” is consistent with SRC’s decision in *Thatcher v. Utah Dep’t of Public*

Safety, Case No. 16-18, which held that disclosure of audio recordings from interviews during a DPS investigation would constitute a clearly unwarranted invasion of personal privacy.

15. SRC scheduled a hearing on TTF's appeal on July 12, 2018.

16. BYU informed SRC in a May 24, 2018 letter that it would not participate in such a hearing because "University Police is not a governmental entity subject to" GRAMA. A true and correct copy of BYU's May 24, 2018, letter is attached hereto as Exhibit 5.

17. In the May 24 letter, BYU further explained that its "position tracks [SRC]'s own position. In 2016, [SRC] determined an appeal from the Salt Lake Tribune regarding University Police records was outside its jurisdiction because University Police is a private institution." *Id.*

18. The May 24 letter also explained that SRC's "legal argument in the Salt Lake Tribune lawsuit follows from the determination by the Utah Division of Archives and Records Service (UDARS) that neither BYU nor any of its departments, including University Police, is a governmental entity subject to GRAMA." *Id.*

19. BYU reiterated its position in a June 18, 2018 letter, a true and correct copy of which is attached hereto as Exhibit 6. Following the same guidance SRC's ombudsman had given regarding releasing the recording to requestors, BYU did not provide a copy of the audio recording to SRC.

20. The Chair *Pro Tem* of SRC is an opinion columnist for the Salt Lake Tribune, and is compensated by the Salt Lake Tribune, and she therefore has a conflict of interest in ruling on a request to University Police given the pending litigation between BYU and the Salt Lake Tribune in the Third District Court concerning the same issue.

21. Despite BYU's stated position, SRC's prior determination that it did not have jurisdiction over University Police because it was not a governmental entity, and the actual conflict of interest, SRC nevertheless held a hearing, led by the Chair *Pro Tem*, on July 12, 2018.

22. On July 23, 2018, SRC issued the Order, signed by the Chair *Pro Tem*, Exhibit 1 hereto.

23. SRC's Order stated that SRC "reviewed all written materials submitted to the Committee and arguments made by Petitioner during the Committee's hearing." Order at ¶ 4.

24. SRC's Order provided: "Since the issue of whether Respondent is a governmental entity is currently being reviewed by a Utah District Court in *Salt Lake Tribune v. Utah State Records Comm.*, 3rd District Case No. 160904365, the Committee defers addressing this issue at this time and instead, addresses solely the issue of the classification of the requested record." *Id.* at ¶ 2.

25. SRC's Order further found as follows:

[T]he requested records were improperly classified as private records by Respondent. Release of the recording would not be a "clearly unwarranted invasion of personal privacy" because information within the recording of the interview has already been released to the public. Accordingly, the Committee finds that the requested records are public records and should be disclosed to Petitioner subject to the District Court's decision in *Salt Lake Tribune v. Utah State Records Comm.*, 3rd District Case No. 160904365 concerning whether Respondent is a governmental entity subject to GRAMA.

Id. at ¶ 4 (footnotes omitted).

26. On July 17, 2018, Judge Laura Scott issued a Ruling and Order in the district court litigation, finding that "[University Police] is a governmental entity subject to GRAMA when acting as a law enforcement agency and/or its officers are acting as law enforcement officers." Judge Scott specifically recognized in her Ruling and Order "that BYU has strong

arguments worthy of appellate consideration.” Judge Scott’s Ruling and Order is currently the subject of a request for interlocutory appeal with the Utah Court of Appeals, and the Salt Lake Tribune does not oppose that request.

27. Despite the Court’s recognition that BYU has “strong arguments,” the very next day, the Chair *Pro Tem* of SRC appeared on a Salt Lake Tribune podcast and opined that BYU has “very little chance” of prevailing on appeal. In the same podcast, the Chair *Pro Tem* acknowledged that SRC had decided “we’re going to act as if University Police is a governmental entity” even before Judge Scott issued her Ruling and Order. The Chair *Pro Tem* was equally definitive that the audio record, which she had not heard, was “public,” notwithstanding the guidance of SRC’s ombudsman as well as SRC’s 2016 decision in *Thatcher*, simply because the investigation was closed and the names of two people were known.

RELIEF REQUESTED AND STATEMENT OF REASONS

28. BYU respectfully requests that the Court reverse SRC’s decision and determine that University Police is *not* a governmental entity subject to GRAMA and that the requested record is a private record not subject to disclosure under GRAMA in any event.

University Police Is Not A Governmental Entity Subject to GRAMA

29. BYU is a private university.

30. BYU created a security/police force in 1952 and has hired officers, whom BYU has always treated and explicitly held out to be BYU employees.

31. In the 1960s, officers employed by BYU were sworn as special deputies of the Utah County Sheriff’s Department and special officers of the Provo City Police Department.

32. In the late 1970s, the Utah Legislature asked for input on legislation that would address peace officer authorization and categories of peace officers. Utah House Bill 80, which took effect in May 1979, expressly recognized that a police force “established” by a private college or university and authorized officers of those forces could exercise police power as Category I officers upon proper notice to the commissioner of public safety, which BYU provided.

33. Utah House Bill 32, which took effect in 1980, amended the same statute to say that a “police force established by a private college or university” must be certified by the commissioner of public safety. BYU received that certification, which has been in effect at all times since 1980.

34. The Department of Public Safety continues to rely solely on that same legislative authority to issue the administrative rules it uses to certify University Police—the statute that authorizes law enforcement officers who are “members of a law enforcement agency established by a private college or university.” Utah Code § 53-13-103(1)(b)(xii). University Police, precisely because it was established by BYU in 1952 and not by the government, was eligible to obtain and maintain the required certification.

35. BYU has continuously operated, managed, and funded the entire University Police operation, including paying all salaries and benefits of all University Police employees.

36. University Police is an internal department within the Division of Student Life at BYU.

37. University Police has voluntarily released certain records as a matter of internal policy using the structure and processes outlined in GRAMA.

38. GRAMA requires only a “governmental entity” to provide public records. Utah Code § 63G-2-201.

39. GRAMA specifically defines the term “governmental entity,” which “means” (a) one of the specifically enumerated state executive, legislative, or judicial entities, a state school, or a state political subdivision, Utah Code § 63G-2-103(11)(a),¹ or (b) “every office, agency, board, bureau, committee, department, advisory board, or commission of an entity listed in Subsection 11(a) that is funded or established by the government to carry out the public’s business,” *id.* § 63G-2-103(11)(b).²

40. In other words, to be a “governmental entity” under GRAMA, an entity must be listed in Subsection 11(a) (a “Listed Entity”) or it must one of the Subsection 11(b) sub-entities of a Listed Entity that is also funded or established by the government. Importantly, the State of Utah itself is not a Listed Entity, although specific departments and agencies organized within

¹ Utah Code § 63G-2-103(11)(a) provides (emphasis added):

(a) “Governmental entity” *means*:

(i) executive department agencies of the state, the offices of the governor, lieutenant governor, state auditor, attorney general, and state treasurer, the Board of Pardons and Parole, the Board of Examiners, the National Guard, the Career Service Review Office, the State Board of Education, the State Board of Regents, and the State Archives;

(ii) the Office of the Legislative Auditor General, Office of the Legislative Fiscal Analyst, Office of Legislative Research and General Counsel, the Legislature, and legislative committees, except any political party, group, caucus, or rules or sifting committee of the Legislature;

(iii) courts, the Judicial Council, the Administrative Office of the Courts, and similar administrative units in the judicial branch;

(iv) any state-funded institution of higher education or public education; or

(v) any political subdivision of the state, but, if a political subdivision has adopted an ordinance or a policy relating to information practices pursuant to Section 63G-2-701, this chapter shall apply to the political subdivision to the extent specified in Section 63G-2-701 or as specified in any other section of this chapter that specifically refers to political subdivisions.

² Utah Code § 63G-2-103(11)(b) provides, in relevant part (emphasis added):

(b) “Governmental entity” also *means*:

(i) every office, agency, board, bureau, committee, department, advisory board, or commission of an entity listed in Subsection (11)(a) that is funded or established by the government to carry out the public’s business;

the three branches of the state government are Listed Entities.

41. Neither BYU nor its University Police is a Listed Entity. Utah Code § 63G-2-103(11)(a). For example, nowhere does the State of Utah or the executive branch of the State of Utah claim or hold out University Police as an executive department agency.

42. None of the specifically enumerated entities listed in Subsection 11(a) recognizes or treats BYU or its University Police as its own “office, agency, board, bureau, committee, department, advisory board, or commission” (i.e., a sub-entity).

43. The Utah Department of Public Safety (“DPS”), which is itself an executive department agency listed in Subsection 11(a), does not fund University Police or consider University Police to be one of its sub-entities under Subsection 11(b).

44. No political subdivision of the State claims University Police as one of its offices or agencies.

45. The state agency tasked with implementing GRAMA—the Utah Division of Archives and Records Service—concluded that BYU is *not* a governmental entity under GRAMA.

46. In a prior proceeding involving the Salt Lake Tribune, SRC determined that it had no jurisdiction over University Police because it is not a governmental entity subject to GRAMA.

The Requested Recording Is a Private Record Not Subject to GRAMA Disclosure

47. GRAMA protects from disclosure certain “private” records. Utah Code § 63G-2-201(5)(a).

48. The audio recording at issue in this case is a private record protected from disclosure under Utah Code § 63G-2-302(2)(d), (g).

PRAYER FOR RELIEF

Wherefore, BYU respectfully requests that the Court order, adjudge and decree that:

49. University Police is not a governmental entity subject to GRAMA and therefore is not required to provide the requested records; and

50. The records requested by TTF are private records not subject to disclosure under GRAMA.

DATED this 21st day of August, 2018.

RAY QUINNEY & NEBEKER P.C.

/s/Samuel C. Straight

James S. Jardine

Samuel C. Straight

Steven M. Sandberg

David M. Andersen

BYU Office of the General Counsel

Attorneys for Plaintiff Brigham Young University

Address of University Police:
2120 Jesse Knight Building
Provo, UT 84602

1463075

EXHIBIT 1

BEFORE THE STATE RECORDS COMMITTEE OF THE

STATE OF UTAH

ETHAN DODGE
on behalf of TRUTH AND
TRANSPARENCY FOUNDATION,

Petitioner,

v.

BRIGHAM YOUNG UNIVERSITY
POLICE DEPARTMENT

Respondent.

DECISION AND ORDER

Case No. 18-24

By this appeal, Petitioner, Ethan Dodge on behalf of Truth and Transparency Foundation, seeks access to records allegedly held by Respondent, the Brigham Young University Police Department.

FACTS

In April 2018, Mr. Dodge made a records request to the Brigham Young University Police Department ("Respondent"), pursuant to the Government Records Access and Management Act ("GRAMA"). Petitioner requested, "all files, videos, audio recordings, or any other kind of documentation related to" allegations against Joseph L. Bishop. In an e-mail dated April 10, 2018 in response to Mr. Dodge's records request, Respondent provided a redacted copy of an incident report.

Mr. Dodge appealed the response and clarified that he already had several versions of the

incident report including one that stated that an interview of Mr. Bishop was conducted on December 5, 2017 and that the recording had been attached to the report. Mr. Dodge stated that he believed the redactions were improper and that he had a right to a copy of the recording.

In an e-mail dated April 13, 2018, Chief Larry Stott replied to Mr. Dodge's appeal stating that "Brigham Young University and its University Police are not subject to GRAMA." Chief Stott also stated that "as a matter of internal practice" it released records classified as public records under GRAMA, but "the requested recording [would be] a private record under Utah Code 63G-2-302" because "disclosure of the recording would constitute a clearly unwarranted invasion of personal privacy of individuals involved in the case."

Petitioner filed an appeal with the State Records Committee ("Committee"). After hearing oral argument and testimony on July 12, 2018, and carefully considering the requested relief of the parties, the Committee issues the following Decision and Order.

STATEMENT OF REASONS FOR DECISION

1. GRAMA states that every person generally has the right to inspect a public record free of charge, and the right to take a copy of a public record during normal working hours. Utah Code § 63G-2-201(1). GRAMA defines a "public record" means a "record" that is not private, controlled, or protected and that is not exempt from disclosure as provided in Utah Code § 63G-2-201(3)(b). Utah Code § 63G-2-103(21). The "record" needs to be "prepared, owned, received, or retained by a governmental entity or political subdivision" of the State of Utah. Utah Code § 63G-2-103(22)(a)(i). One of GRAMA's definitions of a "governmental entity" includes "every office, agency, board, bureau, committee,

department, advisory board, or commission” of an entity listed in Utah Code § 63G-2-103(11)(a) that is “funded or established by the government to carry out the public’s business.” Utah Code § 63G-2-103(11)(b)(i).

2. Respondent argues that it is not a “governmental entity subject to GRAMA” and therefore, would not be participating in the Committee’s hearing or submitting written statements or records for review by the Committee. Since the issue of whether Respondent is a governmental entity is currently being reviewed by a Utah District Court in *Salt Lake Tribune v. Utah State Records Comm.*, 3rd District Case No. 160904365, the Committee defers addressing this issue at this time and instead, addresses solely the issue of the classification of the requested record.
3. In the denial e-mail dated April 13, 2018, Chief Stott stated that if the record was classified under GRAMA, the requested recording would be considered a private record pursuant to Utah Code § 63G-2-302 “because disclosure of the recording would constitute a clearly unwarranted invasion of personal privacy of individuals involved in the case.” Petitioner argued that because of the public interest in disclosure of the information from the investigation, the records should be released.
4. After having reviewed all written materials submitted to the Committee and arguments made by Petitioner during the Committee’s hearing, the Committee finds that the requested records were improperly classified as private records by Respondent. Release of the recording would not be a “clearly unwarranted invasion of personal privacy” because

information within the recording of the interview has already been released to the public.¹ Accordingly, the Committee finds that the requested records are public records and should be disclosed to Petitioner subject to the District Court's decision in *Salt Lake Tribune v. Utah State Records Comm.*, 3rd District Case No. 160904365 concerning whether Respondent is a governmental entity subject to GRAMA.²

ORDER

THEREFORE, IT IS ORDERED THAT the appeal of Petitioner, Ethan Dodge on behalf of Truth and Transparency Foundation is **GRANTED**.

RIGHT TO APPEAL

A party to a proceeding before the Committee may seek judicial review in District Court of a Committee's Order by filing a petition for review of the Committee Order as provided in Utah Code § 63G-2-404. Utah Code § 63G-2-403(14). A petition for judicial review of a Committee Order "shall be filed no later than 30 days" after the date of the Committee Order. Utah Code § 63G-2-404(1)(a). The petition for judicial review must be a complaint which is governed by the Utah Rules of Civil Procedure and include the Committee as a necessary party and contain the required information listed in Subsection -404(2). Utah Code § 63G-2-404(1) & (2). The court

¹ The Committee did not have the opportunity to review the recording *in camera* because it was not submitted to the Committee for review by Respondent. The Committee's findings are based upon the representations made by the parties.

² Subsequent to the Committee's decision, Judge Laura S. Scott issued a decision finding "that when [Respondent] is acting as a law enforcement agency and/or its officers are acting as law enforcement officers, it is a governmental entity subject to GRAMA." *Salt Lake Tribune v. Utah State Records Comm.*, 3rd District Case No. 160904365 (July 17, 2018), pg. 33.

shall make its decision *de novo* but shall allow introduction of evidence presented to the Committee, determine all questions of fact and law without a jury, and decide the issue at the earliest practical opportunity. Utah Code § 63G-2-404(6). In order to protect a parties' rights on appeal, a party may wish to seek advice from an attorney.

PENALTY NOTICE

Pursuant to Utah Code § 63G-2-403(15)(c), if the Committee orders the governmental entity to produce a record and no appeal is filed, the government entity herein shall comply with the order of the Committee and shall: (1) Produce the record; and (2) File a notice of compliance with the Committee. If the governmental entity ordered to produce a record fails to file a notice of compliance or a notice of intent to appeal, the Committee may do either or both of the following: (1) Impose a civil penalty of up to \$500 for each day of continuing noncompliance; or (2) Send written notice of the entity's noncompliance to the Governor. Utah Code § 63G-2-403(15)(d)(i)(B). In imposing a civil penalty, the Committee shall consider the gravity and circumstances of the violation, including whether the failure to comply was due to neglect or was willful or intentional. Utah Code § 63G-2-403(15)(d)(ii).

Entered this 23 day of July 2018

BY THE STATE RECORDS COMMITTEE



HOLLY RICHARDSON, Chair *Pro Tem*
State Records Committee

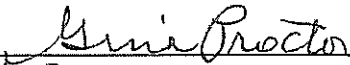
CERTIFICATE OF SERVICE

I hereby certify that I mailed a true and correct copy of the foregoing Decision and Order,

U.S. mail postage prepaid, this 23 day of July 2018, to the following:

Ethan Dodge on behalf of
Truth and Transparency Foundation
PO Box 231192
Las Vegas, NV 89105
Petitioner

Steven M. Sandberg
Office of the General Counsel
Brigham Young University
A-350 ASB
Provo, UT 84602-1333
*Counsel for Respondent,
Brigham Young University
Police Department*



Gina Proctor
Executive Secretary

EXHIBIT 2

Ethan Dodge
PO Box 231192
Las Vegas, NV 89105
[REDACTED]

Brigham Young University Police
2120 JKB
Provo, UT 84602

To whom it may concern:

My name is Ethan Dodge, Technical Director of the Truth and Transparency Foundation. I write submitting a GRAMA request for all files, videos, audio recordings, or any other kind of documentation related to Joseph L. Bishop. Specifically, I seek the investigative file concerning the case described in Incident Report 17BY05023. Given the recent allegations against Mr. Bishop and that the investigation is now closed, we believe this information could potentially be useful to the media.

If possible, I prefer to receive the requested documentation via email to ethan@truthandtransparency.org. However, I do authorize up to \$50 of charges for fees, printing, and mailing of the documentation to the address above if necessary. If it will exceed that amount, please notify me directly.

Thank you,

Ethan Dodge
Technical Director, Co-Founder
The Truth and Transparency Foundation

April 10

EXHIBIT 3

From: [Larry Stott](#)
To: [Ethan Dodge](#)
Cc: [Steven Messick](#)
Subject: RE: GRAMA Request
Date: Friday, April 13, 2018 8:44:53 AM

Ethan Dodge

Brigham Young University and its University Police are not subject to GRAMA. However, as a matter of internal practice, upon proper request, University Police releases law enforcement records that would not be classified under GRAMA as private (Utah Code 63G-2-303), controlled (Utah Code 63G-2-304), or protected (Utah Code 63G-2-305), or that would not otherwise be protected from disclosure under GRAMA. University Police also does not disclose FERPA-protected records, or any records protected from disclosure under any other federal or state laws or privileges.

In this case, the requested recording is a private record under Utah Code 63G-2-302, because disclosure of the recording would constitute a clearly unwarranted invasion of personal privacy of individuals involved in the case.
Chief Stott

From: Ethan Dodge [mailto:ethan@truthandtransparency.org]
Sent: Friday, April 13, 2018 8:05 AM
To: Larry Stott <larry_stott@byu.edu>
Subject: Re: GRAMA Request

Chief Stott,

Please see the attached documentation in appeal to the response given to me by Lt. Messick to my GRAMA request submitted earlier this week.

Thank you,

Ethan Dodge

On Fri, Apr 13, 2018 at 9:18 AM, Steven Messick <steven_messick@byu.edu> wrote:

Larry_stott@byu.edu

From: Ethan Dodge <ethan@truthandtransparency.org>
Sent: Friday, April 13, 2018 7:05 AM
To: Steven Messick <steven_messick@byu.edu>
Subject: Re: GRAMA Request

Perfect. Is there an email where he can be reached directly?

Thanks,

Ethan

On Fri, Apr 13, 2018, 9:04 AM Steven Messick <steven_messick@byu.edu> wrote:

Notice of appeal

You have the right to appeal this denial to the chief administrative officer. Please direct your appeal to:

Chief Larry A. Stott
University Police
2120 JKB
Brigham Young University
Provo, Utah 84602

Best Regards
Lt. Steven Messick
Brigham Young University Police
Steven_messick@byu.edu

From: Ethan Dodge <ethan@truthandtransparency.org>
Sent: Thursday, April 12, 2018 6:04 PM
To: Steven Messick <steven_messick@byu.edu>
Subject: Re: GRAMA Request

Thank you for your quick response. Where can I direct an appeal?

Ethan Dodge

On Wed, Apr 11, 2018, 10:10 AM Steven Messick <steven_messick@byu.edu> wrote:

Per your request,
Please see attached file

Best regards

Lt. Steven Don Messick
BYU Police
steven_messick@byu.edu

From: Debra Harmon
Sent: Tuesday, April 10, 2018 10:23 AM
To: Steven Messick <steven_messick@byu.edu>
Subject: FW: GRAMA Request

Steve,

I put the attachments on your desk.

Thanks
Deb

From: Ethan Dodge [<mailto:ethan@truthandtransparency.org>]
Sent: Tuesday, April 10, 2018 10:10 AM
To: Debra Harmon <debra_harmon@byu.edu>
Subject: Re: GRAMA Request

Debra,

I have attached my GRAMA request and redacted driver's license. I do not feel comfortable sending my unredacted driver's license via email. Please let me know if that is a problem.

Thank you,
Ethan

On Thu, Apr 5, 2018 at 5:13 PM, Debra Harmon <debra_harmon@byu.edu> wrote:
Ethan,

Here is the GRAMA (Government Records Access Management Act) Request form that you asked for. Please fill it out and send it back with a scanned copy of your driver's license in color.

Best Regards
Debra

Debra Harmon
BYU Police Records
(801) 422-4051

--
Ethan Dodge
Technical Director and Co-Founder



The Truth and Transparency Foundation
ethan@truthandtransparency.org

--

Ethan Dodge
Technical Director and Co-Founder
The Truth and Transparency Foundation
ethan@truthandtransparency.org

EXHIBIT 4

Ethan Gregory Dodge



Dylan Mace
346 South Rio Grande Street
Salt Lake City, Utah 84101
dylanmace@utah.gov

April 24, 2018

Mr Mace:

I, as a representative of the Truth and Transparency Foundation, filed a GRAMA request to the BYU Police Department (BYUPD) on April 10, 2018 requesting the "investigative file concerning the case described in Incident Report 17BY05023" In return I received, from Lt Steve Meick, a redacted copy of Incident Report 17BY05023 I then appealed asking specifically for an audio recording referenced in the report, which reference is redacted from the copy I received from Lt Meick The recording is an interview conducted by Detective Long and Nelson of BYU Police Department and Joseph L Bishop, an accused sexual predator who was President of the Mormon Provo Missionary Training Center in the early 1980s Mr Bishop and the accusation leveled against him have contributed to valuable public discourse and reporting and we believe the content of the recording could further do so

Chief Larry Stott of BYUPD denied my appeal claiming the department is not a government entity and is therefore not subject to GRAMA request However the department clearly fits the definition of "Governmental entity" as an "agency" that "is funded or established by the government to carry out the public's business" as outlined in GRAMA in 63G-2-103 subsection 11b. In fact, as recently as January 2017 BYUPD filed a motion to dismiss a case filed against them using this same logic and Judge Laura Scott of Utah's Third District Court rejected said motion

Further, Chief Stott argues that the release of the requested audio would "constitute a clearly unwarranted invasion of personal privacy of individual involved in the case" This defense contradicts the outcome of *Deeret New Publishing Company v Salt Lake County* on March 28, 2008 In said case, Judge Ronald Nehring of the State Supreme Court applied this reasoning to GRAMA request that the United States Supreme Court applied to FOIA request in 1991 (*U S Dep't of State v Ray*, 502 U S 164, 177, 112 S Ct 541, 116 L Ed 2d 526)

"Although the interest in protecting the privacy of the redacted information is substantial, we must still consider the importance of the public interest in its disclosure For unless

the invasion of privacy is clearly unwarranted, the public interest in disclosure must prevail."

It is our belief that the same principle applies to the audio recording between BYUPD detectives and Mr. Bishop.

I have attached all necessary requests and appeals sent to the BYUPD as well as their initial reply to the request and the denial of appeal. I have also sent Chief Stott a copy of this appeal.

Thank you,

Ethan Gregory Dodge
Technical Director, Co-Founder
The Truth and Transparency Foundation

EXHIBIT 5

OFFICE OF THE GENERAL COUNSEL
STEVEN M. SANDBERG
Deputy General Counsel
Admitted in California, Hawaii, and Utah



May 24, 2018

Ms. Gina Proctor
Executive Secretary
State Records Committee
346 S. Rio Grande
Salt Lake City, UT 84101-1106
gproctor@utah.gov

By U.S. Mail and Email

Dear Gina:

Thank you for the opportunity to respond to the two letters dated May 7, 2018, from Interim Executive Secretary Dylan Mace to University Police Chief Larry Stott. The letters inform Chief Stott that the State Records Committee has scheduled hearings after receiving notices of appeal from Ethan Dodge (Appeal Req. #2018-29) and Kimball Bennion (Appeal Req. #2018-30). This week University Police was also notified by email that the State Records Committee has scheduled a third hearing after receiving a notice of appeal from Corbin Volluz (Appeal Req. #2018-33).

The cited authority for the hearings is Utah Code § 63G-2-403, which relates to appeals to the State Records Committee for access denials by governmental entities. University Police is not a governmental entity subject to the Government Records Access and Management Act (GRAMA); we will therefore not be participating in the hearings or submitting any written statements or records for review to the State Records Committee. We would appreciate your forwarding to the members of the State Records Committee copies of this letter and the enclosures so they know our position.

Our position tracks the State Records Committee's own position. In 2016, the State Records Committee determined an appeal from the Salt Lake Tribune regarding University Police records was outside its jurisdiction because University Police is a private institution (Appeal Req. #2016-55). The Salt Lake Tribune sued the State Records Committee in Utah's Third District Court, and that litigation is ongoing (Case No. 160904365). The State Records Committee is currently defending the case and maintaining that University Police is not a governmental entity.

The State Records Committee's legal argument in the Salt Lake Tribune lawsuit follows from the determination by the Utah Division of Archives and Records Service

May 24, 2018
Page 2

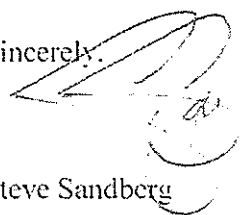
(UDARS) that neither BYU nor any of its departments, including University Police, is a governmental entity subject to GRAMA. BYU, as a private university, is not listed as a state agency or any other governmental entity in the Open Records Portal or in any other database that UDARS maintains.

Enclosed with this letter are the following documents for your reference:

- Letter dated June 14, 2016, from Executive Secretary Nova Dubovik to Matthew Piper (Salt Lake Tribune) stating that the State Records Committee does not have jurisdiction (Appeal Req. #2016-55);
- Memorandum in Support of Motion to Dismiss filed August 25, 2016, by Paul H. Tonks, attorney for the State Records Committee, maintaining that “[a]s a matter of law, Brigham Young University and [University Police] cannot be considered governmental entities”: and
- Affidavit of Rachel Gifford dated July 31, 2017, explaining that “UDARS has taken the position that neither BYU nor any of its departments, including University Police, is a governmental entity subject to GRAMA.”

If you have any questions, please feel free to contact me.

Sincerely,



Steve Sandberg

Enclosures

Cc: Paul H. Tonks, Utah Attorney General's Office
Chief Larry Stott, University Police



State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

Department of Administrative Services

KIMBERLY K. HOOD
Executive Director

Division of Archives and Records Service

PATRICIA SMITH-MANSFIELD
Director

Appeal Req. #2016-55

June 14, 2016

Matthew Piper
Salt Lake Tribune
90 South 400 West, Suite 700
Salt Lake City, Utah 84101

Dear Mr. Piper:

Subject: Notice of Appeal Outside State Records Committee's Jurisdiction.

This correspondence is in response to your June 13, 2016, Notice of Appeal received on June 13, 2016. It was read and reviewed, but unfortunately, the State Records Committee does not have jurisdiction to hear this appeal. Brigham Young University Police Department is a private institution, not a political subdivision, and does not fall under the definition of a governmental entity pursuant to Utah Code 63G-2-103(11)(a)(v) and (b)(i).

-(v) any political subdivision of the state, but, if a political subdivision has adopted an ordinance or a policy relating to information practices pursuant to Section 63G-2-701, this chapter shall apply to the political subdivision to the extent specified in Section 63G-2-701 or as specified in any other section of this chapter that specifically refers to political subdivisions.

-(i) every office, agency, board, bureau, committee, department, advisory board, or commission of an entity listed in Subsection (11)(a) that is funded or established by the government to carry out the public's business; and

If you disagree with this decision, you may appeal to District Court within 30 days of this denial letter. Please see Utah Code 63G-2-404(1).

Petitioners, the Salt Lake Tribune and its reporter, Matthew Piper, ("Petitioners"), on July 12, 2016, and files this Memorandum in Support of its Motion.

I. UNDISPUTED RELEVANT FACTS¹

1. Brigham Young University ("BYU") is a private institution, certified by the Commissioner of the Utah Department of Public Safety ("Public Safety") to maintain a police department ("Department"), employing individuals who also are certified as Utah Peace Officers ("POST Certified"). Petitioners' Complaint Exhibit B; Exhibit E pg. 18.
2. Officers employed by the Department are included within the definition of "law enforcement officers" under Utah Code § 53-13-103. Petitioners' Complaint ¶12.
3. Petitioners made a request for records for law enforcement/public safety records from the Department pursuant to Utah Code § 63G-2-203 of the Government Records Access and Management Act ("GRAMA").
4. In an e-mail dated June 9, 2016, the Department denied Petitioners' request for records, stating that it had "no such law enforcement/public safety records related email." Petitioners Exhibit A.
5. Petitioners filed an appeal with the Committee on or about June 13, 2016. Complaint ¶5.
6. On or about June 14, 2016, the Committee denied Petitioners' appeal based upon lack of jurisdiction over the Department because it is not a "governmental entity" as defined in

¹ If the Court relies upon any undisputed relevant facts that are construed to be outside of the initial pleadings, are not disputed by Petitioners, and/or are not established by statute, the Committee requests that the present Motion to Dismiss be converted into a Motion for Summary Judgment and disposed of as provided in Utah R. Civ.P. 56, as allowed by Utah R. Civ.P. 12(b).

Utah Code § 63G-2-103(11)(a)(v) and (b)(i). Complaint ¶¶6&7, Petitioners' Exhibit C, pg.

II. LEGAL ARGUMENT

Pursuant to Utah R. Civ.P. 12(b)(6), a district court may dismiss a complaint based upon a plaintiff's "failure to state a claim upon which relief can be granted." A Civ.P. 12(b)(6) motion to dismiss admits the facts alleged in the complaint, but challenges the plaintiff's right to relief based on those facts. *Mitchell v. Recontrust Co.*, 2016 UT App 88, ¶16 373 P.3d 189. A district court should grant a motion to dismiss when assuming the truth of the allegations in the complaint and drawing all reasonable inferences therefrom in the light most favorable to the plaintiff, it is clear that the plaintiff is not entitled to relief. *Id.*, following *Hudgens v. Prosper, Inc.*, 2010 UT 68, ¶ 14, 243 P.3d 1275. In evaluating a motion to dismiss, the district court may "consider documents that are referred to in the complaint and [are] central to the plaintiff's claim" and may also "take judicial notice of public records." *Mitchell*, following *BMBT, LLC v. Miller*, 2014 UT App 64, ¶ 6, 322 P.3d 1172.

A review of Petitioners' Complaint shows that their requested relief is that: (1) The Committee's decision denying Petitioners' appeal should be reversed and; (2) Petitioners should be given access to the Departments' records. Complaint ¶27. Petitioners claim that their right to an appeal of the Committee's decision is through Utah Code § 63G-2-404. Complaint ¶4 & 9. However, the central problem with Petitioners' Complaint and the requested relief is that as a matter of law, BYU and the Department are not governmental entities and the Committee did not have jurisdiction over the Petitioners' appeal.

GRAMA states that every person has the right to inspect a “public record” free of charge, and the right to take a copy of a public record during normal working hours subject to Utah Code §§ 63G-2-203 & -204. Utah Code § 63G-2-201(1). A person may make a request for a record from a “governmental entity” pursuant to Utah Code § 63G-2-204. If a person is denied access to a record, the requester may appeal the access denial to the chief administrative officer of the governmental entity. Utah Code § 63G-2-401(1)(a). If the chief administrative officer of the governmental entity affirms the denial of a record request, the requester may appeal the decision to the Committee or petition for judicial review in district court. Utah Code § 63G-2-402(1). If an appeal is filed with the Committee, the Committee shall grant the relief sought in whole or in part, or uphold the governmental entity’s access denial in whole or in part. Utah Code § 63G-2-403(11)(a). A person may petition for judicial review an order or decision of the Committee pursuant to Utah Code § 63G-2-404(1).

In order for Petitioners to have access to records possessed by the Department pursuant to the provisions of GRAMA, either BYU or the Department must be found to be a “governmental entity” as defined in GRAMA. GRAMA defines a “Governmental Entity” in Utah Code § 63G-2-103(11) as:

1. An executive department agency of the state, the offices of the governor, lieutenant governor, state auditor, attorney general, and state treasurer, the Board of Pardons and Parole, the Board of Examiners, the National Guard, the Career Service Review Office, the State Board of Education, the State Board of Regents, and the State Archives.
2. The Office of the Legislative Auditor General, Office of the Legislative Fiscal

Analyst, Office of Legislative Research and General Counsel, the Legislature, and legislative committees, except any political party, group, caucus, or rules or sifting committee of the Legislature;

3. Courts, the Judicial Council, the Office of the Court Administrator, and similar administrative units in the judicial branch;
4. Any state-funded institution of higher education or public education;
5. Any political subdivision of the state; or
6. Every office, agency, board, bureau, committee, department, advisory board, or commission of an entity listed in Utah Code § 63G-2-103(11)(a) that is funded or established by the government to carry out the public's business.

It is undisputed that neither BYU nor the Department are part of the executive, legislative or judicial branches of the State of Utah. It is also undisputed that BYU and the Department are not political subdivisions of the State of Utah. Similarly, there is no dispute that BYU is a private institution and is not a state-funded institution of higher education. The only potential definition of a governmental entity under GRAMA that could include BYU or the Department is the one relied upon by Petitioner: A department "funded or established by the government to carry out the public's business." Petitioners' Complaint ¶24 following Utah Code § 63G-2-103(11)(b)(i).

The reason given by Petitioners to claim that the Department should be considered a "governmental entity" subject to GRAMA is the fact that officers for the Department "are granted the authority by Utah Code Ann. § 53-13-103(3) to exercise the authority delegated to them by the State of Utah to pursue offenders outside of their geographic area" and the

Department “holds itself out to the public as a state-certified police department.” Petitioners’ Complaint ¶¶13 & 14. This authority is based upon Public Safety’s statutory authority to certify BYU and allow it to establish the Department and hire “POST Certified” officers. Complaint ¶¶ 16. However, the fact that Public Safety certifies the Department or that the Department employs POST certified officers to provide security on the BYU campus, does not automatically convert BYU or the Department into a “governmental entity” subject to GRAMA.

Additionally, a careful reading of the POST Certification statute within the Public Safety Code shows that the Legislature did not intend to create “governmental entities” of any college or universities employing POST certified law enforcement officers. A “Law enforcement officer” includes “members of a law enforcement agency **established by a private college or university** provided that the college or university has been certified by the commissioner of public safety according to rules of the Department of Public Safety.” Utah Code § 53-13-103(1)(b)(xii) (emphasis added). Public Safety’s role is limited to “certifying” the law enforcement agency, while it is the private college or university, not the State of Utah, that “establishes” the law enforcement agency.

A comparison between GRAMA’s definition of a governmental entity in Utah Code § 63G-2-103(11) and the POST Certification statute shows this important distinction. GRAMA requires the entity to be “established by the government” in order to be considered a governmental entity pursuant to Utah Code § 63G-2-103(11)(b)(i). The POST Certification statute instead requires that “law enforcement officers” of a private college or university, must be

members of a law enforcement agency “established” by the college or university, and not the government. See, Utah Code § 53-13-103(1)(b)(xii). Therefore, as a matter of law, even assuming the facts as applied by Petitioners in their Complaint, Petitioners cannot establish the Department to be a governmental entity under GRAMA because even though the Department derives its law enforcement authority pursuant to Utah Code § 53-13-103(1)(b)(xii), it was still established by BYU, a private entity. Or as stated by Petitioners in their appeal to the Committee:

BYU is a private institution, but its police department was created with the blessings of the state Commissioner of Public Safety, and its officers are certified as Utah Peace Officers by the state Peace Officer Standards training. Its law enforcement powers to make arrest to use force, to access protected records, etc., derive from statutory authority. [Exhibit B, pg. 1]

The simple fact that the Department derives its law enforcement powers from the State does not automatically convert it into a “governmental entity” subject to GRAMA.

Petitioners also rely upon *Mallory v. Brigham Young Univ.*, 2014 UT 27, 332 P.3d 922, for their claim that the Department is a governmental entity. Petitioners claim that BYU has argued that the Department’s “employees, such as traffic cadets, are subject to Utah governmental immunity because of, among other things, their relationship with and supervision by a [Department] peace officer, and because they carry out governmental functions.” Complaint ¶22. The Committee is not privy to all arguments made by BYU in Utah courts, but a review of *Mallory* shows that this was not BYU’s argument for that case.

In *Mallory*, a BYU traffic cadet was directing traffic under the supervision of a Department peace officer. *Mallory*, ¶3. A Provo City ordinance allows a university's non-peace officer employees to direct traffic on public streets while under the supervision of a peace officer employed by the same university to aid in the orderly movement of traffic related to public gatherings in excess of 5,000 people. *Id.* It is apparent from the language of the Provo City ordinance that the sole purpose of the ordinance was to have it apply to traffic control on public streets related to large public gatherings. The Plaintiff in *Mallory* drove his motorcycle from LaVell Edwards Stadium (private property owned by BYU), onto University Avenue (a public Provo City street), colliding with another vehicle, suffering serious bodily injury and incurred economic damages as a result of the collision. *Id.*

BYU argued that Utah's Governmental Immunity Act's definition of "employee" should include "all authorized agents of a governmental entity except those that are independent contractors." *Mallory*, ¶10. The Utah Supreme Court analyzed the BYU traffic cadet's relationship with Provo City as a "master-servant relationship." The court found that Provo City was the "master" in that it had the legal right to control the BYU traffic cadet through the Provo City ordinance which also granted the Provo City chief of police "full power, at any time, to suspend any subordinate, officer, or employee, person, or agents." *Id.*, ¶22 (quotations excluded). The court held that the "relationship between Provo City and the BYU Defendants, acting pursuant to the Provo City ordinance, exhibits the hallmarks of a master-servant relationship." *Id.* ¶23.

The conduct at issue in *Mallory* was only “Ms. Robinson’s actions as a traffic cadet.” *Mallory*, ¶1, n.1. The Provo City ordinance, and consequently the applicable government immunity in *Mallory*, applied only to the non-peace officer student traffic cadet, and did not apply to the entire Department or BYU. *Id.* ¶3. The holding of *Mallory* relied solely upon the master-servant relationship created by the narrowly tailored Provo City ordinance allowing properly supervised non-peace officer student traffic cadets to aid in the orderly movement of traffic on public streets related to public gatherings in excess of 5,000 people.

It should also be noted that the majority of the court in *Mallory* referenced an argument of the dissenting opinion because of its applicability to the present case:

The dissent wonders whether today’s holding would potentially extend immunity from civil suit to “private security guards” and “private highway contractors’ flagpersons” by virtue of the statutory restrictions placed upon them. It would not. At most, our decision simply recognizes the possibility that statutorily regulated individuals, *if* performing governmental function, *may* be “Employees” as defined in the Governmental Immunity Act, *if* they act pursuant to a statute or ordinance that asserts control over the manner in which they perform that governmental function....[T]he dissent’s implication that our holding will automatically extend governmental *immunity* to a extensive array of private actors is misplaced. [*Mallory*, ¶27, references excluded]

The dissent in *Mallory* uses the exact same reasoning used by Petitioners in the present case and the majority opinion in *Mallory* makes it clear the absurdity of such a proposition. *Mallory* stands for the basic proposition that statutory language, not broad assertions of governmental authority or governmental function, should control. The majority in *Mallory* even

chides the dissent for trying to blur the lines between two separate statutory contexts: Governmental Immunity and Workers' Compensation.

Laws applied to governmental entities (GRAMA/ Governmental Immunity Act), do not apply to individuals or entities (BYU or the Department/ private security guards, private highway contractors), simply because they are "performing governmental functions." Otherwise, the statutory umbrella that was meant to apply only to governmental entities, would become so large that any person, entity, business, corporation, or organization doing any action considered to be a "governmental function" would be included underneath that umbrella. The majority opinion in *Mallory* is consistent with the holding that a private entity performing governmental functions on behalf of a governmental entity does not by itself convert that private entity into a governmental entity. The power to create a governmental entity must be an "explicit" grant of authority from the State of Utah or its subdivisions, and cannot be an "implicit" creation based upon the private entity performing actions similar to governmental functions.

III. CONCLUSION

As a matter of law, Brigham Young University and the Department cannot be considered governmental entities. Petitioners have not presented, nor can they present, any facts that would convert said entities into governmental entities. GRAMA only applies to governmental entities, and therefore, since the State Records Committee can only review appeals of denials of access to records of governmental entities, the Committee properly denied Petitioners' appeal. Accordingly, the Motion to Dismiss should be granted because Petitioners cannot state a claim

upon which relief can be granted and their Complaint should be dismissed pursuant to Utah R. Civ.P. 12(b)(6).

DATED this 25th day of August, 2016.

SEAN D. REYES
Utah Attorney General

/s/ Paul H. Tonks

PAUL H. TONKS
Assistant Attorney General
5110 State Office Building
P.O. Box 141160
Salt Lake City, Utah 84114-1160
Telephone: (801) 538-9501

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of August, 2016, I mailed, U.S. postage prepaid, a true and correct copy of the foregoing **MEMORANDUM IN SUPPORT OF MOTION TO DISMISS**, to the following:

Michael Patrick O'Brien
Mark D. Tolman
JONES WALDO HOLBROOK & McDONOUGH PC
170 South Main Street, Suite 1500
Salt Lake City, UT 84114
*Attorneys for the Petitioners,
The Salt Lake Tribune and Matthew Piper*

/s/ Paul H. Tonks
PAUL H. TONKS

James S. Jardine (1647)
Samuel C. Straight (7638)
RAY QUINNEY & NEBEKER P.C.
36 South State Street, Suite 1400
P.O. Box 45385
Salt Lake City, Utah 84145-0385
Telephone: (801) 532-1500
Facsimile (801) 532-7543
Email: jjardine@rqn.com
sstraight@rqn.com

Steven M. Sandberg (12421)
Office of the General Counsel
BRIGHAM YOUNG UNIVERSITY
A-357 ASB
Provo, Utah 84602
Telephone: (801) 422-2235
Facsimile: (801) 422-0265
Email: steve_sandberg@byu.edu

Attorneys for Intervenor Brigham Young University

IN THE THIRD JUDICIAL DISTRICT COURT,
SALT LAKE COUNTY, STATE OF UTAH

THE SALT LAKE TRIBUNE and its
reporter, MATTHEW PIPER,

Petitioners,

vs.

The UTAH STATE RECORDS
COMMITTEE.

Respondent, and

BRIGHAM YOUNG UNIVERSITY,

Intervenor.

**AFFIDAVIT OF
RACHEL GIFFORD**

Case No. 160904365

Judge Laura Scott

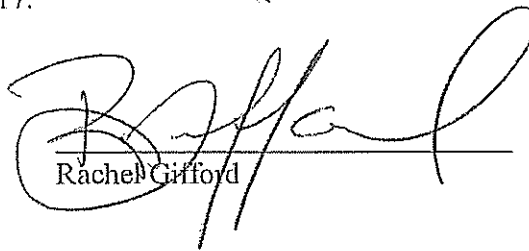
I, Rachel Gifford, being first duly sworn, hereby state as follows:

1. I am an adult over twenty-one (21) years of age.
2. The matters stated herein are true and correct and are within my personal knowledge and, if called to testify as a witness, I could and would testify competently thereto.
3. I used to be a records analyst with the Utah Division of Archives and Records Service (“UDARS”), and I have been employed by UDARS for approximately 2 years.
4. I previously was responsible for assisting public colleges and universities with their records management and providing access to GRAMA certification and training. I have knowledge, background, and experience in that area.
5. Brigham Young University (“BYU”) is a private university and therefore UDARS has taken the position that neither BYU nor any of its departments, including the University Police, is a governmental entity subject to GRAMA.
6. BYU is not listed in our Open Records Portal (or in any other database that we maintain) as a state agency (or other governmental entity) to which a GRAMA request may be submitted, and we do not intend to add or list BYU as a governmental entity subject to GRAMA.
7. In August 2016, Lieutenant Aaron Rhoades, a police officer employed by BYU, contacted UDARS to inquire about possibility of him taking the GRAMA certification exam.
8. We informed Lt. Rhoades that UDARS hierarchy committee had determined that, as a private organization, BYU would not be added to our database as it was not a governmental entity.

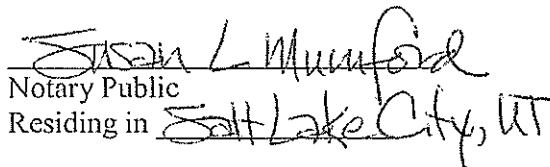
9. While anyone may voluntarily take the GRAMA certification exam, only those employed by a governmental entity may become GRAMA certified on behalf of a governmental entity.

10. Although we allowed Lt. Rhoades to take the GRAMA certification exam, we did not require him to do so; nor have we required any BYU employee to take the certification exam.

DATED this 31 day of July, 2017.


Rachel Gifford

Subscribed and sworn to before me this 31st day of July, 2017.


Notary Public
Residing in Salt Lake City, UT

My Commission Expires: April 11, 2021

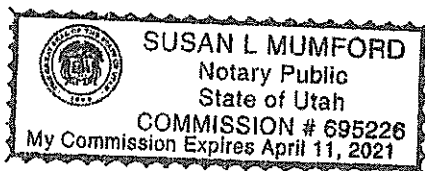


EXHIBIT 6

OFFICE OF THE GENERAL COUNSEL
STEVEN M. SANDBERG
Deputy General Counsel
Admitted in California, Hawaii, and Utah



June 18, 2018

Ms. Gina Proctor
Executive Secretary
State Records Committee
346 S. Rio Grande
Salt Lake City, UT 84101-1106
gproctor@utah.gov

By U.S. Mail and Email

Dear Gina:

Thank you for your letters to University Police Chief Larry Stott dated June 11, 2018. Those letters said the State Records Committee had rescheduled hearings for Ethan Dodge (Appeal Req. #2018-29) and Kimball Bennion (Appeal Req. #2018-30) to July 12, 2018, the same day as the hearing for Corbin Volluz (Appeal Req. #2018-33).

As I explained in my letter to you dated May 25, 2018, BYU is not a governmental entity subject to GRAMA. None of BYU's departments, including University Police, is subject to GRAMA. Please refer to my previous letter for additional information about the State Records Committee's own administrative and legal positions on the issue, specifically relating to University Police.

BYU will not be participating in the hearings or submitting any written statements or records for review to the State Records Committee. I would appreciate your informing the State Records Committee's members and the various petitioners of BYU's position.

Sincerely,

Steve Sandberg

A handwritten signature in black ink, appearing to be "Steve Sandberg", written over the printed name.

Enclosures

Cc: Paul H. Tonks, Utah Attorney General's Office
Chief Larry Stott, University Police