

2007

# Khan v. State Records Committee : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

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NASRULLA KHAN,  
Plaintiff/Appellant,

:

vs.

:

THE STATE RECORDS COMMITTEE, :  
UTAH DEPARTMENT OF PUBLIC  
SAFETY, :  
MR. ROBERT L. FLOWERS, :  
MS. JANELL B. TUTTLE, :  
ET AL., :  
Defendants/Appellees. :

**BRIEF OF THE APPELLANT**

**Case No. 20070341**

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**APPEAL**

FROM THE THIRD DISTRICT COURT,  
SALT LAKE COUNTY,  
JUDGE ANTHONY B. QUINN

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IN THE UTAH COURT OF APPEALS

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NASRULLA KHAN,	:	
	:	<b>BRIEF OF THE APPELLANT</b>
Plaintiff/Appellant,	:	
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vs.	:	
THE STATE RECORDS COMMITTEE,	:	Case No. 20070341
UTAH DEPARTMENT OF PUBLIC	:	
SAFETY,	:	
MR. ROBERT L. FLOWERS,	:	
MS. JANELL B. TUTTLE,	:	
ET AL.,	:	
	:	
Defendants/Appellees.	:	

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**STATEMENT OF JURISDICTION**

The Utah Court of Appeals has jurisdiction pursuant to Utah Code Ann. §78-2a-3(2)(a), (2)(b), and/or (2)(j).

**STATEMENT OF THE ISSUES**

a. The District Court committed abuses of discretion.

Standard of review: "Where the trial court may exercise broad discretion, we presume the correctness of the court's decision absent manifest injustice or inequity that indicates a clear abuse of discretion." *Childs v. Childs*, Case No. 971258-CA (Utah App. 1998). Abuse of discretion is "an appellate court's standard for reviewing a decision that is asserted to be grossly unsound, unreasonable, or illegal" (Black's Law Dictionary).

b. The District Court's findings of fact are clearly erroneous.

Standard of review: "We will overturn the [trial] court's findings of fact only if they are clearly erroneous. For a reviewing court to find clear error, it must decide that the factual findings made by the trial court are not adequately supported by the record, resolving all disputes in the evidence in a light most favorable to the trial court's determination." *State v Greuber*, 2007 UT 50, P. 6.

c. The District Court erred by granting Appellees' Motion for Summary Judgment.

Standard of review: "We review the trial court's grant of summary judgment for correctness, according no deference to the trial court's conclusions of law." *Potter v. Chadaz*, 977 P.2d 533, 535 (Utah Ct. App. 1999). "We view the facts and inferences in the light most favorable to the non-moving party, and affirm only when there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." *Id.* at 535-36.

### **CONSTITUTIONAL PROVISIONS, STATUTES, & RULES**

The following are determinative of this appeal: Utah Code §§63-2-102, 63-2-103, 63-2-201, 63-2-204, 63-2-205, 63-2-401, 63-2-403, and 63-2-404; Administrative Rules R35-1-4 and R35-2-2; Retention Reports labeled as Series 2266, 81804, 84406, 84410, 84416, 10546, 6314, 16944, 84409, 84381, 84411 & 24018 (R. 151-158; R. 160-163); Utah R. Civ. P. 4; Utah R. Civ. P. 52; Utah R. Civ. P. 56. They are set forth verbatim in the Addendum.

## STATEMENT OF THE CASE

Nature of the Case: This case arises out of Appellant's Government Records Access and Management Act ("GRAMA") request to the Utah Department of Public Safety ("DPS") for records relevant to his complaints to DPS.

Course of Proceedings: On November 8, 2002, Appellant Nasrulla Khan (hereinafter referred to as "Khan") had sent his complaints to DPS about continuing crimes and terrorism against him by some people, and about the illegal actions of the Ogden City Police officials concerning his complaint to them of those crimes and terrorism. On August 29, 2005, he had sent a written GRAMA request to DPS for records relevant to his November 8, 2002, complaints to DPS; he requested records of DPS investigators and officials relevant to his complaints. DPS did not give a response to his GRAMA request, or did not provide him the requested records, or did not issue a denial. Khan then filed the GRAMA appeal to the Chief Administrative Officer ("CAO") of DPS, who denied his GRAMA appeal. He then filed the notice of appeal to the State Records Committee, which did not schedule a hearing.

Khan filed the Petition for judicial review by the district court of the State Records Committee's order, and he amended his Petition. Khan served his request for production of documents and things, and Appellees produced some relevant records. He filed a motion to compel discovery, and they produced some more relevant records. Appellees filed their motion for summary judgment, and Khan filed his memorandum in opposition.

Disposition in the district court: The district court entered findings of fact and conclusions, and granted Appellees' motion for summary judgment on March 21, 2007.

## RELEVANT FACTS

On November 8, 2002, Appellant Khan had sent his complaints to the Utah Homeland Security Department about continuing crimes and terrorism against him by some people, and about the illegal actions of the Ogden City Police officials concerning his complaint to them of those crimes and terrorism (see Addendum B, R. 373). (The Utah Homeland Security Department is an agency in DPS.) In December 2002, Mr. John Keyser of DPS had traveled to Ogden City to meet with Khan regarding his complaints (R. 370-371); Mr. Keyser had looked at some of the evidence Khan had brought to that meeting, and he had written down his notes. Then, Khan had not received any communication from DPS; hence, early in the year 2003, he had written to Mr. Scott Behunin and Mr. Sidney Groll of DPS, and to the Governor of Utah about his November 8, 2002, complaints to DPS (Addendum B, R. 373). DPS Investigator, Mr. Jim Keith, had written to Khan in April 2003; during April and May of 2003, they had corresponded about Khan's November 8, 2002, complaints; then, Mr. Keith had stopped communicating with Khan. Khan had, then, written to DPS officials, including Mr. Robert Flowers and Mr. Verdi White, and to the Governor. Then, in June 2003, DPS Agent, Mr. Doug Miller, had written to Khan; during June and July of 2003, they had corresponded about Khan's November 8, 2002, complaints; then, Mr. Miller had stopped communicating with Khan. Khan had, then, again written to DPS officials including Mr. Flowers and Mr. White, and to the Governor.

On January 26, 2005, Khan wrote to the Governor requesting him to have DPS thoroughly and unbiasedly investigate the crimes and terrorism against him (R. 149,

DPS/SRC 9-11). On February 4, 2005, Captain Mitch McKee of DPS responded: "Our agency has looked into your complaints on various occasions, including sending an investigator to speak with you. We have found no evidence to support your claims and no further action will be taken by us at this time." (R. 262). On February 15, 2005, Khan wrote to Mr. McKee to inform Khan of the name of the investigator who was sent to speak with him, and requested Mr. McKee to send him a copy of the reports of that investigator, and of Mr. Keith, Mr. Miller, Mr. Behunin, Mr. Groll, Mr. Flowers and Mr. White concerning his complaints to DPS (R. 389; Addendum B, R. 373). On May 23, 2005, Mr. McKee referred Khan to the February 4, 2005, letter, and wrote: "The officer who interviewed you at the Library was Agent John Keyser. We found no evidence to support your claims and this department has taken no action. [DPS] considers this matter closed" (R. 148, DPS/SRC 5); he did not send Khan copies of the reports of the above-named DPS officers.

On August 29, 2005, Khan sent a written Government Records Access and Management Act ("GRAMA") request to DPS for records relevant to his November 8, 2002, complaints to DPS about "terrorism and crimes against [him], and about the illegal actions of the Ogden City Police;" he requested records of Mr. Behunin, Mr. Groll, Mr. Keith, Mr. Miller, Mr. McKee, Mr. Keyser, Mr. Flowers and Mr. White relevant to his November 8, 2002, complaints to DPS (Addendum B, R. 299 & 373). He sent his GRAMA request to DPS pursuant to Utah Code §63-2-204(1); DPS did not give a response to his GRAMA request, or did not provide him the requested records, or did not issue a denial. (§63-2-204(3)(a) and §63-2-205)). On September 19, 2005, Khan timely filed the GRAMA appeal to the Chief

Administrative Officer of DPS pursuant to §63-2-401; he enclosed a copy of his August 29, 2005, GRAMA request with that appeal. (R. 301). On October 3, 2005, DPS Commissioner Robert Flowers gave his determination on Khan's GRAMA appeal:

In your original request, you asked for records of the department regarding "complaints of terrorism and crimes against me, and about the illegal actions of the Ogden City Police against me." This is the same request you have made on several prior occasions to the Department of Public Safety. You have also requested records of Agent John Keyser regarding his investigation of you. Captain Mitch McKee has previously notified you that the department has never conducted such an investigation and that there are no records that satisfy your request. John Keyser spoke with you regarding your complaints of terrorism and crimes against you by Ogden City. No evidence was found to support your claims and no formal investigation was conducted. The Department of Public Safety closed this matter. The Department of Public Safety does not have any records that satisfy your GRAMA request. Therefore, this is a denial of your Government Records Access and Management Act appeal.

(Addendum B, R. 11). DPS and Mr. Flowers did not provide Khan any records with this determination.

On November 1, 2005, pursuant to Utah Code §63-2-403, Khan timely filed the notice of appeal to the State Records Committee appealing the denial of his GRAMA appeal by the Chief Administrative Officer of DPS; he rebutted the arguments stated in that denial (R. 15-18). The State Records Committee's order of November 7, 2005, states: "According to Administrative Rule R35-2-2(b), the claim that a record does not exist does not constitute a denial. Sufficient facts have not been alleged to determine that the records do exist and therefore I cannot schedule a hearing" (R. 8). The Records Committee did not provide Khan any records with its order. On November 7, 2005, Administrative Rule R35-2-2(b) stated: "The claim that a record does not exist does not constitute a denial unless the petitioner can



provide sufficient evidence in his or her statement of facts, reasons, and legal authority in support of appeal that record did exist at one time.” (Addendum C, R. 9).

On December 6, 2005, Khan timely filed the Petition for judicial review by the Third District Court of the State Records Committee’s order, pursuant to Utah Code §63-2-404(1). (R. 1-11). On April 6, 2006, he amended his Petition; he added Mr. Flowers, Ms. Tuttle, and DPS as respondents, and negligence claims (R. 33-44); by stipulation, the negligence claims and Mr. Flowers and Ms. Tuttle were dismissed. He stated that Appellees violated his constitutional right and his statutory right as his injuries (R. 42), and that they violated the GRAMA (R. 39). He stated his requests for relief (R. 42).

On July 5, 2006, Khan served his request for production of documents and things (R. 168-172); Appellees served their response (R. 139-147), and produced to him records, the Administrative Rules, and the retention reports ("retention policies"), including retention policies R. 151-158 and R. 160-163, and Administrative Rules R35-1-4 and R35-2-2. (R. 306-309, DPS/SRC 1-202). On September 1, 2006, he filed a motion for an order compelling discovery (R. 131-172); on September 13, 2006, Appellees filed their memorandum in opposition to Khan's motion to compel discovery and in support of their motion for protective order (R. 184-195); on September 27, 2006, he filed his reply memorandum to Appellees' memorandum opposing his motion to compel discovery and his memorandum opposing their motion for protective order (R. 211-222); on October 2, 2006, Appellees filed their reply memorandum in support of their motion for protective order (R.

225-230). Appellees produced to him more records (R. 309-310, DPS/SRC 203-226), including Mr. Miller's Investigation Reports (Addendum B, R. 221 & 222).

At the hearing on December 19, 2006, the court ordered Appellees to give Khan two privileged Investigation Reports after redacting those (Addendum A, R. 264, para. 2; R. 246; R. 513, pages 5-7), which they later gave him (R. 369-372 & R. 373-374). At that hearing, the court instructed Appellees' Attorney Ferre: "do a motion for summary judgment . . . with affidavits indicating what searches you've made and what you've done, and I think that that's how we finally dispose of the case" (R. 513, pages 10-11).

Khan filed an objection to the proposed order (R. 255-262); the court granted that order, and denied his motion to compel discovery (Addendum A, R. 263-265). On December 13, 2006, he filed a motion for imposition of costs, pursuant to Utah R. Civ. P. 4(f)(4) (R. 237-245, 247-252); it is pending in the court.

On January 25, 2007, Appellees filed a motion for summary judgment with affidavits (R. 266-319); on February 13, 2007, Khan filed his memorandum in opposition to the motion for summary judgment with his affidavit (R. 320-420); and on February 22, 2007, Appellees filed their reply memorandum (R. 421-435). There was no hearing on the motion. The district court entered its findings of fact, its "undisputed material facts," and its conclusions in its Order, and granted Appellees' motion for summary judgment on March 21, 2007. (Addendum A, R. 438-444). Khan, then, timely filed this appeal.

## **SUMMARY OF THE ARGUMENTS**

Khan argued the following actions of the district court resulted in manifest injustice or inequity, indicating abuses of discretion by the court: (1) the court based its Order on the judicial review of the DPS Commissioner's determination, instead of on the State Records Committee's order or decision; (2) the court misunderstood or misapplied the law and the Administrative Rule; (3) the court's rulings: "[Appellees] have complied with GRAMA, have acted appropriately under the law," and granted them summary judgment are incorrect or erroneous; (4) the court's grant of summary judgment was premature because Khan had not completed discovery; (5) the court did not give its decision on a pending motion and the reliefs Khan had requested; and (6) the court's bias against Khan.

The court wrote the following findings of fact: Khan petitioned the court for judicial review of the DPS Commissioner's response; an Administrative Rule requires a party appealing a denial to provide sufficient evidence in the petitioner's statement of facts, reasons, and legal authority in support of the appeal, . . . or that the governmental entity has concealed, or not sufficiently or improperly searched for the record; the DPS Commissioner of Public Safety stated "no evidence was found to support your claims and no formal investigation was conducted, DPS does not have any records that satisfy your GRAMA request," and denied Khan's GRAMA appeal; Khan sent DPS more than one request on August 29, 2005, and sent a second request to the DPS CAO on September 19, 2005; Appellees have supported their claims that they have no such records, and no records exist; Khan has not shown defendants did anything other than all they could; Appellees submitted

affidavits from the people involved in attempting to locate the records; the material facts of this case are those pertaining to plaintiff's GRAMA requests and the department's response to his requests; defendants have complied with the applicable laws, requirements and procedures of GRAMA, have given Khan information to which he was entitled in response to his requests, defendants have complied with GRAMA and have acted appropriately under the law, and court is not persuaded that there truly remains any actual dispute of any material fact; and Khan requested access to particular governmental information. Khan marshaled all of the relevant evidence which supported the findings, and then demonstrated that these findings are not adequately supported by the record, and that they are contrary to the clear weight of the evidence; hence, he argued that the findings of the court are clearly erroneous.

Khan argued that the court erred in granting Appellees the summary judgment. He showed that the court's findings of fact and the court's "Undisputed Material Facts" are clearly erroneous, and the court's Order is erroneously based on the court's judicial review of the DPS Commissioner's determination instead of being based on the judicial review of the State Records Committee's order or decision; hence, he argued that the court's ensuing conclusion of granting summary judgment is erroneous. He showed that the court expressed a doubt or uncertainty concerning question of fact about the production of all of the material records by Appellees. Khan showed that there are doubts or uncertainties concerning questions of fact as to whether Appellees gave him all of the material, responsive, and existing records and information, and as to the accuracy and validity of their affidavits. He disputed the court's "Undisputed Material Facts." He argued that Appellees failed to comply

with the GRAMA, the applicable laws and procedures, their retention policies, and the Administrative Rules. He argued that discovery was not complete. Khan argued that because Appellees did not give him all of the existing, material, responsive information and public records, they also violated his legal right of access to unrestricted public records and his constitutional "right of access to information concerning the conduct of the public's business." Khan's statement of material facts in his affidavit are in conflict with Appellees' statement of material facts in their affidavits. Appellees and Khan have disputed each other's material facts. Based upon all of these arguments, Khan argues that there are genuine issues as to material facts, and that Appellees are not entitled to a judgment as a matter of law.

## **DETAILS OF THE ARGUMENTS**

### **I. THE DISTRICT COURT COMMITTED ABUSES OF DISCRETION.**

(1). At the hearing on December 19, 2006, the court ordered Appellees' Attorney Ferre to "do a motion for summary judgment . . . with affidavits indicating what searches you've made and what you've done, and I think that that's how we finally dispose of the case" (R. 513, pages 10-11). Khan argues that this shows that the court assisted the Appellees by instructing them what they should do next and what things should be in their motion for summary judgment, in order for the court and Appellees to "finally dispose of [Khan's] case." He argues that on that date, even before Appellees had written their summary judgment motion, the court had already decided to "dispose of [his] case." After Appellees filed their summary judgment motion with their affidavits in accordance with the court's

detailed and beneficial guidance or instructions to them, the court granted it. Khan argues that the court used Appellees' wordings from their pleadings for most of its findings in its Order. He argues that all of these show the court's bias against him in this case and by granting that summary judgment motion, and that he suffered manifest injustice or inequity in this case. The last comment of the court speaks for itself. "Where the trial court may exercise broad discretion, we presume the correctness of the court's decision absent manifest injustice or inequity that indicates a clear abuse of discretion." *Childs*, Case No. 971258-CA. Therefore, Khan argues that the court abused its discretion.

(2). Utah Code §63-2-404(1) states: "(a) Any party to a proceeding before the records committee may petition for judicial review by the district court of the records committee's order. . . . (c) The records committee is a necessary party to the petition for judicial review." Khan had filed his notice of appeal to the State Records Committee (R. 15-18); hence, he was a party to the proceeding before that Committee. The Records Committee issued its order on his notice of appeal (R. 8-10). On December 6, 2005, Khan filed his petition for judicial review by the district court of the State Records Committee's order (R. 1-11); later, he filed his amended petition for judicial review by the district court of the State Records Committee's order (R. 33-44). In its "Undisputed Material Facts" (Addendum A, R. 441), the district court's Order states: "On December 6, 2005 [Khan] then petitioned this Court for judicial review of the [DPS] Commissioner's response" (Addendum A, R. 442). Khan disputes this "material fact" of the court, because his Petition and amended Petition state judicial review of "the State Records Committee's order" (R. 1 & R. 33). In his Affidavit,

Khan wrote: "On December 6, 2005, I filed my Petition for Judicial Review by this District Court of the State Records Committee's order, pursuant to Utah Code §63-2-404" (R. 418, paras. 35 & 36); Appellees did "not dispute the alleged facts in paragraphs 35, 36" (R. 429, para. 25), and, hence, they themselves agreed with Khan that his Petition and amended Petition were for judicial review by the district court of the "State Records Committee's order," pursuant to the Utah Code. Because Utah Code §63-2-404(1)(a) clearly states "judicial review by the district court of the records committee's order," Khan argues that the district court's Order is erroneously based on the court's judicial review of the "[DPS] Commissioner's response" (Addendum B, R. 11), as stated in the Order (Addendum A, R. 442), instead of being based on the court's judicial review of the State Records Committee's order or decision (R. 8). Also, the court's Order reviews and discusses the response of DPS, and does not review and discuss the order or decision of the Records Committee (Addendum A, R. 442-444). Hence, Khan argues that the court has erred by basing its Order on the judicial review of the wrong response, i.e., the court based its Order on the judicial review of the DPS Commissioner's response, instead of basing that Order on the judicial review of the State Records Committee's order or decision. Thus, the court misunderstood or misapplied the Utah Code or law. Hence, Khan argues that the court's Order is invalid or erroneous, and that manifest injustice or inequity has resulted. "We will disturb the trial court's [decision] only if there is a misunderstanding or misapplication of the law such that a manifest injustice or inequity results, indicating an abuse of discretion." *Oliekan v. Oliekan*, 2006 UT. App. 405; *Childs*, Case No. 971258-CA. "We will not overturn its decision unless

it is manifest that the trial court has misapplied proven facts." *Ferrin v. Ferrin*, 315 P.2d 978, 980 (1957). Therefore, Khan argues that the district court committed an abuse of discretion, an error in law, and an irregularity in its Order.

(3). In its Order, the court stated: "[Appellees] have complied with GRAMA, [and] have acted appropriately under the law." (Addendum A, R. 444). Khan argues as follows:

(a). In response to Khan's request for production of documents and his motion to compel (R. 168-172, & R. 131-167), Appellees also produced two documents: DPS Agent Doug Miller's "Investigation Reports" (Addendum B, R. 221 & 222). Khan argues that these Reports have been altered or tampered with, and the material information on the investigations is missing from those two "Investigation Reports," which are dated 06/05/2003. In the "Synopsis" section of the Reports (Addendum B, R. 221 & 222), there is a note dated 8-23-06, i.e., more than three years later, concerning Appellees' Attorney Ferre in this case; this case was filed in December 2005, long after 06/05/2003. Hence, on 06/05/2003, Mr. Miller could not have written that note in his Investigation Reports about 8-23-06 and Attorney Ferre; Khan argues that that note was added in the two Investigation Reports on 8-23-06, more than three years later, and during the discovery process in this case. There is nothing else in the Synopsis section. He argues that the actual synopsis and information, which are in these two official Reports, have been concealed or covered up. The note also states: 'A cover sheet with the case number and a short synopsis was "faxed" to Mr. Ferre on 8-23-06.' (*Id.*). Appellees and their Attorney Ferre did not produce the "synopsis," which is a part of each of the two Reports and which Attorney Ferre has or had



while the discovery was ongoing on 8-23-06. Khan argues that Mr. Miller's Investigation Reports are directly related and responsive to Khan's November 8, 2002, complaints to DPS of terrorism against him (Addendum B, R. 373), because these Reports have been assigned Case Number: 2003-00876 by DPS, and the headings state: "SIDRM TERRORISTIC THREATS NASRULLA KHAN" and "LETTER SENT BY ME TO KHAN ADVISING OF POSSIBLE CRIMINAL ACTIONS – REFRAIN FROM CONT" (see Addendum B, R. 221 & 222). Khan did not receive the "letter" referenced in these Reports from Mr. Miller or DPS, and Appellees did not produce it. These Reports are also directly relevant and responsive to his GRAMA request (Addendum B, R. 299) and GRAMA appeals (R. 301 & 15-18). Appellees' Attorney, Mr. Ferre, has or had in his possession the "synopsis" while the request for production of documents was in progress on 8-23-06 in this case, but yet he failed to produce it. Khan argues that since DPS or Mr. Miller sent these Investigation Reports to Attorney Ferre on 8-23-06, these two material and responsive Reports, synopsis, information, and the "letter" exist and have existed since 06/05/2003. He argues that Appellees and their attorney, Mr. Ferre, did not produce the true, complete, and actual copies of these material, responsive, and existing, official Investigation Reports of Mr. Miller, the existing "synopsis," the existing "letter," the existing cover sheet, and the existing information; that instead, they produced altered, inaccurate, and/or incomplete Reports (Addendum B, R. 221 & 222) in response to his discovery request. Khan argues that these actions of Appellees and their attorney have resulted in manifest injustice and/or inequity. Hence, he argues that Appellees did not comply with the GRAMA, the applicable laws, and

the court rules on discovery, and that they acted inappropriately under the law. The foregoing evidence and facts do not support the court's ruling: "[Appellees] have complied with GRAMA, [and] have acted appropriately under the law" (Addendum A, R. 444). Khan argues that the court's ruling falls outside the bounds of reason under the relevant facts and evidence. Therefore, he argues that the court's ruling is incorrect or erroneous, that manifest injustice or inequity has resulted, and that the court committed an abuse of discretion.

*Childs*, Case No. 971258-CA.

(b). In his Affidavit, Mr. Rick Wyss, legal counsel for DPS, wrote:

4. I reviewed and drafted the response signed by Commissioner Robert Flowers dated October 3, 2005 to Mr. Khan's public records request that is subject of this case. 5. In his request, Mr. Khan requested documents regarding complaints of terrorism and crimes against him. I was unable to locate any documents the Department possessed that were responsive to his request because [DPS] never conducted such an investigation. . . . 8. I have been unable to locate other records in the Department's possession that pertain to Mr. Khan. . . . 10. So far as I am aware, those non-privileged records the Department could locate that did or may have pertained to Mr. Khan have been made available to Mr. Khan.

(R. 304-305). In her Affidavit, Ms. Janell Tuttle wrote: "4. I was the official records custodian of the Records Committee, and I recorded or supervised the recording of the minutes of the Records Committee's meetings. 5. In the course of this case . . . I did not find any records beyond those listed on the attached index. 6. I provided the non-privileged documents . . . to Assistant Attorney General Joel Ferre . . . 7. the Records Committee . . . has no other records, . . . pertaining to Mr. Khan." (R. 313-314). In Khan's GRAMA request (Addendum B, R. 299), he requested records concerning his complaints to DPS about "terrorism and crimes against me, and about the illegal actions of the Ogden City Police;" in

his sworn Affidavit, Mr. Wyss clearly omitted to mention Khan's complaint of "the illegal actions of the Ogden City Police." Before Khan filed the Petition to the court, Appellees, Mr. Wyss, and Ms. Tuttle did not provide him any records (Addendum B, R. 11; R. 8) in response to his GRAMA request (Addendum B, R. 299) and GRAMA appeals (R. 301 & 15-18), but after he filed the Petition and served discovery request, Appellees, Mr. Wyss, and Ms. Tuttle produced some records (R. 262, 376-378, 387, 389; R. 148-149, DPS/SRC 1-13; R. 309-310, DPS/SRC 204-212, 214-226) and Investigation Reports (R. 369-374; Addendum B, R. 221, 222) that were responsive to his GRAMA request. The Investigation Reports indicate that DPS conducted investigations of Khan's November 8, 2002, complaints to DPS (Addendum B, R. 373). These Investigation Reports and the records are dated from November 8, 2002 (*Id.*) to before August 29, 2005, and, hence, existed before October 3, 2005, (Addendum B, R. 11) and before Khan filed his GRAMA request on August 29, 2005. (Addendum B, R. 299). All of these records contradict Mr. Wyss's (and the DPS's) official response of October 3, 2005, and his sworn statements in his Affidavit that DPS "never conducted such an investigation" and "there are no records that satisfy your [GRAMA] request." (R. 304, para. 5; R. 305, para. 8; Addendum B, R. 11). DPS and the Records Committee have their retention policies and Administrative Rules that require them to retain official records for the specified periods of time (Addendum C), but they did not produce many of those retained, responsive, material records and information concerning Khan's complaints about the terrorism and crimes against him, and about the illegal actions of the Ogden City Police. Executive Secretary Tuttle wrote in her sworn Affidavit that she

"recorded or supervised the recording of the minutes of the Records Committee's meetings" (R. 313, para. 4); hence, Khan argues that the minutes of the meeting on his GRAMA appeal and the reports on the declining of hearing on his GRAMA appeal exist, because Administrative Rules R35-2-2(b), (d), (f) and (h), (Addendum C, R. 9 & 10), and Rule R35-1-4 (Addendum C) require those to be retained; Appellees and Ms. Tuttle did not produce those responsive, existing, material records. Mr. Wyss's and Ms. Tuttle's sworn statements indicate that there exist relevant, material records, other than the non-privileged records, that they have not produced (R. 305, para. 10; R. 313, para. 6). Hence, based upon all of the foregoing, Khan argues that legal counsel Wyss's sworn Affidavit (R. 303-305), the official response of October 3, 2005, which Wyss reviewed and drafted for DPS CAO (Addendum B, R. 11; R. 304, para. 4) to Khan's GRAMA appeal, and Ms. Tuttle's sworn Affidavit (R. 312-314) contain misrepresentations and are misleading. He also argues that Appellees did not produce many responsive, existing, material records, which they are required to retain, and that their refusal or failure to produce those material records have resulted in manifest injustice and/or inequity. Therefore, he argues that Mr. Wyss's and Ms. Tuttle's sworn affidavits, for Appellees, are false or invalid, that they and Appellees violated the GRAMA, official retention policies and Administrative Rules, and that they acted inappropriately under the law. The foregoing facts and evidence do not support the court's ruling: "[Appellees] have complied with GRAMA, [and] have acted appropriately under the law." (Addendum A, R. 444). Khan argues that the court's ruling falls outside the bounds of reason under the relevant facts and evidence. Therefore, he argues that the court's ruling is

incorrect or erroneous, that manifest injustice or inequity has resulted, and that the court committed an abuse of discretion. *Childs*, Case No. 971258-CA.

(c). DPS and the State Records Committee have their official retention policies and Administrative Rules that require them to retain official records (see Addendum C). The retention policies specify where and for how long records should be retained; hence, these policies and Administrative Rules are material to this case because they are applicable to the records and information pertaining to Khan's complaints to DPS on November, 8, 2002 (Addendum B, R. 373) and pertaining to his GRAMA request (Addendum B, R. 299) and GRAMA appeals (R. 301, & 15-18). Khan argues that the retention policies and the Administrative Rules he identified are applicable to this case (Addendum C; R. 411, paras. 23-27), but Appellees dispute that those are applicable to this case (R. 425, paras. 16 & 17). He argues that Appellees did not provide him and produce many of the material and existing records and information relevant to his complaints to DPS that they are required to retain, in response to his GRAMA request (Addendum B, R. 299) and GRAMA appeals (R. 301, 15-18) to them, and in response to his discovery request (R. 168-172, & 131-167). Appellees created some of those material records, which are under their control, and Khan needs those existing, material records and information because those may create genuine issues of material facts sufficient to defeat the summary judgment motion. In his sworn Affidavit, Mr. Wyss, legal counsel for DPS, wrote: "I have been unable to locate other records in the Department's possession that pertain to Mr. Khan" (R. 305, para. 8); in her sworn Affidavit, Ms. Janell Tuttle wrote: "the Records Committee . . . has no other records, . . . pertaining to

Mr. Khan." (R. 314, para. 7). Khan argues that he finds it shocking and unbelievable that many critical, material, official records and information concerning his complaints of *crimes* and *terrorism* against *him* and of *illegal actions of Ogden Police officials*, and concerning *his* numerous correspondences with DPS investigators and officers about those serious *complaints of his* are, according to Appellees, not at DPS and/or the State Records Center. DPS's Peace Officers Standards and Training Division certifies or licenses Utah police officials (R. 429, para. 24); hence, it would investigate a complaint of illegal actions of Ogden Police officials. As Khan has stated above, before he filed the Petition to the court on December 6, 2005, Appellees did not provide him any records stating that DPS "does not have any records that satisfy your GRAMA request" (Addendum B, R. 11), but after he filed the petition (R. 1-13 & 33-43) and discovery request (R. 168-172), they produced some records which were material to his GRAMA request (R. 262, 376, 378, 387, 389; R. 148-149, DPS/SRC 1-13). He, then, filed a motion to compel (R. 131-167), and they produced Investigation Reports (R. 369-374; Addendum B, R. 221 & 222) and some more records (R. 262, 377, 378, 387; R. 309-310, DPS/SRC 204-212, 214-226) that were material to his GRAMA request. He argues that their reluctance to provide him and produce the material records and information, and that their misleading, false, written, official responses to his formal GRAMA appeals clearly indicate the unreliability and invalidity of their official responses, and their failure to comply with the GRAMA, the applicable laws, the retention policies and the Administrative Rules. Also, if he had not filed his Petition to the court, he would have not received any responsive, existing records and information at all, and his

constitutional right, the GRAMA, and the applicable laws would have been clearly violated by Appellees. Hence, Khan argues that other material records and information exist because their official retention policies and Administrative Rules require them to retain those, including the true and complete copies of Mr. Miller's Investigation Reports (Addendum B, R. 221 & 222), that they have not produced those, that they have violated the GRAMA, the applicable laws, the retention policies, and the Administrative Rules, and that manifest injustice and/or inequity have resulted. The court stated: "[Appellees] have complied with GRAMA, [and] have acted appropriately under the law." (Addendum A, R. 444). Therefore, Khan argues that, based on his foregoing arguments and evidence, the court's ruling is incorrect or erroneous, that manifest injustice or inequity has resulted, and that the court abused its discretion. *Childs*, Case No. 971258-CA.

(d). Khan sent his written GRAMA request to DPS on August 29, 2005, pursuant to Utah Code §63-2-204(1). (Addendum B, R. 299). But DPS failed to respond to his GRAMA request; hence, Khan argues that DPS clearly violated §63-2-204(3)(a) and §63-2-205. Before Khan filed the Petition to the court on December 6, 2005 (R. 1-11), Appellees did not provide him any records in response to his GRAMA request and his GRAMA appeals (Addendum B, R. 11; R. 8). But after he filed the Petition, amended Petition, and discovery request, Appellees produced some material, responsive records and information, including Investigation Reports, as shown above, that satisfied his GRAMA request, and that existed at the time of his GRAMA request, August 29, 2005 (Addendum B, R. 299). Appellees wrote that they did not have any other records pertaining to Khan (R. 305, para. 8; R. 314,

para. 7); Khan argues that they also did not produce other material records and information they have, or should have, because they are required to retain those pursuant to their agencies' official retention policies and Administrative Rules (Addendum C). Based upon all of the evidence, Khan argues that before he filed the Petition on December 6, 2005, (R. 1-11), Appellees did not provide him any of the existing records, Investigation Reports, and information that satisfied his GRAMA request (Addendum B, R. 299). Hence, he argues that before he filed the Petition to the court on December 6, 2005, Appellees did not comply with the GRAMA, that they violated the applicable laws, his constitutional right (Utah Code §63-2-102(1)(a)), his legal rights (Utah Code §63-2-102(3)(a) and §63-2-201(1)), Administrative Rules and their official retention policies (Addendum C), and that manifest injustice and/or inequity resulted; in his amended Petition, he stated that Appellees violated his constitutional right and his statutory right as his injuries (R. 42), and that they violated the GRAMA (R. 39). But the district court ruled that "[Appellees] have complied with GRAMA, [and] have acted appropriately under the law," and granted them summary judgment (Addendum A, R. 444). Khan argues that the court's conclusions and/or rulings fall outside the bounds of reason under the applicable laws and the relevant facts and evidence. Therefore, he argues that the court's findings and/or conclusions that Appellees' actions were in compliance with the GRAMA and appropriate under the law (and substantially justified) when the Appellees' actions were based on violations of Utah Codes, of the Legislative Act (the GRAMA), of Khan's constitutional right, of his legal rights, and of their agencies' own official retention policies or regulations and Administrative Rules,



constitute an abuse of discretion. (See *Mendenhall v. National Transp. Safety Bd.*, 92 F.3d 871, 874 (9<sup>th</sup> Cir. 1996)). He also argues that the court abused its discretion because its "error is substantial and prejudicial such that there is a reasonable likelihood that in its absence, there would have been a more favorable result for" Khan. (*State v. Pritchett*, 2003 UT 24, P 10). "[The trial court's] judgment will not be disturbed lightly, nor at all unless the evidence clearly preponderates against its findings, or there has been a plain abuse of discretion, or a manifest injustice or inequity is wrought." *Richardson v. Richardson*, 2007 UT App. 222. Also, see *Childs*, Case No. 971258-CA; *Oliekan*, 2006 UT. App. 405, above.

(4). The district court's grant of summary judgment was premature because Khan had not completed discovery. Khan had served his request for production of documents on Appellees (R. 168-172); he argues that Appellees had produced some of the material and responsive records, and that their response had been incomplete. He had then filed a motion to compel discovery (R. 131-172); he argues that in response, Appellees had produced some more material and responsive records and Investigation Reports. As Khan has shown above, Appellees did not produce other existing, material and responsive records and information, including Mr. Miller's complete Investigation Reports (Addendum B, R. 221 & 222).

"Evasive or incomplete answers are considered to be failures to respond" (*Brown v. Glover*, 16 P.3d 540, 548 (Utah 2000)). Khan had also filed a Rule 56(f) motion for a stay or continuance (R. 127-130, 178-183). Hence, he was diligent in using the available procedures to obtain discovery, because, without adequate discovery responses, he was unable to fully support his claims in his Petition. As he has argued and shown above,

Appellees have not produced many of the existing, material and responsive records. Hence, discovery was not complete, the court erred by denying his motion to compel (Addendum A, R. 264), and the court erred by granting summary judgment. "Generally, summary judgment should not be granted if discovery is incomplete since information sought in discovery may create genuine issues of material fact sufficient to defeat the motion" *Callioux v. Progressive Ins. Co.*, 745 P.2d 838, 840 (Utah 1987). "Trial courts have substantial discretion in deciding whether to grant continuances, and their decision will not be overturned unless that discretion has been clearly abused. . . . Nevertheless, an abuse of discretion may be found if a party has made timely objections, [has] given necessary notice" through his motion to compel discovery (*Brown*, 16 P.3d at 548-549). Therefore, Khan argues that the court abused its discretion because its "error is substantial and prejudicial such that there is a reasonable likelihood that in its absence, there would have been a more favorable result for" him. (*Pritchett*, 2003 UT 24, P 10).

(5). In its Order, the court wrote:

[O]n November 7, 2005 the Executive Secretary of the Committee responded and informed [Khan] the [DPS's] claim no records existed did not constitute a denial upon which she could schedule a hearing pursuant to Administrative Rule R35-2-2(b). This rule requires a party appealing a denial to "provide sufficient evidence in the petitioner's statement of facts, reasons, and legal authority in support of the appeal, that the record did exist at one time, or that the governmental entity has concealed, or not sufficiently or improperly searched for the record."

(Addendum A, R. 442). On November 7, 2005, Administrative Rule R35-2-2(b) stated:

The claim that a record does not exist does not constitute a denial unless the petitioner can provide sufficient evidence in his or her statement of facts, reasons, and legal authority in support of appeal that record did exist at one time. A

determination that sufficient facts have or have not been alleged shall be made by the chair of the Committee. In the circumstance that sufficient facts have not been alleged, the Executive Secretary shall be instructed not to schedule an appeal hearing, and shall inform the petitioner appropriately.

(Addendum C, R. 9). Khan argues that the court misquoted the Administrative Rule R35-2-2(b) and the Records Committee's order (R. 8), and that it misunderstood or misapplied the Rule R35-2-2(b) and the Committee's order. Hence, he argues that the court's Order is incorrect or invalid, and that manifest injustice or inequity has resulted. "We will disturb the trial court's [decision] only if there is a misunderstanding or misapplication of the law such that a manifest injustice or inequity results, indicating an abuse of discretion." *Oliekan*, 2006 UT. App. 405; *Childs*, Case No. 971258-CA. Therefore, Khan argues that the court committed an abuse of discretion, and an irregularity in its Order.

(6). On December 13, 2006, Khan filed a Motion for Imposition of Costs pursuant to Utah R. Civ. P. 4(f)(4), and the court did not give its order on this Motion (R. 237-240). Hence, he argues that the court committed an irregularity in its Order concerning this Motion by which he was prevented from having a fair trial, that manifest injustice and/or inequity has resulted, and that the court committed an abuse of discretion. *Childs*, Case No. 971258-CA.

(7). In his amended Petition, Khan had also requested reimbursement for the costs he incurred in this case, imposing of compensatory damages and/or civil penalties, imposing of punitive damages upon Appellee-officials, and such other and further relief as is appropriate (R. 42). In its Order, the court did not give its decisions on these requests for relief. Hence, Khan argues that the court committed irregularities in its Order concerning these requests for

relief by which he was prevented from having a fair trial, that manifest injustice and/or inequity has resulted, and that the court committed abuses of discretion. *Childs*, Case No. 971258-CA.

## II

### **THE DISTRICT COURT'S FINDINGS OF FACT ARE CLEARLY ERRONEOUS.**

"We will overturn the [trial] court's findings of fact only if they are clearly erroneous." *State v Greuber*, 2007 UT 50, P. 6; Utah R. Civ. P. 52(a). "To challenge the sufficiency of a trial court's findings, an appellant must [marshal] the evidence in support of the findings and then demonstrate that despite this evidence, the court's findings are so lacking in support as to be against the clear weight of the evidence." *State in Interest of D.G.*, 938 P.2d 298, 301 (Utah App. 1997). "A finding of fact will be found clearly erroneous when it is contrary to the clear weight of the evidence, or if the appellate court has a definite and firm conviction that a mistake has been made." *Arnason v. Arnason*, 2002 UT App. 243. "[The trial court's] judgment will not be disturbed lightly, nor at all unless the evidence clearly preponderates against its findings, or there has been a plain abuse of discretion, or a manifest injustice or inequity is wrought." *Richardson*, 2007 UT App. 222. "For a reviewing court to find clear error, it must decide that the factual findings made by the trial court are not adequately supported by the record, resolving all disputes in the evidence in a light most favorable to the trial court's determination." *Greuber*, 2007 UT 50, P. 6.

### District Court's "Undisputed Material Facts"

Khan argues that the court's "Undisputed Material Facts" (Addendum A, R. 441-442) are its findings of fact. The court based its Order upon those because it wrote: "the undisputed material facts undisputedly demonstrate defendants conformed with the requirements imposed upon them under the applicable portions of GRAMA" (*Id.*, R. 442). In its Order, the court's findings are:

(1) "On December 6, 2005 plaintiff then petitioned this Court for judicial review of the Commissioner's response" (*Id.*, R. 442). This finding is supported by Appellees' statement: "On December 6, 2005, plaintiff petitioned for judicial review of [DPS Commissioner] Mr. Flowers's response" (R. 270, para. 5; R. 84, para. 5; R. 513, page 3). Khan argues that in his Petition of December 6, 2005, to the court, he wrote: "Khan is filing this Petition for Judicial Review by this District Court of the State Records Committee's order" (R. 1; also see R. 33). In Khan's affidavit, too, he wrote similar statements (R. 418, paras. 35 & 36; also R. 410, paras. 11 & 12); Appellees, then, did "not dispute the alleged facts" of Khan (R. 429, para. 25; also R. 423, paras. 6 & 7; R. 29, para. 1; R. 30, para. 5; R. 48, para. 3; R. 70, para. 3), and, hence, they themselves agreed with Khan that on December 6, 2005, he filed his petition for judicial review by the district court of the "State Records Committee's order." He controverted Appellees' statement (R. 270, para. 5; R. 324-325, para. 5). Khan argues that the supporting "evidence, when compared to the contrary evidence, is so lacking as to warrant the conclusion that clear error has been committed" (*Newmeyer v. Newmeyer*, 745 P.2d 1276, 1278 (Utah 1987)). Hence, based upon the cited records and evidence, the

court's finding is not adequately supported by the record (*Greuber*, 2007 UT 50, P. 6), and is contrary to the clear weight of the evidence (*Arnason*, 2002 UT App. 243). Therefore, the finding of fact is clearly erroneous.

(2) The district court wrote:

[O]n November 7, 2005 the Executive Secretary of the Committee responded and informed [Khan] the Department's claim no records existed did not constitute a denial upon which she could schedule a hearing pursuant to Administrative Rule R35-2-2(b). This rule requires a party appealing a denial to "provide sufficient evidence in the petitioner's statement of facts, reasons, and legal authority in support of the appeal, that the record did exist at one time, or that the governmental entity has concealed, or not sufficiently or improperly searched for the record."

(Addendum A, R. 442). These findings are supported by Appellees' statements in R. 270, para. 4; R. 8-10; R. 429, para. 23; R. 84, para. 3; R. 85, para. 7; and "Plaintiff alleges that the Records Committee and Tuttle 'misrepresented' certain items in the Records Committee's letter and an administrative rule governing hearings" (R. 91-92). Khan argues that the court's findings misrepresent or misquote the Records Committee's order and the Administrative Rule R35-2-2(b). On November 7, 2005, Rule R35-2-2(b) stated:

The claim that a record does not exist does not constitute a denial unless the petitioner can provide sufficient evidence in his or her statement of facts, reasons, and legal authority in support of appeal that record did exist at one time. A determination that sufficient facts have or have not been alleged shall be made by the chair of the Committee. In the circumstance that sufficient facts have not been alleged, the Executive Secretary shall be instructed not to schedule an appeal hearing, and shall inform the petitioner appropriately.

(Addendum C, R. 9; R. 418, para. 32). He controverted Appellees' statements (R. 270, para. 4; R. 324, para. 4). Khan argues that he provided sufficient evidence in his statement of facts, reasons, and legal authority in support of his GRAMA appeal that showed material

records "did exist at one time" in the years 2002, 2003 and 2005 (R. 15-17; R. 418, para. 33); legal counsel Wyss for DPS and Appellees did produce some records during discovery that "pertained to Mr. Khan" (R. 304, para. 6; R. 305, para. 10; R. 313, para. 5; R. 306-310, 315-319; also R. 267; R. 271, para. 8; R. 425, para. 18; R. 429, para. 23). Khan has argued in this Brief that some of those records are material to his GRAMA request (Addendum B, R. 299), and that those records existed at the time DPS received that August 29, 2005, GRAMA request. He argues that the court's findings contradict Rule R35-2-2(b) (which was in effect on November 7, 2005) and the Records Committee's order (R. 8; Addendum C, R. 9). Hence, based upon the evidence and cited records, the court's findings about the Records Committee's order and the Administrative Rule R35-2-2(b) are not adequately supported by the record (*Greuber*, 2007 UT 50, P. 6), and are contrary to the clear weight of the evidence (*Arnason*, 2002 UT App. 243). Therefore, the findings are clearly erroneous.

(3) "On October 3, 2005 the Commissioner of Public Safety responded to plaintiff's request stating, '[n]o evidence was found to support your claims and no formal investigations was conducted . . . the Department of Public Safety does not have any records that satisfy your GRAMA request. Therefore this is a denial of your [GRAMA] . . . appeal'" (Addendum A, R. 441). These findings are supported by Appellees' statements in Addendum B, R. 11; R. 267; R. 270, para. 3; R. 273; R. 274; R. 275; R. 304, para. 5; R. 313, para. 3; R. 433-434; R. 83-84, para. 2; R. 87-88, 89-91. Khan argues that in his Petition to the court, he wrote: "On October 3, 2005, [CAO], Mr. Robert Flowers, denied [Khan's] GRAMA appeal." (R. 35; R. 416, para. 26). He argues that the Commissioner, as the CAO of DPS, responded to Khan's

GRAMA "appeal" (R. 301), and not to his "request;" also, the CAO's response is clearly titled: "Re: Government Records Access and Management Act Appeal" (Addendum B, R. 11). He controverted or disputed Appellees' statements (R. 15-17; R. 35-37; R. 323-324, para. 3; R. 325-326, para. 8; R. 328-330; R. 331-335). Khan complained to DPS about the crimes and terrorism against him and about the illegal actions of Ogden Police (Addendum B, R. 373). DPS confirmed that Ogden Police did not seem to "follow-up on the numbers and people that Mr. Khan had identified" as alleged perpetrators concerning those crimes and terrorism against him (R. 370; Addendum B, R. 373); DPS confirmed that it was taking "possible criminal actions" concerning Khan's complaint of "terroristic threats" against him (Addendum B, R. 221 & 222). Hence, these show DPS found evidence that supported Khan's claims against the Police and his claims of terrorism against him. Khan argues he has evidence to support his complaints (Addendum B, R. 373), although Mr. Keyser did not look at all of the evidence when he met with Khan, and Appellees did not produce Mr. Keyser's notes of that meeting; Khan sent facts about his complaints to DPS Agent Miller, but DPS did not produce those. During discovery, DPS produced its Investigation Reports (Addendum B, R. 221 and 222; R. 369-372, 373-374). Khan argues these Investigation Reports clearly show that DPS conducted official and formal or informal investigations of his complaints to DPS (Addendum B, R. 373), and that DPS also conducted a thorough investigation "of" him (R. 369-370; R. 371; R. 374; R. 329-330); he had not requested an investigation "of" him. DPS produced some material records and information during discovery that satisfied Khan's GRAMA request and that existed at the time (August 29,



2005) he sent his GRAMA request (Addendum B, R. 299), because those records are dated from November 8, 2002 (R. 373) to before August 29, 2005. (Addendum B, R. 221 & 222; R. 262, 376-378, 387, 389, 369-374; R. 148-149, DPS/SRC 1-13; R. 309-310, DPS/SRC 204-212, 214-226). Mr. Wyss, legal counsel for DPS, and Ms. Tuttle produced some material records during discovery that "pertained to Mr. Khan" in this GRAMA case of Khan; those records existed at the time DPS received that GRAMA request, as shown above. (R. 304, para. 6; R. 305, para. 10; R. 313, para. 5). Khan argues that based on the foregoing, the DPS Commissioner erred by denying his GRAMA appeal. He argues that the supporting "evidence, when compared to the contrary evidence, is so lacking as to warrant the conclusion that clear error has been committed" (*Newmeyer*, 745 P.2d at 1278). Hence, based upon the cited records and evidence, the court's findings are not adequately supported by the record (*Greuber*, 2007 UT 50, P. 6), and are contrary to the clear weight of the evidence (*Arnason*, 2002 UT App. 243). Therefore, the findings are clearly erroneous.

(4) "This action commenced with written requests plaintiff sent to the Department of Public Safety on August 29, 2005. In his first request plaintiff asked for 'records concerning my complaints to the Utah Department of Public Safety and to the Utah Homeland Security Department . . . complaints of terrorism and crimes against me, and about the illegal actions of the Ogden City Police against me'" (Addendum A, R. 441). These findings are supported by Appellees' statements: "On August 29, 2005, [Khan] sent a letter to [DPS] requesting 'records concerning [his] complaints to [DPS] and to the Utah Homeland Security Department.' [Khan] described the documents he was requesting as 'complaints of terrorism

and crimes against [him], and about the illegal actions of the Ogden City Police against [him]" (R. 269-270, para. 2); and "[DPS] does not dispute that Khan requested records from [DPS] as alleged in paragraph 18. The request speaks for itself, and, therefore, [DPS] disputes Khan's characterization of that letter to the extent it differs from the actual document. [Appellees] dispute the alleged facts in paragraph 19. Khan has made several requests from [DPS]" (R. 427-428, para. 14 & 15). Khan argues that in his Petition to the court, he wrote: "On August 29, 2005, . . . [Khan] filed a [GRAMA] request to [DPS] for records of [DPS officials] regarding [his] complaints or claims to [DPS]." (R. 35). He argues that he sent only one written GRAMA request titled "Government Records Access and Management Act Request" dated August 29, 2005, addressed to DPS (see Addendum B, R. 299), that he did not send any other written GRAMA request addressed to DPS or to Utah Homeland Security Department (R. 415, para. 19), and that he did not make "several requests" from DPS. In his affidavit, he wrote: "On August 29, 2005, . . . I filed a [GRAMA] request to [DPS] for records relevant to my complaints to [DPS] . . ." (R. 415, para. 18). Khan controverted Appellees' statements (R. 269-270, para. 2; R. 322-323, para. 2). (The court's Order repeatedly states or implies that Khan sent "requests," i.e., more than one GRAMA request to DPS (Addendum A, R. 441, 443 & 444)). He argues that the supporting "evidence, when compared to the contrary evidence, is so lacking as to warrant the conclusion that clear error has been committed" (*Newmeyer*, 745 P.2d at 1278). Hence, based upon the cited records and evidence, the court's findings of "requests [Khan] sent to [DPS] on August 29, 2005," and his "first" request are not adequately supported by the

record (*Greuber*, 2007 UT 50, P. 6), and are contrary to the clear weight of the evidence (*Arnason*, 2002 UT App. 243). Therefore, the findings are clearly erroneous.

(5) "In his second request then to the 'Chief Administrative Officer' of the Department of Public Safety on September 19, 2005, plaintiff stated that because the Department of Public Safety had not responded to his prior request within ten days, he was 'filing this appeal to you concerning the 'denial' of my Government Records Access and Management Act request, pursuant to Utah Code §63-2-205'" (Addendum A, R. 441). These findings are supported by Appellees' statements: "[Khan] sent the same request again on September 19, 2005" (R. 270, para. 2); "Khan wrote again to the [CAO] of [DPS] on September 19, 2005" (R. 432); and "[CAO] wrote that Khan's request was a repeat" (R. 433; Addendum B, R. 11). Khan argues that in his Petition to the court, he wrote: "On September 19, 2005, [Khan] then timely filed the GRAMA appeal to the Chief Administrative Officer of [DPS], pursuant to Utah Code §63-2-401." (R. 35). He argues that he did not file or send "his second request" or a "second" GRAMA request to the CAO of DPS "on September 19, 2005." On September 19, 2005, he sent or filed his GRAMA "appeal" to the CAO of DPS, pursuant to Section 63-2-401, and he enclosed a copy of his August 29, 2005, GRAMA request, as his GRAMA appeal states; that appeal of his is clearly titled: "Re: Government Records Access and Management Act Appeal" (R. 301). In his affidavit, Khan wrote: "On September 19, 2005, I, then, timely filed the GRAMA appeal to the [CAO] of [DPS] . . . appealing the denial of my GRAMA request." (R. 415, para. 25); Appellees did "not dispute the alleged facts [of Khan] in paragraph 25" (R. 428, para. 18), and, hence, they themselves agreed with

Khan that he sent his GRAMA "appeal" to the CAO on September 19, 2005. Khan controverted Appellees' statement (R. 270, para. 2; R. 322-323, para. 2). He argues that he did not write "prior" request (or "first" request) in that GRAMA appeal. He argues that the supporting "evidence, when compared to the contrary evidence, is so lacking as to warrant the conclusion that clear error has been committed" (*Newmeyer*, 745 P.2d at 1278). Hence, based upon the cited records and evidence, the court's findings of "second request" and "prior request" are not adequately supported by the record (*Greuber*, 2007 UT 50, P. 6), and are contrary to the clear weight of the evidence (*Arnason*, 2002 UT App. 243). Therefore, the findings are clearly erroneous.

Hence, based on the foregoing, Khan has demonstrated that the court's "Undisputed Material Facts" are clearly erroneous. Also, he argues that the court misrepresented the court records in this case and the Administrative Rule R35-2-2(b) (Addendum C, R. 9).

#### District Court's Findings of Fact

Khan argues that some of the court's "findings are not sufficiently detailed to disclose the evidentiary basis for the court's decision and thereby allow for meaningful review"

(*Campbell v. Campbell*, 896 P.2d 635, 638 (Utah App. 1995)). He will attempt to show that the findings of fact are clearly erroneous. In its Order, the court's findings of fact are:

(i) "Plaintiff claims defendants have produced no records in response to his GRAMA request, but defendants have supported their claims that they have no such records"

(Addendum A, R. 442-443), "defendants have consistently supported their denials of these requests with supported claim that no records exist" (*Id.*, R. 443), and "[Khan] has not

shown defendants did anything other than all they could under his unduly burdensome litany of correspondences to them" (*Id.*). These findings are supported by statements in R, 8; Addendum B, R. 11; R. 3, 6, 35, 38, 39, 40, 41, 42; R. 83-84; R. 131, 134, 135, 137; R. 142, response to para. 9; R. 144, response to para. 15; R. 186, 187-188; R. 202-203, para. h; R. 212, 213, 215-216, 217, 219; R. 255, 256, 257; R. 267; R. 270, paras. 3, 4; R. 271, paras. 7, 8; R. 273; R. 274; R. 275; R. 411, paras. 28, 30; R. 415, para. 24; R. 416, para. 26; R. 417, para. 29; R. 418, para. 31; R. 428, para. 19, 20; R. 429, para. 21; R. 432, 433, 434; R. 409, paras. 3, 6, 9; R. 423, paras. 3 & 4; R. 304, paras. 4, 5, 7, 8; R. 313, para. 3, 7; R. 323, 324, 328, 329, 330, 331-332, 333, 335. Khan argues that the material facts are: (1) On November 8, 2002, Khan sent Utah Homeland Security Department (in DPS) his complaints about the continuing crimes and terrorism against him by some people since 1994, and about the illegal actions of the Ogden City Police concerning his complaint to them of those crimes and terrorism (Addendum B, R. 373); (2) In 2002, 2003 and 2005, he corresponded by emails, fax, and telephone with DPS investigators and officers about his complaints; (3) On August 29, 2005, he sent a GRAMA request to DPS requesting records relevant to his November 8, 2002, complaints to DPS (Addendum B, R. 299 & 373); (4) DPS did not respond to his GRAMA request; (5) After he sent his GRAMA appeal to the DPS CAO, the CAO wrote: "No evidence was found to support your claims and no formal investigation was conducted. . . . [DPS] does not have any records that satisfy your GRAMA request," and did not provide him any records or information (R. 301; Addendum B, R. 11); (6) After Khan sent his GRAMA appeal to the Records Committee, the Committee wrote: "According

to Administrative Rule R35-2-2(b), the claim that a record does not exist does not constitute a denial. Sufficient facts have not been alleged to determine that the records do exist and therefore I cannot schedule a hearing,” and did not provide him any records or information (R. 15-18; R. 8-10); (7) On December 6, 2005, he filed his Petition for judicial review by the court of the State Records Committee's order (R. 1-11; also R. 33-43); and (8) During discovery (R. 168-172; R. 131-172), Appellees produced records identified in their Indexes (R. 306-309, DPS/SRC 1-202; R. 309-310, DPS/SRC 203-226). Khan argues that some of the records and information Appellees produced are material and responsive to his GRAMA request and that those existed at the time he sent his August 29, 2005 GRAMA request (Addendum B, R. 299), because those are dated November 8, 2002 to before August 29, 2005, those pertain to his complaints to DPS (Addendum B, R. 373), and Mr. Wyss wrote that those "pertained to Mr. Khan" "in this [GRAMA] case" (R. 304, para. 6; also R. 313, paras. 5, 6). (See Addendum B, R. 221 & 222; R. 262, 376-378, 387, 389, 369-374; R. 148-149, DPS/SRC 1-13; R. 309-310, DPS/SRC 204-212, 214-226). Appellees, too, wrote that they "have produced records they can locate that pertain to Mr. Khan" (R. 275; R. 434; R. 271, para. 8). Hence, these records show that Appellees did have "such records" and the "records [did] exist." He argues that in response to his GRAMA request and his GRAMA appeals to the DPS CAO and the Records Committee (Addendum B, R. 299; R. 301 & 15-18), i.e., before he filed his Petition to the court (R. 1-11), Appellees provided him no records at all (see Addendum B, R. 11; R. 8-10; R. 415, para. 24; R. 320-321; R. 325, para. 7), even though material records and information existed on August 29, 2005, as shown

above. Based on the above, he argues that the Appellees' claims---"they have no such records" and "no records exist"---are invalid, false and misleading, and that they have not supported their claims; also, the material records they produced during discovery prove their official responses (Addendum B, R. 11; R. 8) to be false and misleading. The court did not provide sufficient details on "such records" and "these requests" (and "extraneous requests"). Therefore, based on the evidence and the cited records, the court's first and second findings, above, are not adequately supported by the record, and are contrary to the clear weight of the evidence. Khan has argued earlier in this Brief that Appellees did not provide him and produce: (a) the true and complete copies of the material, responsive, and existing, official Investigation Reports of Mr. Miller, the existing "synopsis," the existing "letter," the existing cover sheet, and the existing information (Addendum B, R. 221 & 222); (b) other existing, responsive, and material, official records and information that they are required to retain in accordance with their agencies' official retention policies and Administrative Rules (Addendum C; R. 513, pages 7-8, 9); (c) "the recording of the minutes of the Records Committee's meetings" on his GRAMA appeal (R. 313, para. 4); (d) the existing, material, responsive records, other than the non-privileged records (R. 305, para. 10; R. 313 para. 6); and (e) copies of the correspondences between him and the DPS investigators and officers pertaining to his November 8, 2002, complaints to DPS that they are required to retain pursuant to their retention policies, e.g., R. 379-382. (R. 2-3, 4, 5; R. 34-35, 36, 37; R. 417, para. 29; R. 513, page 10). Appellees "do not dispute that Khan addressed letters and electronic mail to employees of [DPS] and the Utah Division of Homeland Security in 2002

and 2003" regarding his November 8, 2002, complaints (R. 414, para. 4; R. 426, para. 4; R. 409, paras. 1 & 2; R. 422, paras. 1 & 2); they admit Mr. Keith of DPS "communicated with an Ogden Police official regarding [Khan's] complaint to DPS" ( R. 411, para. 22; R. 380; R. 424, para. 14). But they did not provide Khan, and produce, all of those records and information that are material to his complaints to DPS and to his GRAMA request (Addendum B, R. 373 and 299), and that existed on August 29, 2005. On February, 4, 2005, Mr. McKee wrote that DPS "looked into [Khan's] complaints on various occasions" (R. 262); Khan argues this indicates that there exist several material DPS information and records that Appellees have not produced (R. 256, para. 2). Khan has argued that, in response to his GRAMA request and GRAMA appeal, i.e., before he filed his Petition, DPS did not provide him any of the existing, material, responsive records and information, identified above, that they (and Mr. Wyss) later produced during discovery. The Records Committee failed to order DPS to provide Khan those material, responsive records and information DPS had at that time (see Utah Code §63-2-403(10), and (12)(b)). Hence, Khan argues that based on the above evidence and the cited records, Appellees did not do "all they could" have in response to his GRAMA request, his GRAMA appeals, and during legitimate discovery; only after he filed the motion to compel (R. 131-172), Appellees produced some more material records, e.g., the Investigation Reports (Addendum B, R. 221 & 222; R. 369-374). Therefore, based on the evidence and the cited records, the court's third finding, above, is not adequately supported by the record, and is contrary to the clear weight of the evidence. Based on the foregoing, Khan argues that Appellees did not support their claims.



The court's findings contain the words "such records," "these requests," and "his unduly burdensome litany of correspondences to them;" these are vague words, and are 'not sufficiently detailed to disclose the evidentiary basis for' these words; the court has 'not included enough subsidiary facts' (see *Campbell*, 896 P.2d at 638-639). He argues that the supporting "evidence, when compared to the contrary evidence, is so lacking as to warrant the conclusion that clear error has been committed" (*Newmeyer*, 745 P.2d at 1278). Hence, based upon the cited records and evidence, the court's findings are not adequately supported by the record (*Greuber*, 2007 UT 50, P. 6), and are contrary to the clear weight of the evidence (*Arnason*, 2002 UT App. 243). Therefore, the findings are clearly erroneous.

(ii) "Defendants submitted affidavits from the people involved in attempting to locate these records, and detailed outlines of the procedures followed in this effort" (Addendum A, R. 443). These findings are supported by Appellees' statements: "During the course of discovery, [DPS] and Records Committee searched their records and provided [Khan] documents they could locate that pertained to Mr. Khan. Affidavit of Rick Wyss at 6 & 7 . . . ; Affidavit of Janell Tuttle at 5 & 6" (R. 271, para. 8); "throughout discovery, defendants have produced records they can locate that pertain to Mr. Khan. See Wyss Affidavit at 10; Tuttle Affidavit at 6" (R. 275; R. 423, para. 8; R. 429, para. 26); (R. 303-319); and R. 513, pages 8-9. Wyss and Tuttle wrote that they, in the course of discovery in this case, made a diligent search of their records and produced the documents listed on their index that pertained to Khan in this GRAMA case of his (R. 304, paras. 6 & 7; R. 313, para. 5); Khan has shown, above, that some of the records they produced during discovery satisfied his

GRAMA request and existed at the time DPS received his GRAMA request (Addendum B, R. 299). Khan argues that they did not make a diligent search of their records after he sent their agencies his GRAMA appeals, because they did not provide him any records with their official responses (Addendum B, R. 11; R. 8) to his GRAMA request and his GRAMA appeals (Addendum B, R. 299; R. 301 & 15-18); and that, hence, Wyss and Tuttle violated the GRAMA, the applicable laws and procedures, his constitutional right (Utah Code §63-2-102(1)(a)), and his legal right (Utah Code §63-2-102(3)(a) and §63-2-201(1)) before he filed his Petition to the court (R. 1-11). He argues Wyss and Tuttle have not produced other material records and information that their agencies are required to retain in accordance with their agencies' official retention policies and Administrative Rules (Addendum C), and that the agencies have or should have. They also did not produce the true and complete copies of Mr. Miller's Investigation Reports (Addendum B, R. 221 & R. 222), "the recording of the minutes of the Records Committee's meetings" on Khan's GRAMA appeal (R. 313, para. 4; R. 15-18), and records, other than the non-privileged records (R. 305, para. 10; R. 313, para. 6). Khan controverted Appellees' statements (R. 325-326, para. 8; R. 333-334; R. 460, 461, 462). He argues that Wyss deliberately concealed Khan's complaint of "the illegal actions of Ogden City Police" from his sworn affidavit (Addendum B, R. 299 & 373; R. 304, para. 5). He argues that all of the above evidence and facts show that Wyss's and Tuttle's official responses (Addendum B, R. 11; R. 8) clearly contradict their statements in their sworn affidavits (Wyss wrote: "I reviewed and drafted the response signed by [the DPS CAO] dated October 3, 2005" (Addendum B, R. 11)) (R. 304-305, paras. 3-8, 10; R. 313-314,

paras. 3, 5, 6, 7). Based on the above, he argues that their sworn affidavits are misleading, inaccurate, and invalid. Hence, Khan argues that all of the foregoing evidence indicate the invalidity, insufficiency, and/or inaccuracy of Mr. Wyss's and Ms. Tuttle's statements in their sworn affidavits (*Id.*), of their attempt to locate the material records, and of their search procedures. He argues that the supporting "evidence, when compared to the contrary evidence, is so lacking as to warrant the conclusion that clear error has been committed" (*Newmeyer*, 745 P.2d at 1278). Based upon the cited records and evidence, the court's findings are not adequately supported by the record (*Greuber*, 2007 UT 50, P. 6), and are contrary to the clear weight of the evidence (*Arnason*, 2002 UT App. 243). Therefore, the findings are clearly erroneous.

(iii) "The material facts of this case are those pertaining to plaintiff's GRAMA requests and the department's response to his requests" (Addendum A, R. 443). Khan has argued and shown, above, in this Brief that the court's findings "requests," "first request," "second request," "prior request" with respect to his GRAMA request (Addendum B, R. 299) and GRAMA appeal (R. 301) are clearly erroneous; using the same supporting evidence that he marshaled for those findings, above, to now support the findings "GRAMA requests" and "his requests," he similarly argues that these findings, too, are not adequately supported by the record. The finding about "the department's response" is supported by Appellees' statement: "On December 6, 2005, plaintiff petitioned for judicial review of [DPS Commissioner] Mr. Flowers response" (R. 270, para. 5; R. 84, para. 5; R. 513, page 3; Addendum A, R. 442); Khan controverted Appellees' statement (R. 324-325, para. 5). He

argues that the court's finding is based on its judicial review of the wrong response, i.e., of "the department's response" (Addendum B, R. 11), instead of the Records Committee's order (Addendum A, R. 442). He filed his petition for judicial review by the court of "the State Records Committee's order" (R. 1 & 33). In his affidavit, too, he wrote similar statements (R. 418, paras. 35 & 36); Appellees did "not dispute the alleged facts" of Khan (R. 429, para. 25; also R. 29, para. 1; R. 30, para. 5; R. 48, para. 3; R. 70, para. 3), and, hence, they themselves agreed with Khan that on December 6, 2005, he filed his petition for judicial review by the court of the "State Records Committee's order." Khan argues that the material facts of this case are those pertaining to his one and only one GRAMA request to DPS (Addendum B, R. 299), and the Records Committee's order (R. 8-10) on his GRAMA appeal (R. 15-18). He argues that the supporting "evidence, when compared to the contrary evidence, is so lacking as to warrant the conclusion that clear error has been committed" (*Newmeyer*, 745 P.2d at 1278). Hence, based upon the cited records and evidence, the court's findings are not adequately supported by the record (*Greuber*, 2007 UT 50, P. 6), and are contrary to the clear weight of the evidence (*Arnason*, 2002 UT App. 243). Therefore, the findings of fact are clearly erroneous.

(iv) "The documents introduced as evidence to this Court demonstrate defendants' response has met GRAMA's requirements" (Addendum A, R. 443); "defendants responded to his requests in compliance with GRAMA" (*Id.*); "Plaintiff's differing opinions of the facts do not persuade the Court that there truly remains any actual dispute of any material fact in this case" (*Id.*); "the undisputed material facts undisputedly demonstrate defendants conformed

with the requirements imposed upon them under the applicable portions of GRAMA" (*Id.*, R. 442); and "The court finds defendants have complied with the applicable laws and procedures of GRAMA and have given [Khan] information to which he was entitled in response to his requests. Defendants have complied with GRAMA, have acted appropriately under the law." (*Id.*, R. 444). These findings are supported by documents and statements in Addendum B, R. 221, 222, 299; Addendum A, R. 264; R. 255, 256, 257, 260, 262, 267, 269-270, 271, 272, 273, 274, 275, 276, 278-297, 301, 303-310, 312-319, 369-374, 376-378, 384, 385, 387, 389, 396-407, 148-167; Addendum C, Administrative Rules and retention policies; R. 422, paras. 1, 2; R. 423-424, paras. 3, 8, 11-14; R. 425, paras. 18, 20; R. 426, paras 6-8; R. 427, paras. 9-13; R. 428, paras. 15, 17; R. 429, paras. 23, 26, 28; R. 430, paras. 29, 30, 33, 34; R. 431, para. 35; R. 431-434; R. 185, 186, 187-188, 189-190, 195, 212, 225, 226-228, 229, 140-146, 83-84, 89-91; Addendum A, R. 264, para. 3; R. 513, pages 3-4, 7-9, 10. Here, Khan uses his arguments he presented in paragraph (i), above. He has shown that in response to his GRAMA request and his GRAMA appeals to the DPS CAO and the Records Committee (Addendum B, R. 299; R. 301, 15-18), i.e., before he filed his Petition to the court (R. 1-11), Appellees did not provide him any records at all, even though they had some of the material and responsive information, records, and Investigation Reports (that they later produced during discovery) at the time he sent his August 29, 2005 GRAMA request (Addendum B, R. 299). But after he filed the petition and during discovery, Appellees produced some material records and information, including Investigation Reports, that satisfied his GRAMA request, and that existed at the time he sent

his GRAMA request, as shown above. Hence, Khan argues that Appellees violated the GRAMA before he filed the petition. The DPS CAO, for DPS, wrote: "[DPS] does not have any records that satisfy your GRAMA request" (Addendum B, R. 11), when, in fact, DPS had material records and information at that time that DPS later produced; hence, he wrote a false statement with regards to the GRAMA, and he acted inappropriately under the law. The Records Committee misrepresented the Administrative Rule R35-2-2(b) with regards to the GRAMA (R. 8; Addendum C, R. 9), and, hence, acted inappropriately under the law. The records show that Appellees produced incomplete and untrue copies of Miller's Investigation Reports, and concealed the material information that is in those Reports (Addendum B, R. 221 & 222); even after Khan mentioned that those Reports were incomplete, they failed to produce the true and complete copies of those two Investigation Reports (R. 410, para. 21; R. 424, para. 14). Hence, they violated the GRAMA and the applicable laws. Appellees wrote that they did not have any other records that pertain to Khan (R. 305, para. 8; R. 314, para. 7), but Khan argues that they also did not produce other material records and information that they have, or should have, because they are required to retain those pursuant to their agencies' official retention policies and Administrative Rules (Addendum C), e.g., copies of the correspondences between him and the DPS investigators and officers pertaining to his complaints to DPS (Addendum B, R. 373), communication of Mr. Keith with an Ogden Police official regarding Khan's complaint to DPS (R. 422, paras. 1, 2; R. 424, para. 14; R. 426, para. 4). Hence, they violated the GRAMA. In its order (R. 8), the Records Committee failed to order DPS to provide Khan the material, responsive

records and information that DPS had at that time as shown above (Utah Code §63-2-403(10), and (12)(b)); hence, it did not comply with the applicable law and procedure of GRAMA. Khan had sent his written GRAMA request to DPS pursuant to Utah Code §63-2-204(1), but DPS failed to respond to his GRAMA request; hence, Khan argues that DPS clearly violated the GRAMA procedures of §63-2-204(3)(a) and §63-2-205. Above in this Brief, Khan demonstrated that the court's "undisputed material facts" are clearly erroneous, and that the court misrepresented the court records in this case and the Administrative Rule R35-2-2(b) (Addendum C, R. 9); hence, the court's undisputed material facts and the facts Khan presented here do not demonstrate Appellees conformed with the requirements imposed upon them under the applicable portions of GRAMA. Hence, Khan argues that all of the foregoing evidence, facts and records show that, before and after Khan filed the petition to the court and during discovery, Appellees did not comply with the GRAMA, the applicable laws, requirements and procedures of GRAMA, that they violated his constitutional "right of access to information concerning the conduct of the public's business" (Utah Code §63-2-102(1)(a)), his legal right of access to unrestricted public records (Utah Code §63-2-102(3)(a) and §63-2-201(1)), and the cited Administrative Rules and retention policies (Addendum C), that they did not give him all of the material and responsive records and information he was entitled to, and that they acted inappropriately under the law. Khan argues that the foregoing shows that there truly remain actual and genuine issues or disputes as to material facts in this case. He argues that the court's findings contain wordings "his requests," "the facts," and "information" that are not

sufficiently detailed to disclose the evidentiary basis for these words; the court has not included enough subsidiary facts (see *Campbell*, 896 P.2d at 638-639). He argues that the supporting "evidence, when compared to the contrary evidence, is so lacking as to warrant the conclusion that clear error has been committed" (*Newmeyer*, 745 P.2d at 1278). Hence, based upon the cited records and evidence, the court's findings are not adequately supported by the record (*Greuber*, 2007 UT 50, P. 6), and are contrary to the clear weight of the evidence (*Arnason*, 2002 UT App. 243). Therefore, the findings are clearly erroneous.

(v) The court's Order states: "Defendants have succinctly surveyed the federal and Utah case law on the public's right to access governmental information, and the Court will not reiterate it here" (R. 439). This finding is supported by Appellees' statements about particular records (R. 271-273, 275; R. 266; R. 431; R. 434). Khan argues that he did not request "particular" records, and that he controverted Appellees' statements (R. 327-328). Hence, the finding's supporting evidence is irrelevant in this case. He argues that according to Utah Code §63-2-103(22)(a), "information [is] in the original" record, i.e., a record contains information; hence, for him to access the material and responsive information, he has to have access to the material and responsive records, which means that Appellees should produce such material records to him. Pursuant to Utah Code §63-2-102(1)(a) and the GRAMA, Khan does have the constitutional right of access to the material and responsive "information concerning the conduct of the public's business." Hence, based upon the cited records and evidence, the court's finding about Khan's right to access "particular" governmental information is not adequately supported by the record (*Greuber*,



2007 UT 50, P. 6), and is contrary to the clear weight of the evidence (*Arnason*, 2002 UT App. 243). Therefore, the finding is clearly erroneous.

(vi) "Plaintiff has made some extraneous requests throughout his appeals process"

(Addendum A, R. 443), "Plaintiff submitted his opinions of the material facts and of immaterial facts" (*Id.*), "under [Khan's] unduly burdensome litany of correspondences to them" (*Id.*), "Plaintiff attempts to create disputes of irrelevant facts or disputes of material facts where there simply are none" (*Id.*), "The documents introduced as evidence to this Court" (*Id.*), and "Plaintiff's differing opinions of the facts" (*Id.*). Khan argues that "some extraneous requests," "requests," "his opinions," "the material facts," "immaterial facts," his "litany of correspondences," "irrelevant facts," "the documents introduced as evidence," and "the facts" are vague words. The court did not clearly identify or specify these items.

Hence, Khan argues that these findings are too general or vague, making it difficult for him to marshal all the evidence supporting these findings and then demonstrate that these findings are not supported by legally sufficient evidence; these findings are "facially inadequate" to allow for meaningful review. (*Campbell*, 896 P.2d at 638.) He argues that these findings are not adequate because they are not sufficiently detailed and do not include "enough subsidiary facts to disclose the steps by which the ultimate conclusion on each factual issue was reached." (*Id.*, at 638-639). "Appellants need not engage in a futile [marshaling] exercise if they can demonstrate the findings, as framed by the court, are legally insufficient." (*Id.* at 638).

### III

#### THE DISTRICT COURT ERRED BY GRANTING SUMMARY JUDGMENT.

"If there is any doubt or uncertainty concerning questions of fact, the doubt should be resolved in favor of the opposing party. Thus, the court must evaluate all the evidence and all reasonable inferences fairly drawn from the evidence in a light most favorable to the party opposing summary judgment." *Frisbee v. K & K Constr. Co.*, 676 P.2d 387, 389 (Utah 1984); *Goodnow v. Sullivan*, 2002 UT 21, P. 17; Utah R. Civ. P. 56(c). At the hearing, Khan informed the court: ". . . I've not received those records" (R. 513, page 8). The court informed Khan: "Well, you know, I don't know whether you've received the records or not, but Mr. Ferre is telling me that you've [been] provided all the records" (*Id.*). Khan argues that this shows a doubt or uncertainty in the Judge's mind concerning question of fact about the production of material records. Therefore, summary judgment should be denied.

Khan argues that he has shown, in this Brief, that the court's findings of fact and the court's "Undisputed Material Facts" are clearly erroneous; hence, he argues that the court's ensuing conclusion of granting summary judgment is erroneous.

Khan argues that the court's Order is erroneously based on the court's judicial review of the DPS "Commissioner's response," as stated in the court's "Undisputed Material Facts" (Addendum A, R. 442), instead of being based on the judicial review of the State Records Committee's order or decision (R. 8-10). Utah Code §63-2-404(1)(a) clearly states: "Any party to a proceeding before the records committee may petition for judicial review by the district court of the records committee's order." Also, Khan argues that the court's Order

reviews and discusses the response of DPS (Addendum B, R. 11), and does not review and discuss the order or decision of the Records Committee (Addendum A, R. 442-444).

Therefore, he argues that the court's ensuing conclusion of granting summary judgment is erroneous, because it is based on the judicial review of the wrong response by the court.

Khan has shown, in this Brief, that the court's "Undisputed Material Facts" are clearly erroneous; hence, he disputes these "Undisputed Material Facts." Therefore, there are genuine issues as to these "Material Facts," and summary judgment should be denied.

The court's Order states: "On December 6, 2005 plaintiff then petitioned this Court for judicial review of the [DPS] Commissioner's response" (Addendum A, R. 442); the court identified this as one of the "undisputed material facts" (*Id.*, R. 441). Khan disputes this "material fact" of the court because he filed his Petition and amended Petition for judicial review of "the State Records Committee's order" (see R. 1 & R. 33). Hence, he argues that there is a genuine issue as to this "material fact," and, therefore, summary judgment should be denied.

The record shows that Appellees produced untrue and incomplete copies of Miller's Investigation Reports, and that they concealed the material information that is in those Reports (Addendum B, R. 221 & 222). Khan argued that the agencies' retention policies and Administrative Rules require Appellees to retain official records and the recording of the minutes of the Records Committee's meetings on his GRAMA appeal; Appellees did not give him all those retained, material records and the recording. On February 4, 2005, Mr. McKee of DPS wrote to Khan: "Our agency has looked into your complaints on various

occasions . . ." (R. 262); hence, Khan argues that this indicates that there exist several other material records, Investigation Reports, and/or information responsive to his complaints and GRAMA request that they have not produced. He did not get all of the existing records and information that are material to his complaints to DPS and to his GRAMA request. Hence, there are doubts or uncertainties concerning the question of fact as to whether Appellees gave Khan all of the material, responsive, and existing records and information; therefore, summary judgment should have been denied. *Frisbee*, 676 P.2d at 389. Khan has presented a genuine issue as to Appellees' failure to give him all of the existing, responsive, and material records and information. Therefore, summary judgment should have been denied.

Khan argued that discovery was not complete, and that the court erred by denying his motion to compel (Addendum A, R. 264), and by granting Appellees the summary judgment (Addendum A, R. 444). As he has argued above, Appellees have not given him the true and complete copies of Miller's Investigation Reports (Addendum B, R. 221 & 222), and all of the other retained, material and responsive records and information. "Generally, summary judgment should not be granted if discovery is incomplete since information sought in discovery may create genuine issues of material fact sufficient to defeat the motion" *Callioux*, 745 P.2d at 840. Hence, summary judgment should have been denied.

Khan has shown, above, that in response to his GRAMA request and his GRAMA appeals to the DPS CAO and the Records Committee (Addendum B, R. 299; R. 301, 15-18), i.e., before he filed his Petition to the court (R. 1-11), Appellees did not provide him any records at all, even though they had some of the material and responsive records and

information at the time he sent his August 29, 2005 GRAMA request (Addendum B, R. 299). DPS CAO wrote: "[DPS] does not have any records that satisfy your GRAMA request" (Addendum B, R. 11). But after Khan filed his petition (R. 1-13 & 33-43) and discovery request (R. 168-172), Appellees produced some records which were material to his GRAMA request (R. 262, 376, 378, 387, 389; R. 148-149, DPS/SRC 1-13). He, then, filed a motion to compel (R. 131-167), and they produced Investigation Reports (Addendum B, R. 221 & 222; R. 369-374) and some more records (R. 262, 377, 378, 387; R. 309-310, DPS/SRC 204-212, 214-226) that were material to his GRAMA request. As he has shown above, they have not given him other material records and information that they have, or should have, because they are required to retain those. He argues that Appellees' reluctance to provide him and produce the material records and information, and that their misleading, false, official, written responses to his GRAMA appeals clearly indicate the unreliability and invalidity of their official responses in this case, and their failure to comply with the GRAMA, the applicable laws and procedures, the Administrative Rules, and their retention policies. But the court wrote: "Defendants have complied with GRAMA" (Addendum A, R. 444). Hence, there are genuine issues as to these material facts; therefore, summary judgment should have been denied.

Khan has argued, above, that DPS's official response of October 3, 2005 (Addendum B, R. 11), the Records Committee's order (R. 8-10), and Mr. Wyss's and Ms. Tuttle's sworn affidavits (R. 303-305; R. 312-314) contain misrepresentations, and, hence, are inaccurate, misleading, and invalid. Also, their response and order are in conflict with their sworn

affidavits with regards to existence of material records. But the court's Order states: "The documents introduced as evidence to this Court demonstrate defendants' response has met GRAMA's requirements" (Addendum A, R. 443), and "Defendants have complied with GRAMA, have acted appropriately under the law" (*Id.*, R. 444). Hence, there are doubts or uncertainties concerning the questions of fact as to the validity and accuracies of Appellees' responses and their affidavits, and as to Appellees' production of all material records and information; therefore, summary judgment should have been denied. *Frisbee*, 676 P.2d at 389. Also, there are genuine issues as to these material facts, and summary judgment should have been denied. (Rule 56(c)).

Because Appellees did not give Khan all of the existing, material, responsive information and records, as argued above, he argues that Appellees also violated his constitutional "right of access to information concerning the conduct of the public's business" (Utah Code §63-2-102(1)(a)), and his legal right of access to unrestricted public records (Utah Code §63-2-102(3)(a) and §63-2-201(1)); these statutes and laws are GRAMA-related. But the court's Order states: "The court finds defendants have complied with the applicable laws and procedures of GRAMA" (Addendum A, R. 444). Hence, there are genuine issues as to whether Appellees violated: (a) Khan's constitutional right of access to information concerning the conduct of the public's business, i.e., Cause of action, Count 2; and (b) his legal right of access to unrestricted public records, i.e., Cause of action, Count 1. (R. 38-39). Therefore, summary judgment should have been denied.

Khan's statement of material facts in his affidavit (R. 413-420, paras. 5-8, 11, 12, 14, 20, 42, 45-48) are in conflict with Appellees' statement of material facts in their affidavits (R. 303-305, paras. 5, 7, 8, 10; R. 312-314, paras. 5, 7). "The conflicting statements in the two affidavits raise an issue of fact" *Strand v. Prince-Covey & Co.*, 534 P.2d 892, 893 (Utah 1975). If the affidavits on the one side and on the other are directly opposed as to the facts shown, the case must go to trial. Hence, there are genuine issues as to these material facts, and summary judgment should have been denied.

Appellees and Khan have disputed each other's material facts (R. 269-271, 321-326; R. 409-411, 422-425). Hence, there are genuine issues as to the material facts, and summary judgment should have been denied.

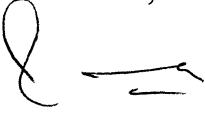
Based upon the foregoing, Khan argues that substantial, genuine issues as to material facts exist, and that Appellees are not entitled to a judgment as a matter of law. (Rule 56(c)).

## **CONCLUSION**

Based upon the arguments presented in this Brief, Khan requests this Court to: (1) find the district court's decisions were not correct because they resulted in manifest injustice or inequity, indicating clear abuses of discretion by the court; (2) overturn the district court's findings of fact because they are clearly erroneous; (3) reverse the district court's order granting summary judgment; (4) find the court's "Undisputed Material Facts" to be clearly erroneous; (5) order the discovery to continue because it is not complete; (6) reverse the order denying motion to compel; (7) direct the district court to issue decision on the pending

motion for imposition of costs, and on the reliefs sought by Khan; (8) direct the district court to award Khan the expenses he incurred in bringing the motion to compel.

September 27, 2007

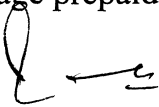


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Nasrulla Khan  
Pro Se Appellant  
1024 Childs Ave., # 205  
Ogden, Utah 84404

CERTIFICATE OF SERVICE

I hereby certify that two copies of the foregoing **Brief of the Appellant** were served on Ms. Bridget Romano, Assistant Attorney General, Utah Attorney General's Office, 160 East 300 South, P.O. Box 140857, Salt Lake City, UT 84114-0857, by first class mail, postage prepaid, or hand-delivery, on September 27, 2007.



---

Nasrulla Khan



## **ADDENDA**

- Addendum A      Order denying motion to compel (R. 263-265).  
Ruling and Order granting Appellees summary judgment (R. 438-444).
- Addendum B      DPS Chief Administrative Officer's response (R. 11).  
Mr. Miller's Investigation Reports (R. 221 & R. 222).  
Khan's GRAMA request (R.299).  
Khan's complaints to DPS (R. 373).
- Addendum C      Utah Code §§ 63-2-102, 63-2-103, 63-2-201, 63-2-204, 63-2-205, 63-2-401, 63-2-403, and 63-2-404.  
Administrative Rules R35-1-4 & R35-2-2 (R. 9-10).  
Retention Reports (Policies) labeled as Series 2266, 81804, 84406, 84410, 84416, 10546, 6314, 16944, 84409, 84381, 84411 & 24018 (see R. 151-158; R. 160-163).  
Utah R. Civ. P. 4; Utah R. Civ. P. 52; Utah R. Civ. P. 56.

ADDENDUM "A"

DISTRICT COURT'S ORDERS

ORIGINAL

FILED DISTRICT COURT  
Third Judicial District

JAN 19 2007

SALT LAKE COUNTY

By

Deputy Clerk

JOEL A. FERRE (7517)  
Assistant Utah Attorney General  
MARK L. SHURTLEFF (4666)  
Utah Attorney General  
Attorneys for Defendants  
160 East 300 South, Sixth Floor  
P.O. Box 140856  
Salt Lake City, Utah 84114-0856  
Telephone: (801) 366-0100

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

---

NASRULLA KHAN,

Plaintiff,

vs.

THE STATE RECORDS COMMITTEE,  
UTAH DEPARTMENT OF PUBLIC  
SAFETY, MR. ROBERT L. FLOWERS, .  
MS. JANELL B. TUTTLE, ET AL.,

Defendants.

:

**ORDER**

:

:

Case No. 050921490

:

Judge Anthony Quinn

:

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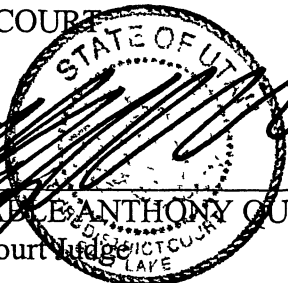
Defendant's Motion for Partial Summary Judgment, Plaintiff's Motion to Stay or  
Continue Defendant's Motion for Partial Summary Judgment, Plaintiff's Motion to Compel, and  
Defendant's Motion for a Protective Order, came before the Court, the Honorable Anthony  
Quinn, for decision. Having reviewed the supporting and opposing memoranda and having  
heard oral argument of counsel the Court makes the following ruling.

IT IS HEREBY ORDERED THAT:

1. Given the stipulation of the parties, Defendants' Motion for Partial Summary Judgment and Plaintiff's Motion to Stay are MOOT;
2. Plaintiff's Motion to Compel and Defendant's Motion for a Protective Order are GRANTED in part and DENIED in part. After review of the contested documents *in camera*, the Court finds that the government's interest in maintaining confidentiality to portions of the contested documents that reference Mr. Khan is outweighed by Mr. Khan's interest in discovery of that material. Accordingly, Defendants are ordered to produce copies of the two contested documents dated November 8, 2002, and November 22, 2002, except that Defendants may redact the references to Federal law enforcement agents and any information pertaining to other individuals contained within the reports. Otherwise, Plaintiff's and Defendants' motions are DENIED;
3. To the extent Plaintiff seeks to compel production of other documents, the Motion to Compel is DENIED based on the representation that Defendants have conducted a reasonably diligent search of their records and based upon knowledge, information, and belief formed after a reasonable search have produced to Plaintiff those non-privileged documents they have located or identified that pertain to Plaintiff; and
4. Each party to bear its respective costs and fees.

DATED this 19<sup>th</sup> day of January, 2007.

BY THE COURT

  
HONORABLE ANTHONY QUINN  
District Court Judge

Approved as to form:

---

Nasrulla Khan  
Plaintiff Pro Se

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

NASRULLA KHAN,  
Plaintiff,

vs.

THE STATE RECORDS COMMITTEE,  
UTAH DEPARTMENT OF PUBLIC  
SAFETY, MR. ROBERT L. FLOWERS,  
MS. JANELL B. TUTTLE, ET AL.,  
Defendants.

RULING and ORDER

CASE NO. 050921490

Honorable Anthony B. Quinn

The above matter came before the Court on Defendant's Motion for Summary Judgment filed January 25, 2007. The Court having carefully considered all the pleadings on file and having been fully informed, determines oral argument is not necessary and concludes as follows.

The issue before this Court is whether defendants have shown that, as a matter of law, they are entitled to summary judgment because they have complied with GRAMA in response to Plaintiff's requests for documents.

**Summary Judgment Standard**

Rule 56(c) of the Utah Rules of Civil Procedure mandates, summary judgment "shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." In reviewing a motion for summary

judgment, a court "must consider all facts, and all inferences from those facts, in the light most favorable to the nonmoving party." (*Goodnow v. Sullivan*, 2002 UT 21 ¶ 17, 44 P.3d 704.) Summary judgment "should be granted only when it clearly appears that there is no reasonable probability that the party moved against could prevail." (*Snyder v. Merkley*, 693 P.2d 64, 65 (Utah 1984)).

### **Right to Information**

Defendants have succinctly surveyed the federal and Utah case law on the public's right to access governmental information, and the Court will not reiterate it here. GRAMA outlines the procedures Utah's public may use to gain access to the governmental information to which they may be entitled. Consequently, the Court will only address whether defendants complied with the provisions of GRAMA in response to plaintiff's requests.

### **Defendants' Compliance with Utah Code Ann. §§ 63-2-101, et seq.**

Utah has enacted the statutes presently known as the Government Record Access and Management Act, or GRAMA, to deal with the public's ability to access governmental information. (Utah Code Ann. §§ 63-2-101, et seq). GRAMA's procedures balance "the public's right of access to information concerning the conduct of the public's business; and the right of privacy in relation to personal data gathered by governmental entities," while acknowledging the "public policy interest in allowing a government to restrict access to certain records . . . for the public good." (Utah Code Ann. §§

63-2-102 (1992)). These procedures work as "guidelines for both disclosure and restrictions on access to government records . . . [and] establish fair and reasonable records management practices" and allow the public to access "a public record free of charge." (*Id.*, and *Id.* at § 201). These procedures require a request for information to be in writing and identify the record with "reasonable specificity." (*Id.*, at § 204). The governmental entity, must respond to such a request by either providing the record, denying the request, or informing the person requesting information it does not have such a record. (*Id.*). GRAMA does not require a governmental entity to either create a record in response to a request, or fulfill a person's records request if the request unreasonably duplicates prior records requests from that person. (*Id.* §§ 63-2-201(8)(a)(i) and (iv)). A person "aggrieved" by a governmental entity's access determination may appeal the determination to the head of the governmental entity, then the State Records Committee and then, under certain circumstances, to the District Court. (See Utah Code Ann. §§ 63-2-401 through 404). If the requester substantially prevails in district court, the court may enjoin the actions of a governmental entity or political subdivision that violates provisions of GRAMA, and it may assess reasonable attorneys' fees and other litigation costs reasonably incurred in a judicial appeal of a denial of a records request, once it makes certain determinations. (See Utah Code Ann. § 63-2-802).



Pursuant to these provisions, when plaintiff felt aggrieved by the results of his requests for information, plaintiff brought his case to this Court through a Petition for Judicial Review and subsequent First Amended Petition for Judicial Review. The Court has reviewed the complete course of action taken by all parties in this case and has determined the material facts are not in dispute.

### **Undisputed Material Facts**

This action commenced with written requests plaintiff sent to the Department of Public Safety on August 29, 2005. In his first request plaintiff asked for "records concerning my complaints to the Utah Department of Public Safety and to the Utah Homeland Security Department . . . complaints of terrorism and crimes against me, and about the illegal actions of the Ogden City Police against me." In his second request then to the "Chief Administrative Officer" of the Department of Public Safety on September 19, 2005, plaintiff stated that because the Department of Public Safety had not responded to his prior request within ten days, he was "filing this appeal to you concerning the 'denial' of my Government Records Access and Management Act Request, pursuant to Utah Code Section 63-2-205." On October 3, 2005 the Commissioner of Public Safety responded to plaintiff's request stating, "[n]o evidence was found to support your claims and no formal investigations was conducted . . . the Department of Public Safety does not have any records that satisfy your GRAMA request. Therefore this is a denial of your [GRAMA] . . . appeal." This letter informed plaintiff of his right to appeal

this denial to the State Records Committee ("Committee"). Plaintiff did appeal to the Committee, on November 7, 2005 the Executive Secretary of the Committee responded and informed plaintiff the Department's claim no records existed did not constitute a denial upon which she could schedule a hearing pursuant to Administrative Rule R35-2-2(b). This rule requires a party appealing a denial to "provide sufficient evidence in the petitioner's statement of facts, reasons, and legal authority in support of the appeal, that the record did exist at one time, or that the governmental entity has concealed, or not sufficiently or improperly searched for the record." On December 6, 2005 plaintiff then petitioned this Court for judicial review of the Commissioner's response.

## **DISCUSSION**

When reviewing a petition for judicial review under GRAMA, the district court shall make a decision on the case de novo after allowing the introduction of evidence presented to the Committee and determine all questions of fact and law without a jury. (Utah Code Ann. § 63-2-404(7)(b)). Accordingly, the Court has reached the following decision.

The Court finds, despite the confusion of this case, the undisputed material facts undisputedly demonstrate defendants conformed with the requirements imposed upon them under the applicable portions of GRAMA. Plaintiff claims defendants have produced no records in response to his GRAMA request, but

defendants's have supported their claims that they have no such records. Plaintiff has made some extraneous requests throughout his appeals process but defendants have consistently supported their denials of these requests with supported claim that no records exist. Defendants submitted affidavits from the people involved in attempting to locate these records, and detailed outlines of the procedures followed in this effort. Plaintiff submitted his opinions of the material facts and of immaterial facts, but has not shown defendants did anything other than all they could under his unduly burdensome litany of correspondences to them.

Plaintiff attempts to create disputes of irrelevant facts or disputes of material facts where there simply are none. The material facts of this case are those pertaining to plaintiff's GRAMA requests and the department's response to his requests. The documents introduced as evidence to this Court demonstrate defendants' response has met GRAMA's requirements. Plaintiff's differing opinions of the facts do not persuade the Court that there truly remains any actual dispute of any material fact in this case.

Plaintiff used the procedures of GRAMA to seek access to information to which it entitles him; his dissatisfaction with the results does not change the underlying material facts that defendants responded to his requests in compliance with GRAMA. GRAMA guarantees that certain procedural formalities must be followed in response to appropriate requests for information, however it makes no guarantee of the results these procedures may achieve.

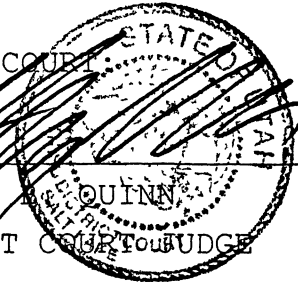
The Court finds defendants have complied with the applicable laws and procedures of GRAMA and have given plaintiff information to which he was entitled in response to his requests. Defendants have complied with GRAMA, have acted appropriately under the law, and accordingly defendants are entitled to summary judgment as a matter of law. Defendants' Motion for Summary Judgment is hereby GRANTED.

This Ruling and Order is the Order of the court and no other order is required.

Dated this 21<sup>st</sup> day of March 2007.

BY THE COURT

\_\_\_\_\_  
ANTHONY J. QUINN  
DISTRICT COURT JUDGE



ADDENDUM "B"

PARTS OF THE RECORD OF  
CENTRAL IMPORTANCE



State of Utah

N M. HUNTSMAN, JR.  
*Governor*

GARY R. HERBERT  
*Lieutenant Governor*

Department of Public Safety

ROBERT L. FLOWERS  
*Commissioner*

October 3, 2005

Mr. Nasrulla Khan  
663 22<sup>nd</sup> Street, #16  
Ogden, Utah 84401

Re: Government Records Access and Management Act Appeal.

Dear Mr. Khan:

Reference is made to your GRAMA appeal dated September 19, 2005 to the Utah Department of Public Safety. In your original request, you asked for records of the department regarding "complaints of terrorism and crimes against me, and about the illegal actions of the Ogden City Police against me." This is the same request you have made on several prior occasions to the Department of Public Safety. You have also requested records of Agent John Keyser regarding his investigation of you. Captain Mitch McKee has previously notified you that the department has never conducted such an investigation and that there are no records that satisfy your request. John Keyser spoke with you regarding your complaints of terrorism and crimes against you by Ogden City. No evidence was found to support your claims and no formal investigation was conducted. The Department of Public Safety closed this matter.

The Department of Public Safety does not have any records that satisfy your GRAMA request. Therefore, this is a denial of your Government Records Access and Management Act appeal. You have the right to appeal this denial to the State Records Committee pursuant to Utah Code. Ann. §63-2-403, or to the district court pursuant to §63-2-404. The appeal must be filed within 30 days following the date of this denial. The State Records Committee secretary is Janell Tuttle located at 346 South Rio Grande Street, Salt Lake City, Utah 84101.

Thank you for your consideration in this matter.

Sincerely,

*Robert L. Flowers*

Robert L. Flowers  
Commissioner of Public Safety

cc: Governor Jon Huntsman

UTAH DEPARTMENT OF PUBLIC SAFETY INVESTIGATIONS

Page

**Investigation Report**

Printed on: 08/23

**Case Number:** 2003-00876 SIDRM TERRORISTIC THREATS NASRULLA KHAN

**Agent:** DOUG MILLER

**Requested By:** ANDY CAMPBELL

**MNI #:** 30014348

**Date Reported:** 06/05/2006

**Date & Time Occured:** 06/05/2006

**Remarks:** COMPLAINT BY GOVERNOR MIKE LEAVITT - LETTER SENT BY ME TO KHAN ADVISING OF POSSIBLE CRIMINAL ACTIONS - REFRAIN FROM CONT

**Offense:** COMPLAINANT

**Property**

NO

**Narrative**

**SOURCE**

Agent Doug Miller  
Utah Highway Patrol - Section 22  
Alcohol Enforcement Team/ Special Investigations  
3888 West 5400 South  
Kearns, Utah 84118  
Phone: 955-2145

**SYNOPSIS**

On 8-23-06, I was contacted by Joel Ferre at the Utah Attorney General Office. Mr Ferre requested that I send him a copy of the cover sheet with the case number and a short synopsis was "faxed" to Mr. Ferre on 8-23-06

**UTAH DEPARTMENT OF PUBLIC SAFETY INVESTIGATIONS**

Page #: 1

**Investigation Report**

Printed on: 08/23/2006

**Case Number:** 2003-00876 SIDRM TERRORISTIC THREATS NASRULLA KAHN**Agent:** DOUG MILLER**Requested By:** ANDY CAMPBELL**MNI #:** 30014348**Date Reported:** 06/05/2003**Date & Time Occured:** 06/05/2003**Remarks:** COMPLAINT BY GOVERNOR MIKE LEAVITT - LETTER SENT BY ME TO KHAN ADVISING OF  
POSSIBLE CRIMINAL ACTIONS - REFRAIN FROM CONT**Offense:** COMPLAINANT**Property**

NO

**Narrative****SOURCE**

Agent Doug Miller  
Utah Highway Patrol - Section 22  
Alcohol Enforcement Team/ Special Investigations  
3888 West 5400 South  
Kearns, Utah 84118  
Phone: 955-2145

**SYNOPSIS**

On 8-23-06 I contacted by Joel Ferre at the Utah Attorney General Office. Mr Ferre requested that I send him a case that I was involved with concerning Nasrulla Khan. A cover sheet with the case number and a short synopsis was "faxed" to Mr. Ferre on 8-23-06

222



Nasrulla Khan  
663 22<sup>nd</sup> Street, # 16  
Ogden, Utah 84401

(801) 621-0995

August 29, 2005

Utah Department of Public Safety  
4501 South 2700 West  
Box 141775  
Salt Lake City, UT 84119

Re: Government Records Access and Management Act Request

The Utah Department of Public Safety:

Pursuant to Utah's Government Records Access and Management Act, I am requesting records concerning my complaints to the Utah Department of Public Safety and to the Utah Homeland Security Department. Following is the information concerning which I am requesting the records:

On November 8, 2002, I had written to the Utah Homeland Security Department about my complaint of terrorism and crimes against me, and about the illegal actions of the Ogden City Police against me. I had written to Mr. Scott Behunin, Mr. Sidney Groll, Mr. Jim Keith, Mr. Doug Miller, and Mr. Mitch McKee of the Utah Department of Public Safety about my complaints. I had also written to Mr. Robert Flowers and Mr. Verdi White (the Commissioner and the Deputy Commissioner of the Utah Department of Public Safety, respectively) about my complaints. Mr. Mitch McKee mentioned Agent John Keyser's name with reference to my complaints; I am requesting Mr. Keyser's records, too. On April 17, 2003, I had filed a complaint again with the Ogden Police (Case number 03-30223) concerning the 'recent' crimes against me; the Police did not investigate it; I had informed the Utah Department of Public Safety about that police complaint and about the failure of the Ogden Police to investigate it. Also, in 1995 or 1996, I had contacted the Utah Department of Public Safety about Ogden Police.

Sincerely,



Nasrulla Khan

P.S. The above is my new address.

# HOMELAND SECURITY TASKFORCE

## Investigation Report

Page #: 1

Printed on: 04/15/2005

Case Number: 2002-00175 HLS MM NASRULLA KHAN

Agent: MCKEE

Requested By: CPT MITCH MCKEE

MNI #: 20020273

Date Reported: 11/08/2002

Date & Time Occured: 11/08/2002

Remarks:

Offense:

Property

NO

### Narrative

#### SOURCE

DPS Web page through Col. Randy Johnson

#### SYNOPSIS

A person identifying himself and Nasrulla Khan wrote a complaint on our web page complaining on Ogden City Police for not investigating crimes against him. Through contacts with the FBI I have found out that this person has made various complaints and has filed many law suits that have been dismissed.

#### DETAIL

The following web contact was received from a person stating that his name was Nasrulla Khan.

name :

Nasrulla Khan

Utah\_Resident :

Yes

comments :

I understand your Office handles Homeland Security matters in Utah.

Since 1995, the officials in Utah, including the Ogden City Police, have covered up the evidence of continuing crimes against me and threats on my life, falsified their reports, covered up the names of the alleged criminals, etc. I consider the threats and crimes against me since 1994 to be acts of terrorism against me. The Police did not investigate the evidence and those crimes against me, and did not charge anyone with those continuing crimes and acts of terrorism against me. The officials in Utah have been fully aware of all of these facts, which they have not disputed. I am a U.S. citizen.

I have the names of

those officials and the evidence to support my facts. Please contact me for the evidence and the names of those officials.

My phone number is (801) 621-0995.

I have notified Mr. Tom

Ridge (the Homeland Security Advisor) and President Bush about this.

Sincerely, Nasrulla Khan.

Senders IP Address : 198.60.5.1

Senders Host Name : 198.60.5.1

ADDENDUM "C"

CONSTITUTIONAL PROVISIONS, STATUTES & RULES

**63-2-102. Legislative intent.**

- (1) In enacting this act, the Legislature recognizes two constitutional rights:
  - (a) the public's right of access to information concerning the conduct of the public's business; and
  - (b) the right of privacy in relation to personal data gathered by governmental entities.
- (2) The Legislature also recognizes a public policy interest in allowing a government to restrict access to certain records, as specified in this chapter, for the public good.
- (3) It is the intent of the Legislature to:
  - (a) promote the public's right of easy and reasonable access to unrestricted public records;
  - (b) specify those conditions under which the public interest in allowing restrictions on access to records may outweigh the public's interest in access;
  - (c) prevent abuse of confidentiality by governmental entities by permitting confidential treatment of records only as provided in this chapter;
  - (d) provide guidelines for both disclosure and restrictions on access to government records, which are based on the equitable weighing of the pertinent interests and which are consistent with nationwide standards of information practices;
  - (e) favor public access when, in the application of this act, countervailing interests are of equal weight; and
  - (f) establish fair and reasonable records management practices.

Amended by Chapter 280, 1992 General Session

### **63-2-103. Definitions.**

As used in this chapter:

(1) "Audit" means:

(a) a systematic examination of financial, management, program, and related records for the purpose of determining the fair presentation of financial statements, adequacy of internal controls, or compliance with laws and regulations; or

(b) a systematic examination of program procedures and operations for the purpose of determining their effectiveness, economy, efficiency, and compliance with statutes and regulations.

(2) "Chronological logs" mean the regular and customary summary records of law enforcement agencies and other public safety agencies that show:

(a) the time and general nature of police, fire, and paramedic calls made to the agency;

(b) and any arrests or jail bookings made by the agency.

(3) "Classification," "classify," and their derivative forms mean determining whether a record series, record, or information within a record is public, private, controlled, protected, or exempt from disclosure under Subsection **63-2-201(3)(b)**.

(4) (a) "Computer program" means:

(i) a series of instructions or statements that permit the functioning of a computer system in a manner designed to provide storage, retrieval, and manipulation of data from the computer system; and

(ii) any associated documentation and source material that explain how to operate the computer program.

(b) "Computer program" does not mean:

(i) the original data, including numbers, text, voice, graphics, and images;

(ii) analysis, compilation, and other manipulated forms of the original data produced by use of the program; or

(iii) the mathematical or statistical formulas, excluding the underlying mathematical algorithms contained in the program, that would be used if the manipulated forms of the original data were to be produced manually.

(5) (a) "Contractor" means:

(i) any person who contracts with a governmental entity to provide goods or services directly to a governmental entity; or

(ii) any private, nonprofit organization that receives funds from a governmental entity.

(b) "Contractor" does not mean a private provider.

(6) "Controlled record" means a record containing data on individuals that is controlled as provided by Section **63-2-303**.

(7) "Designation," "designate," and their derivative forms mean indicating, based on a governmental entity's familiarity with a record series or based on a governmental entity's review of a reasonable sample of a record series, the primary classification that a majority of records in a record series would be given if classified and the classification that other records typically present in the record series would be given if classified.

(8) "Elected official" means each person elected to a state office, county office, municipal office, school board or school district office, local district office, or special service district office, but does not include judges.

(9) "Explosive" means a chemical compound, device, or mixture:

(a) commonly used or intended for the purpose of producing an explosion; and

(b) that contains oxidizing or combustible units or other ingredients in proportions, quantities, or packing so that:

(i) an ignition by fire, friction, concussion, percussion, or detonator of any part of the compound or mixture may cause a sudden generation of highly heated gases; and

(ii) the resultant gaseous pressures are capable of:

(A) producing destructive effects on contiguous objects; or

(B) causing death or serious bodily injury.

(10) "Government audit agency" means any governmental entity that conducts an audit.

(11) (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 Board, 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 Office of the Court Administrator, 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 **63-2-701**, this chapter shall apply to the political subdivision to the extent specified in Section **63-2-701** or as specified in any other section of this chapter that specifically refers to political subdivisions.

(b) "Governmental entity" also means 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.

(12) "Gross compensation" means every form of remuneration payable for a given period to an individual for services provided including salaries, commissions, vacation pay, severance pay, bonuses, and any board, rent, housing, lodging, payments in kind, and any similar benefit received from the individual's employer.

(13) "Individual" means a human being.

(14) (a) "Initial contact report" means an initial written or recorded report, however titled, prepared by peace officers engaged in public patrol or response duties describing official actions initially taken in response to either a public complaint about or the discovery of an apparent violation of law, which report may describe:

(i) the date, time, location, and nature of the complaint, the incident, or offense;

(ii) names of victims;

(iii) the nature or general scope of the agency's initial actions taken in response to the incident;

(iv) the general nature of any injuries or estimate of damages sustained in the incident;

(v) the name, address, and other identifying information about any person arrested or charged in connection with the incident; or

(vi) the identity of the public safety personnel, except undercover personnel, or

prosecuting attorney involved in responding to the initial incident.

(b) Initial contact reports do not include follow-up or investigative reports prepared after the initial contact report. However, if the information specified in Subsection (14)(a) appears in follow-up or investigative reports, it may only be treated confidentially if it is private, controlled, protected, or exempt from disclosure under Subsection **63-2-201(3)(b)**.

(15) "Legislative body" means the Legislature.

(16) "Notice of compliance" means a statement confirming that a governmental entity has complied with a records committee order.

(17) "Person" means:

(a) an individual;

(b) a nonprofit or profit corporation;

(c) a partnership;

(d) a sole proprietorship;

- (e) other type of business organization; or
- (f) any combination acting in concert with one another.

(18) "Private provider" means any person who contracts with a governmental entity to provide services directly to the public.

(19) "Private record" means a record containing data on individuals that is private as provided by Section **63-2-302**.

(20) "Protected record" means a record that is classified protected as provided by Section **63-2-304**.

(21) "Public record" means a record that is not private, controlled, or protected and that is not exempt from disclosure as provided in Subsection **63-2-201(3)(b)**.

(22) (a) "Record" means a book, letter, document, paper, map, plan, photograph, film, card, tape, recording, electronic data, or other documentary material regardless of physical form or characteristics:

(i) that is prepared, owned, received, or retained by a governmental entity or political subdivision; and

(ii) where all of the information in the original is reproducible by photocopy or other mechanical or electronic means.

(b) "Record" does not mean:

(i) a personal note or personal communication prepared or received by an employee or officer of a governmental entity in the employee's or officer's private capacity;

(ii) a temporary draft or similar material prepared for the originator's personal use or prepared by the originator for the personal use of an individual for whom the originator is working;

(iii) material that is legally owned by an individual in the individual's private capacity;

(iv) material to which access is limited by the laws of copyright or patent unless the copyright or patent is owned by a governmental entity or political subdivision;

(v) proprietary software;

(vi) junk mail or a commercial publication received by a governmental entity or an official or employee of a governmental entity;

(vii) a book that is cataloged, indexed, or inventoried and contained in the collections of a library open to the public;

(viii) material that is cataloged, indexed, or inventoried and contained in the collections

of a library open to the public, regardless of physical form or characteristics of the material;

(ix) a daily calendar or other personal note prepared by the originator for the originator's personal use or for the personal use of an individual for whom the originator is working;

(x) a computer program that is developed or purchased by or for any governmental entity for its own use;

(xi) a note or internal memorandum prepared as part of the deliberative process by:

(A) a member of the judiciary;

(B) an administrative law judge;

(C) a member of the Board of Pardons and Parole; or

(D) a member of any other body charged by law with performing a quasi-judicial function; or

(xii) a telephone number or similar code used to access a mobile communication device that is used by an employee or officer of a governmental entity, provided that the employee or officer of the governmental entity has designated at least one business telephone number that is a public record as provided in Section **63-2-301**.

(23) "Record series" means a group of records that may be treated as a unit for purposes of designation, description, management, or disposition.

(24) "Records committee" means the State Records Committee created in Section **63-2-501**.

(25) "Records officer" means the individual appointed by the chief administrative officer of each governmental entity, or the political subdivision to work with state archives in the care, maintenance, scheduling, designation, classification, disposal, and preservation of records.

(26) "Schedule," "scheduling," and their derivative forms mean the process of specifying the length

of time each record series should be retained by a governmental entity for administrative, legal, fiscal, or historical purposes and when each record series should be transferred to the state archives or destroyed.

(27) "Sponsored research" means research, training, and other sponsored activities as defined by the federal Executive Office of the President, Office of Management and Budget:

(a) conducted:

(i) by an institution within the state system of higher education defined in Section **53B-1-102**; and

(ii) through an office responsible for sponsored projects or programs; and

(b) funded or otherwise supported by an external:

(i) person that is not created or controlled by the institution within the state system of higher education; or

(ii) federal, state, or local governmental entity.

(28) "State archives" means the Division of Archives and Records Service created in Section **63-2-901**.

(29) "State archivist" means the director of the state archives.

(30) "Summary data" means statistical records and compilations that contain data derived from private, controlled, or protected information but that do not disclose private, controlled, or protected information.

Amended by Chapter 329, 2007 General Session



**63-2-201. Right to inspect records and receive copies of records.**

(1) 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 Sections **63-2-203** and **63-2-204**.

(2) A record is public unless otherwise expressly provided by statute.

(3) The following records are not public:

(a) a record that is private, controlled, or protected under Sections **63-2-302**, **63-2-302.5**, **63-2-303**, and **63-2-304**; 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.

(4) Only a record specified in Section **63-2-302**, **63-2-302.5**, **63-2-303**, or **63-2-304** may be classified private, controlled, or protected.

(5) (a) A governmental entity may not disclose a record that is private, controlled, or protected to any person except as provided in Subsection (5)(b), Subsection (5)(c), Section **63-2-202**, **63-2-206**, or **63-2-302.5**.

(b) A governmental entity may disclose a record that is private under Subsection **63-2-302(2)** or protected under Section **63-2-304** to persons other than those specified in Section **63-2-202** or **63-2-206** if the head of a governmental entity, or a designee, determines that:

(i) there is no interest in restricting access to the record; or

(ii) the interests favoring access outweighs the interest favoring restriction of access.

(c) In addition to the disclosure under Subsection (5)(b), a governmental entity may disclose a record that is protected under Subsection **63-2-304(51)** if:

(i) the head of the governmental entity, or a designee, determines that the disclosure:

(A) is mutually beneficial to:

(I) the subject of the record;

(II) the governmental entity; and

(III) the public; and

(B) serves a public purpose related to:

(I) public safety; or

(II) consumer protection; and

(ii) the person who receives the record from the governmental entity agrees not to use or allow the use of the record for advertising or solicitation purposes.

(6) (a) The disclosure of a record to which access is governed or limited pursuant to court rule, another state statute, federal statute, or federal regulation, including a record for which access is governed or limited as a condition of participation in a state or federal program or for receiving state or federal funds, is governed by the specific provisions of that statute, rule, or regulation.

(b) This chapter applies to records described in Subsection (6)(a) insofar as this chapter is not inconsistent with the statute, rule, or regulation.

(7) A governmental entity shall provide a person with a certified copy of a record if:

(a) the person requesting the record has a right to inspect it;

(b) the person identifies the record with reasonable specificity; and

(c) the person pays the lawful fees.

(8) (a) In response to a request, a governmental entity is not required to:

(i) create a record;

(ii) compile, format, manipulate, package, summarize, or tailor information;

(iii) provide a record in a particular format, medium, or program not currently maintained by the governmental entity;

(iv) fulfill a person's records request if the request unreasonably duplicates prior records requests from that person; or

(v) fill a person's records request if:

(A) the record requested is accessible in the identical physical form and content in a public publication or product produced by the governmental entity receiving the request;

(B) the governmental entity provides the person requesting the record with the public publication or product; and

(C) the governmental entity specifies where the record can be found in the public publication or product.

(b) Upon request, a governmental entity may provide a record in a particular form under Subsection (8)(a)(ii) or (iii) if:

(i) the governmental entity determines it is able to do so without unreasonably interfering with the governmental entity's duties and responsibilities; and

(ii) the requester agrees to pay the governmental entity for providing the record in the requested form in accordance with Section **63-2-203**.

(9) (a) A governmental entity may allow a person requesting more than 50 pages of records to copy the records if:

(i) the records are contained in files that do not contain records that are exempt from disclosure, or the records may be segregated to remove private, protected, or controlled information from disclosure; and

(ii) the governmental entity provides reasonable safeguards to protect the public from the potential for loss of a public record.

(b) When the requirements of Subsection (9)(a) are met, the governmental entity may:

(i) provide the requester with the facilities for copying the requested records and require that the requester make the copies; or

(ii) allow the requester to provide the requester's own copying facilities and personnel to make the copies at the governmental entity's offices and waive the fees for copying the records.

(10) (a) A governmental entity that owns an intellectual property right and that offers the intellectual property right for sale or license may control by ordinance or policy the duplication and distribution of the material based on terms the governmental entity considers to be in the public interest.

(b) Nothing in this chapter shall be construed to limit or impair the rights or protections granted to the governmental entity under federal copyright or patent law as a result of its ownership of the intellectual property right.

(11) A governmental entity may not use the physical form, electronic or otherwise, in which a record is stored to deny, or unreasonably hinder the rights of a person to inspect and receive a copy of a record under this chapter.

(12) A governmental entity may provide access to an electronic copy of a record in lieu of providing access to its paper equivalent.

Amended by Chapter 174, 2006 General Session

**63-2-204. Requests -- Time limit for response and extraordinary circumstances.**

(1) A person making a request for a record shall furnish the governmental entity with a written request containing:

- (a) the person's name, mailing address, and daytime telephone number, if available; and
- (b) a description of the record requested that identifies the record with reasonable specificity.

(2) (a) Subject to Subsection (2)(b), a person making a request for a record shall submit the request to the governmental entity that prepares, owns, or retains the record.

(b) In response to a request for a record, a governmental entity may not provide a record that it has received under Section **63-2-206** as a shared record if the record was shared for the purpose of auditing, if the governmental entity is authorized by state statute to conduct an audit.

(c) If a governmental entity is prohibited from providing a record under Subsection (2)(b), it shall:

- (i) deny the records request; and
- (ii) inform the person making the request that records requests must be submitted to the governmental entity that prepares, owns, or retains the record.

(d) A governmental entity may make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, specifying where and to whom requests for access shall be directed.

(3) (a) As soon as reasonably possible, but no later than ten business days after receiving a written request, or five business days after receiving a written request if the requester demonstrates that expedited response to the record request benefits the public rather than the person, the governmental entity shall respond to the request by:

- (i) approving the request and providing the record;
- (ii) denying the request;
- (iii) notifying the requester that it does not maintain the record and providing, if known, the name and address of the governmental entity that does maintain the record; or
- (iv) notifying the requester that because of one of the extraordinary circumstances listed in Subsection (4), it cannot immediately approve or deny the request.

(b) The notice described in Subsection (3)(a)(iv) shall:

- (i) describe the circumstances relied upon; and
- (ii) specify the date when the records will be available.

(c) Any person who requests a record to obtain information for a story or report for publication or broadcast to the general public is presumed to be acting to benefit the public rather than a person.

(4) The following circumstances constitute "extraordinary circumstances" that allow a governmental entity to delay approval or denial by an additional period of time as specified in Subsection (5) if the governmental entity determines that due to the extraordinary circumstances it cannot respond within the time limits provided in Subsection (3):

(a) another governmental entity is using the record, in which case the originating governmental entity shall promptly request that the governmental entity currently in possession return the record;

(b) another governmental entity is using the record as part of an audit, and returning the record before the completion of the audit would impair the conduct of the audit;

(c) (i) the request is for a voluminous quantity of records or a record series containing a

substantial number of records;

(ii) the requester seeks a substantial number of records or records series in requests filed within five working days of each other;

(d) the governmental entity is currently processing a large number of records requests;

(e) the request requires the governmental entity to review a large number of records to locate the records requested;

(f) the decision to release a record involves legal issues that require the governmental entity to seek legal counsel for the analysis of statutes, rules, ordinances, regulations, or case law;

(g) segregating information that the requester is entitled to inspect from information that the requester is not entitled to inspect requires extensive editing; or

(h) segregating information that the requester is entitled to inspect from information that the requester is not entitled to inspect requires computer programming.

(5) If one of the extraordinary circumstances listed in Subsection (4) precludes approval or denial within the time specified in Subsection (3), the following time limits apply to the extraordinary circumstances:

(a) for claims under Subsection (4)(a), the governmental entity currently in possession of the record shall return the record to the originating entity within five business days of the request for the return unless returning the record would impair the holder's work;

(b) for claims under Subsection (4)(b), the originating governmental entity shall notify the requester when the record is available for inspection and copying;

(c) for claims under Subsections (4)(c), (d), and (e), the governmental entity shall:

(i) disclose the records that it has located which the requester is entitled to inspect;

(ii) provide the requester with an estimate of the amount of time it will take to finish the work required to respond to the request;

(iii) complete the work and disclose those records that the requester is entitled to inspect as soon as reasonably possible; and

(iv) for any person that does not establish a right to an expedited response as authorized by Subsection (3)(a), a governmental entity may choose to:

(A) require the person to provide for copying of the records as provided in Subsection **63-2-201(9)**; or

(B) treat a request for multiple records as separate record requests, and respond sequentially to each request;

(d) for claims under Subsection (4)(f), the governmental entity shall either approve or deny the request within five business days after the response time specified for the original request has expired;

(e) for claims under Subsection (4)(g), the governmental entity shall fulfill the request within 15 business days from the date of the original request; or

(f) for claims under Subsection (4)(h), the governmental entity shall complete its programming and disclose the requested records as soon as reasonably possible.

(6) (a) If a request for access is submitted to an office of a governmental entity other than that specified by rule in accordance with Subsection (2), the office shall promptly forward the request to the appropriate office.

(b) If the request is forwarded promptly, the time limit for response begins when the record is received by the office specified by rule.

(7) If the governmental entity fails to provide the requested records or issue a denial

within the specified time period, that failure is considered the equivalent of a determination denying access to the record.

Amended by Chapter 64, 2006 General Session

**63-2-205. Denials.**

(1) If the governmental entity denies the request in whole or part, it shall provide a notice of denial to the requester either in person or by sending the notice to the requester's address.

(2) The notice of denial shall contain the following information:

(a) a description of the record or portions of the record to which access was denied, provided that the description does not disclose private, controlled, or protected information or information exempt from disclosure under Subsection **63-2-201(3)(b)**;

(b) citations to the provisions of this chapter, court rule or order, another state statute, federal statute, or federal regulation that exempt the record or portions of the record from disclosure, provided that the citations do not disclose private, controlled, or protected information or information exempt from disclosure under Subsection **63-2-201(3)(b)**;

(c) a statement that the requester has the right to appeal the denial to the chief administrative officer of the governmental entity; and

(d) the time limits for filing an appeal, and the name and business address of the chief administrative officer of the governmental entity.

(3) Unless otherwise required by a court or agency of competent jurisdiction, a governmental entity may not destroy or give up custody of any record to which access was denied until the period for an appeal has expired or the end of the appeals process, including judicial appeal.

Amended by Chapter 280, 1992 General Session

**63-2-401. Appeal to head of governmental entity.**

(1) (a) Any person aggrieved by a governmental entity's access determination under this chapter, including a person not a party to the governmental entity's proceeding, may appeal the determination within 30 days to the chief administrative officer of the governmental entity by filing a notice of appeal.

(b) If a governmental entity claims extraordinary circumstances and specifies the date when the records will be available under Subsection 63-2-204(3), and, if the requester believes the extraordinary circumstances do not exist or that the time specified is unreasonable, the requester may appeal the governmental entity's claim of extraordinary circumstances or date for compliance within 30 days after notification of a claim of extraordinary circumstances by the governmental entity, despite the lack of a "determination" or its equivalent under Subsection 63-2-204(7).

(2) The notice of appeal shall contain the following information:

- (a) the petitioner's name, mailing address, and daytime telephone number; and
- (b) the relief sought.

(3) The petitioner may file a short statement of facts, reasons, and legal authority in support of the appeal.

(4) (a) If the appeal involves a record that is the subject of a business confidentiality claim under Section 63-2-308, the chief administrative officer shall:

(i) send notice of the requester's appeal to the business confidentiality claimant within three business days after receiving notice, except that if notice under this section must be given to more than 35 persons, it shall be given as soon as reasonably possible; and

(ii) send notice of the business confidentiality claim and the schedule for the chief administrative officer's determination to the requester within three business days after receiving notice of the requester's appeal.

(b) The claimant shall have seven business days after notice is sent by the administrative officer to submit further support for the claim of business confidentiality.

(5) (a) The chief administrative officer shall make a determination on the appeal within the following period of time:

(i) within five business days after the chief administrative officer's receipt of the notice of appeal; or

(ii) within twelve business days after the governmental entity sends the requester's notice of appeal to a person who submitted a claim of business confidentiality.

(b) If the chief administrative officer fails to make a determination within the time specified in Subsection (5)(a), the failure shall be considered the equivalent of an order denying the appeal.

(c) The provisions of this section notwithstanding, the parties participating in the proceeding may, by agreement, extend the time periods specified in this section.

(6) The chief administrative officer may, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or nondisclosure, order the disclosure of information properly classified as private under Section 63-2-302(2) or protected under Section 63-2-304 if the interests favoring access outweigh the interests favoring restriction of access.

(7) The governmental entity shall send written notice of the determination of the chief administrative officer to all participants. If the chief administrative officer affirms the denial in

whole or in part, the denial shall include a statement that the requester has the right to appeal the denial to either the records committee or district court, the time limits for filing an appeal, and the name and business address of the executive secretary of the records committee.

(8) A person aggrieved by a governmental entity's classification or designation determination under this chapter, but who is not requesting access to the records, may appeal that determination using the procedures provided in this section. If a nonrequester is the only appellant, the procedures provided in this section shall apply, except that the determination on the appeal shall be made within 30 days after receiving the notice of appeal.

(9) The duties of the chief administrative officer under this section may be delegated.

**63-2-403. Appeals to the records committee.**

(1) A petitioner, including an aggrieved person who did not participate in the appeal to the governmental entity's chief administrative officer, may appeal to the records committee by filing a notice of appeal with the executive secretary no later than:

(a) 30 days after the chief administrative officer of the governmental entity has granted or denied the record request in whole or in part, including a denial under Subsection **63-2-204(7)**;

(b) 45 days after the original request for a record if:

(i) the circumstances described in Subsection **63-2-401(1)(b)** occur; and

(ii) the chief administrative officer failed to make a determination under Section **63-2-401**.

(2) The notice of appeal shall contain the following information:

(a) the petitioner's name, mailing address, and daytime telephone number;

(b) a copy of any denial of the record request; and

(c) the relief sought.

(3) The petitioner may file a short statement of facts, reasons, and legal authority in support of the appeal.

(4) (a) Except as provided in Subsection (4)(b), no later than five business days after receiving a notice of appeal, the executive secretary of the records committee shall:

(i) schedule a hearing for the records committee to discuss the appeal at the next regularly scheduled committee meeting falling at least 14 days after the date the notice of appeal is filed but no longer than 52 calendar days after the date the notice of appeal was filed except that the records committee may schedule an expedited hearing upon application of the petitioner and good cause shown;

(ii) send a copy of the notice of hearing to the petitioner; and

(iii) send a copy of the notice of appeal, supporting statement, and a notice of hearing to:

(A) each member of the records committee;

(B) the records officer and the chief administrative officer of the governmental entity from which the appeal originated;

(C) any person who made a business confidentiality claim under Section **63-2-308** for a record that is the subject of the appeal; and

(D) all persons who participated in the proceedings before the governmental entity's chief administrative officer.

(b) (i) The executive secretary of the records committee may decline to schedule a hearing if the record series that is the subject of the appeal has been found by the committee in a previous hearing involving the same government entity to be appropriately classified as private, controlled, or protected.

(ii) (A) If the executive secretary of the records committee declines to schedule a hearing, the executive secretary of the records committee shall send a notice to the petitioner indicating that the request for hearing has been denied and the reason for the denial.

(B) The committee shall make rules to implement this section as provided by Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(5) (a) A written statement of facts, reasons, and legal authority in support of the governmental entity's position must be submitted to the executive secretary of the records committee not later than five business days before the hearing.

(b) The governmental entity shall send a copy of the written statement to the petitioner

by first class mail, postage prepaid. The executive secretary shall forward a copy of the written statement to each member of the records committee.

(6) (a) No later than ten business days after the notice of appeal is sent by the executive secretary, a person whose legal interests may be substantially affected by the proceeding may file a request for intervention before the records committee.

(b) Any written statement of facts, reasons, and legal authority in support of the intervener's position shall be filed with the request for intervention.

(c) The person seeking intervention shall provide copies of the statement described in Subsection (6)

(b) to all parties to the proceedings before the records committee.

(7) The records committee shall hold a hearing within the period of time described in Subsection (4).

(8) At the hearing, the records committee shall allow the parties to testify, present evidence, and comment on the issues. The records committee may allow other interested persons to comment on the issues.

(9) (a) The records committee may review the disputed records. However, if the committee is weighing the various interests under Subsection (11), the committee must review the disputed records. The review shall be in camera.

(b) Members of the records committee may not disclose any information or record reviewed by the committee in camera unless the disclosure is otherwise authorized by this chapter.

(10) (a) Discovery is prohibited, but the records committee may issue subpoenas or other orders to compel production of necessary evidence.

(b) When the subject of a records committee subpoena disobeys or fails to comply with the subpoena, the records committee may file a motion for an order to compel obedience to the subpoena with the district court.

(c) The records committee's review shall be de novo.

(11) (a) No later than five business days after the hearing, the records committee shall issue a signed order either granting the petition in whole or in part or upholding the determination of the governmental entity in whole or in part.

(b) The records committee may, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or nondisclosure, order the disclosure of information properly classified as private, controlled, or protected if the public interest favoring access outweighs the interest favoring restriction of access.

(c) In making a determination under Subsection (11)(b), the records committee shall consider and, where appropriate, limit the requester's use and further disclosure of the record in order to protect:

(i) privacy interests in the case of a private or controlled record;

(ii) business confidentiality interests in the case of a record protected under Subsection **63-2-304**(1), (2), (40)(a)(ii), or (40)(a)(vi); and

(iii) privacy interests or the public interest in the case of other protected records.

(12) The order of the records committee shall include:

(a) a statement of reasons for the decision, including citations to this chapter, court rule or order, another state statute, federal statute, or federal regulation that governs disclosure of the record, provided that the citations do not disclose private, controlled, or protected information;

(b) a description of the record or portions of the record to which access was ordered or

denied, provided that the description does not disclose private, controlled, or protected information or information exempt from disclosure under Subsection **63-2-201**(3)(b);

(c) a statement that any party to the proceeding before the records committee may appeal the records committee's decision to district court; and

(d) a brief summary of the appeals process, the time limits for filing an appeal, and a notice that in order to protect its rights on appeal, the party may wish to seek advice from an attorney.

(13) If the records committee fails to issue a decision within 57 calendar days of the filing of the notice of appeal, that failure shall be considered the equivalent of an order denying the appeal. The petitioner shall notify the records committee in writing if the petitioner considers the appeal denied.

(14) (a) Unless a notice of intent to appeal is filed under Subsection (14)(b), each party to the proceeding shall comply with the order of the records committee.

(b) If a party disagrees with the order of the records committee, that party may file a notice of intent to appeal the order of the records committee.

(c) If the records committee orders the governmental entity to produce a record and no appeal is filed, or if, as a result of the appeal, the governmental entity is required to produce a record, the governmental entity shall:



- (i) produce the record; and
- (ii) file a notice of compliance with the records committee.
- (d) (i) If the governmental entity that is ordered to produce a record fails to file a notice of compliance or a notice of intent to appeal, the records committee may do either or both of the following:
  - (A) impose a civil penalty of up to \$500 for each day of continuing noncompliance; or
  - (B) send written notice of the governmental entity's noncompliance to:
    - (I) the governor for executive branch entities;
    - (II) the Legislative Management Committee for legislative branch entities; and
    - (III) the Judicial Council for judicial branch agencies entities.
- (ii) In imposing a civil penalty, the records 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.

Amended by Chapter 284, 2006 General Session

#### **63-2-404. Judicial review.**

(1) (a) Any party to a proceeding before the records committee may petition for judicial review by the district court of the records committee's order.

(b) The petition shall be filed no later than 30 days after the date of the records committee's order.

(c) The records committee is a necessary party to the petition for judicial review.

(d) The executive secretary of the records committee shall be served with notice of the petition in accordance with the Utah Rules of Civil Procedure.

(2) (a) A requester may petition for judicial review by the district court of a governmental entity's determination as specified in Subsection **63-2-402** (1)(b).

(b) The requester shall file a petition no later than:

(i) 30 days after the governmental entity has responded to the records request by either providing the requested records or denying the request in whole or in part;

(ii) 35 days after the original request if the governmental entity failed to respond to the request; or

(iii) 45 days after the original request for records if:

(A) the circumstances described in Subsection **63-2-401**(1)(b) occur; and

(B) the chief administrative officer failed to make a determination under Section **63-2-401**.

(3) The petition for judicial review shall be a complaint governed by the Utah Rules of Civil Procedure and shall contain:

(a) the petitioner's name and mailing address;

(b) a copy of the records committee order from which the appeal is taken, if the petitioner brought a prior appeal to the records committee;

(c) the name and mailing address of the governmental entity that issued the initial determination with a copy of that determination;

(d) a request for relief specifying the type and extent of relief requested; and

(e) a statement of the reasons why the petitioner is entitled to relief.

(4) If the appeal is based on the denial of access to a protected record, the court shall allow the claimant of business confidentiality to provide to the court the reasons for the claim of business confidentiality.

(5) All additional pleadings and proceedings in the district court are governed by the Utah Rules of Civil Procedure.

(6) The district court may review the disputed records. The review shall be in camera.

(7) The court shall:

(a) make its decision de novo, but allow introduction of evidence presented to the records committee;

(b) determine all questions of fact and law without a jury; and

(c) decide the issue at the earliest practical opportunity.

(8) (a) The court may, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or nondisclosure, order the disclosure of information properly classified as private, controlled, or protected if the interest favoring access outweighs the interest favoring restriction of access.

(b) The court shall consider and, where appropriate, limit the requester's use and further disclosure of the record in order to protect privacy interests in the case of private or controlled

records, business confidentiality interests in the case of records protected under Subsections **63-2-304**(1) and (2), and privacy interests or the public interest in the case of other protected records.

Amended by Chapter 133, 1995 General Session

**R35-1-4. Committee Minutes.**

(1) All meetings of the Committee shall be recorded. Access to the audio recordings shall be provided by the Executive Secretary at the Utah State Archives, Research Center.

(2) Written minutes of the meetings and appeal hearings shall be maintained by the Executive Secretary. A copy of the approved minutes shall be made available for public access at the Utah State Archives.

**KEY: government documents, state records committee, records appeal hearings**

**Date of Enactment or Last Substantive Amendment: August 9, 2006**

**Notice of Continuation: July 2, 2004**

**Authorizing, and Implemented or Interpreted Law: 63-2-502(2)(a)**

**R35. Administrative Services, Records Committee.**

**R35-2. Declining Appeal Hearings.**

**R35-2-1. Authority and Purpose.**

In accordance with Section 63-2-502 and Subsection 63-2-403(4), Utah Code, this rule establishes the procedure declining to schedule hearings by the Executive Secretary of the Records Committee.

**R35-2-2. Declining Requests for Hearings.**

(a) In order to decline a request for a hearing under Subsection 63-2-403(4), the Executive Secretary shall consult with the chair of the Committee and at least one other member of the Committee as selected by the chair.

(b) The claim that a record does not exist does not constitute a denial unless the petitioner can provide sufficient evidence in his or her statement of facts, reasons, and legal authority in support of appeal that record did exist at one time. A determination that sufficient facts have or have not been alleged shall be made by the chair of the Committee. In the circumstance that sufficient facts have not been alleged, the Executive Secretary shall be instructed not to schedule an appeal hearing, and shall inform the petitioner appropriately.

(c) In order to file an appeal the petitioner must submit a copy of their initial records requests, as well as any denial of the records request. The Executive Secretary shall notify the petitioner that a hearing cannot be scheduled until the proper information is submitted.

(d) The chair of the Committee and one other member of the Committee must both agree with the Executive Secretary's recommendation to decline to schedule a hearing. Such a decision shall consider the potential for a public interest claim as may be put forward by the petitioner under the provisions of Subsection 63-2-402(11)(b), Utah Code. A copy of each decision to deny a hearing shall be signed and retained in the file.

(e) The Executive Secretary's notice to the petitioner indicating that the request for hearing has been denied, as provided for in Subsection 63-2-403(4)(ii), Utah Code, shall include a copy of the previous order of the Committee holding the records series at issue appropriately classified.

(f) The Executive Secretary shall report on each of the hearings declined at each regularly scheduled meeting of the Committee in order to provide a public record of the actions taken.

(g) If a Committee member has requested a discussion to reconsider the decisions to decline a hearing, the Committee may, after discussion and by a majority vote, choose to reverse the decision of the Executive Secretary and hold a hearing. Any discussion of reconsideration shall be limited to those Committee members then present, and shall be based only on two questions: (1) whether the records being requested were covered by a previous order of the Committee, and/or (2) whether the petitioner has, or is likely to, put forth a public interest claim. Neither the petitioner nor the agency whose records are requested shall be heard at this time. If the Committee votes to hold a hearing, the

Executive Secretary shall schedule it on the agenda of the next regularly scheduled Committee meeting.

(h) The Executive Secretary shall compile and include in an annual report to the Committee a complete documented list of all hearings held and all hearings declined.

**KEY: government documents, state records committee, records appeal hearings**

**March 4, 2005**

**Notice of Continuation July 2, 2004**

**63-2-403(4)**

## Utah State Archives

Page: 2

AGENCY: Dept. of Public Safety

SERIES: 2266

3

TITLE: Annual reports

VARIANT Biennial reports

DATES: 1950-

ARRANGEMENT: Chronological

**DESCRIPTION:**

This series contains reports of Department of Public Safety activities from the previous year with information pertaining to agency activities, agency staff, public safety, drivers licenses, emergency management, law enforcement, criminal identification, crime, fire, peace officers, and fiscal and financial operations.

**RETENTION:**

Retain until transferred to the State Archives.

**DISPOSITION:**

Transfer to the State Archives with authority to weed.

**STATE RECORDS COMMITTEE STATUS:**

This retention was approved by the State Records Committee on 07/01/1990.

**FORMAT MANAGEMENT:**

Paper: Retain in State Archives permanently with authority to weed.

**APPRAISAL:**

This disposition is based on Utah State General Records Retention Schedule, Schedule 1, Item 25.

Utah State Archives

Page: 14

AGENCY: Dept. of Public Safety

SERIES: 81804

1

TITLE: Records

DATES: undated

ARRANGEMENT: numerical

DESCRIPTION:

STATE RECORDS COMMITTEE STATUS:

This retention has not been approved by the State Records Committee.

FORMAT MANAGEMENT:

Paper: Retain in Office until microfilmed and then destroy  
provided microfilm has passed inspection.

Microfilm master: Retain in State Archives permanently with  
authority to weed.

AGENCY: Dept. of Public Safety. Investigation Division

SERIES: 84406

3

TITLE: Daily activity reports

VARIANT DAR

DATES: 1977-

ARRANGEMENT: Alphabetical by last name

ANNUAL ACCUMULATION: 1.50 cubic feet.

DESCRIPTION:

These reports are used to monitor the daily activities of agents and personnel of the office and are used to aid in the preparation of the time sheets. They include information on the daily activities and contacts made by Bureau personnel, name, area working in, and all activities of the day.

RETENTION:

Retain 4 years.

DISPOSITION:

Destroy.

STATE RECORDS COMMITTEE STATUS:

This retention was approved by the State Records Committee on 12/01/1989.

FORMAT MANAGEMENT:

Paper: Retain in Office for 1 year and then transfer to State Records Center. Retain in State Records Center for 3 years and then destroy.

APPRAISAL:

Administrative Fiscal

The retention is based on the office need.

PRIMARY CLASSIFICATION:

Protected



Utah State Archives

Page: 9

AGENCY: Dept. of Public Safety. Investigation Division

SERIES: 84410

3

TITLE: Investigative case number book

VARIANT Case Book

DATES: 1969-

ARRANGEMENT: Numerical by case number

ANNUAL ACCUMULATION:

DESCRIPTION:

This book is used to document the issuing of investigative case numbers and serves as a back-up to the index cards. This includes the case number, defendant's name, date, location, type of evidence, violation and the agent assigned to that particular case.

RETENTION:

Retain 10 years.

DISPOSITION:

Destroy.

STATE RECORDS COMMITTEE STATUS:

This retention was approved by the State Records Committee on 12/01/1989.

FORMAT MANAGEMENT:

Paper: Retain in Office for 10 years and then destroy.

APPRAISAL:

Administrative

PRIMARY CLASSIFICATION:

Protected

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**Utah State Archives**

**Page: 11**

**AGENCY:** Dept. of Public Safety. Investigation Division

**SERIES:** 84416

**3**

**TITLE:** Law enforcement intelligence unit files

**VARIANT LEIU**

**DATES:** 1978-

**ARRANGEMENT:** Numerical by identification number, thereunder alphabetical by name

**ANNUAL ACCUMULATION:** 10.00 cubic feet.

**DESCRIPTION:**

This file is used to gather information (intelligence) about persons, places, organizations, criminal or suspect. This would include a physical description, any information or knowledge of the past history of persons, criminal history, etc. This gathers and collects information nationwide with law enforcement agencies all over the United States.

**RETENTION:**

Retain 7 years.

**DISPOSITION:**

Destroy.

**STATE RECORDS COMMITTEE STATUS:**

This retention was approved by the State Records Committee on 12/01/1989.

**FORMAT MANAGEMENT:**

Paper: Retain in Office for 5 years and then transfer to State Records Center. Retain in State Records Center for 2 years and then destroy.

Computer data files: Retain in Office for 7 years and then delete provided these files are reviewed every two years.

**APPRAISAL:**

Administrative Legal

**PRIMARY CLASSIFICATION:**

Protected

**Utah State Archives**

**Page: 3**

**AGENCY:** Dept. of Public Safety. Administrative Services Division

**SERIES:** 10546

**3**

**TITLE:** GRAMA correspondence and records

**DATES:** 1992-

**ARRANGEMENT:** Alphabetical by surname

**ANNUAL ACCUMULATION:** 0.50 cubic feet.

**DESCRIPTION:**

These are records related to the Government Records Access and Management Act (GRAMA) and the public's request for information. Included are request forms and correspondence.

**RETENTION:**

Retain 2 years after final agency action.

**DISPOSITION:**

Destroy.

**STATE RECORDS COMMITTEE STATUS:**

This retention was approved by the State Records Committee on 07/01/1990.

**FORMAT MANAGEMENT:**

Paper: Retain in Office for 2 years after final agency action and then destroy.

**APPRAISAL:**

This disposition is based on Utah State General Records Retention Schedule, Schedule 1, Item 36.

**PRIMARY CLASSIFICATION:**

Public

## Utah State Archives

Page: 25

AGENCY: Dept. of Public Safety. Division of Emergency Services and Homeland Security

SERIES: 6314

3

TITLE: Personnel records

DATES: 1969-

ARRANGEMENT: Chronological, thereunder alphabetical by name

TOTAL VOLUME:

DESCRIPTION:

Complete work history of individual while employed by the State. Refer to UCA 67-18-1, et seq. When an employee transfers to another state agency, the official personnel file must be sent to the new agency.

RETENTION:

Retain 65 years after separation of employee.

DISPOSITION:

Destroy.

STATE RECORDS COMMITTEE STATUS:

This retention was approved by the State Records Committee on 12/01/1992.

FORMAT MANAGEMENT:

Paper: Retain in Office until separation of employee and then transfer to State Records Center. Retain in State Records Center for 65 years and then destroy.

APPRAISAL:

This disposition is based on Utah State General Records Retention Schedule, Schedule 11, Item 2.

PRIMARY CLASSIFICATION:

Private

SECONDARY CLASSIFICATION(S):

Public. Eighteen personal data elements identified by the State Records Committee

## Utah State Archives

Page: 5

AGENCY: Dept. of Public Safety. Division of Emergency Services and Homeland Security

SERIES: 16944

3

TITLE: Correspondence with the Department of Public Safety

DATES: 1979-

ARRANGEMENT: Chronological

ANNUAL ACCUMULATION:

DESCRIPTION:

These are correspondence and memoranda of the Commissioner of Public Safety to and from the Division of Comprehensive Emergency Management. Issues discussed include personnel matters, reports from Police Officers Standards and Training (POST), and the internal management of the division. These records include names, addresses, personnel issues, management issues of the division, and POST reports.

### STATE RECORDS COMMITTEE STATUS:

This retention was approved by the State Records Committee on 03/01/1987.

### FORMAT MANAGEMENT:

Paper: Retain in Office for 1 year and then transfer to State Records Center. Retain in State Records Center for 4 years and then transfer to State Archives with authority to weed.

### APPRAISAL:

Administrative Historical

Because this is administrative and program management correspondence indicating the relation of the division to the goals of Public Safety and the development of policies concerning civil defense, a permanent retention is needed.

### PRIMARY CLASSIFICATION:

Public

### SECONDARY CLASSIFICATION(S):

Private.

Personnel issues not among the 18 personal data elements identified by the State Records Committee.

**Utah State Archives**

**Page: 14**

**AGENCY:** Dept. of Public Safety. Investigation Division

**SERIES:** 84409

**3**

**TITLE:** Requests for Bureau of Criminal Identification records

**VARIANT** BCI Checks

**DATES:** 1987-

**ARRANGEMENT:** Chronological

**ANNUAL ACCUMULATION:** 0.50 cubic feet.

**DESCRIPTION:**

These records are required by the Bureau of Criminal Identification. These checks are recorded and filed for audit purposes. This includes the requesting person, BCI number, individual's name (subject of search), and subject's date of birth.

**RETENTION:**

Retain 3 years.

**DISPOSITION:**

Destroy.

**STATE RECORDS COMMITTEE STATUS:**

This retention was approved by the State Records Committee on 12/01/1989.

**FORMAT MANAGEMENT:**

Paper: Retain in Office for 3 years and then destroy.

**APPRAISAL:**

Administrative Legal

**PRIMARY CLASSIFICATION:**

Protected

## Utah State Archives

Page: 15

AGENCY: Dept. of Public Safety. Investigation Division

SERIES: 84381

3

TITLE: Suspect files index

DATES: 1969-

ARRANGEMENT: Alphabetical by last name of suspect

ANNUAL ACCUMULATION: 1.00 cubic foot.

DESCRIPTION:

This is the manual index used to locate files maintained on suspects of the Utah Division of Investigation. The card states the case number, date of initiation of the case, suspect's name, date of birth, physical description, vehicle description, substance purchased and amount purchased, and any violations which relate back to the investigative file.

RETENTION:

Retain 10 years after investigation is closed.

DISPOSITION:

Destroy.

STATE RECORDS COMMITTEE STATUS:

This retention was approved by the State Records Committee on 12/01/1989.

FORMAT MANAGEMENT:

Paper: Retain in Office for 10 years after investigation closed and then destroy.

APPRAISAL:

Administrative Legal

PRIMARY CLASSIFICATION:

Protected

161

**Utah State Archives**

**Page: 12**

**AGENCY:** Dept. of Public Safety. Investigation Division

**SERIES:** 84411

**3**

**TITLE:** Nationwide check of FBI records

**VARIANT** III Checks

**DATES:** 1987-

**ARRANGEMENT:** Chronological

**ANNUAL ACCUMULATION:** 0.50 cubic feet.

**DESCRIPTION:**

These records are required by regulations from the Bureau of Criminal Identification, and are recorded and filed for audit purposes. These include the person's name and date of birth, requester's initials and the date check was run.

**RETENTION:**

Retain until case is closed.

**DISPOSITION:**

Destroy.

**STATE RECORDS COMMITTEE STATUS:**

This retention was approved by the State Records Committee on 12/01/1989.

**FORMAT MANAGEMENT:**

Paper: Retain in Office until case is closed and then destroy.

**APPRAISAL:**

Administrative

**PRIMARY CLASSIFICATION:**

Protected

162



## Utah State Archives

Page: 3

AGENCY: State Records Committee

SERIES: 24018

3

TITLE: Annual Reports

DATES: 1999-

ARRANGEMENT: Chronological

ANNUAL ACCUMULATION: 0.10 cubic feet.

**DESCRIPTION:**

These records document the appeal requests sent to the State Records Committee each year. The information summarizes the cases for which hearings are scheduled as well as those declined or otherwise remedied without a hearing.

**RETENTION:**

Retain 7 years.

**DISPOSITION:**

Transfer to the State Archives with authority to weed.

**STATE RECORDS COMMITTEE STATUS:**

This retention was approved by the State Records Committee on 07/01/1990.

**FORMAT MANAGEMENT:**

Paper: Retain in Office for 5 years and then transfer to State Records Center. Retain in State Records Center for 2 years and then transfer to State Archives.

Computer data files: Retain in Office until administrative need ends and then delete.

**APPRAISAL:**

Fiscal

This disposition is based on Utah State General Records Retention Schedule, Schedule 1, Item 25.

**PRIMARY CLASSIFICATION:**

Public

163

#### **Rule 4. Process.**

(a) Signing of summons The summons shall be signed and issued by the plaintiff or the plaintiff's attorney. Separate summonses may be signed and served.

(b)(i) Time of service In an action commenced under Rule 3(a)(1), the summons together with a copy of the complaint shall be served no later than 120 days after the filing of the complaint unless the court allows a longer period of time for good cause shown. If the summons and complaint are not timely served, the action shall be dismissed, without prejudice on application of any party or upon the court's own initiative.

(b)(ii) In any action brought against two or more defendants on which service has been timely obtained upon one of them,

(b)(ii)(A) the plaintiff may proceed against those served, and

(b)(ii)(B) the others may be served or appear at any time prior to trial.

(c) Contents of summons

(c)(1) The summons shall contain the name of the court, the address of the court, the names of the parties to the action, and the county in which it is brought. It shall be directed to the defendant, state the name, address and telephone number of the plaintiff's attorney, if any, and otherwise the plaintiff's address and telephone number. It shall state the time within which the defendant is required to answer the complaint in writing, and shall notify the defendant that in case of failure to do so, judgment by default will be rendered against the defendant. It shall state either that the complaint is on file with the court or that the complaint will be filed with the court within ten days of service.

(c)(2) If the action is commenced under Rule 3(a)(2), the summons shall state that the defendant need not answer if the complaint is not filed within 10 days after service and shall state the telephone number of the clerk of the court where the defendant may call at least 13 days after service to determine if the complaint has been filed.

(c)(3) If service is made by publication, the summons shall briefly state the subject matter and the sum of money or other relief demanded, and that the complaint is on file with the court.

(d) Method of Service Unless waived in writing, service of the summons and complaint shall be by one of the following methods:

(d)(1) Personal service The summons and complaint may be served in any state or judicial district of the United States by the sheriff or constable or by the deputy of either, by a United States Marshal or by the marshal's deputy, or by any other person 18 years of age or older at the time of service and not a party to the action or a party's attorney. If the person to be served refuses to accept a copy of the process, service shall be sufficient if the person serving the same shall state the name of the process and offer to deliver a copy thereof. Personal service shall be made as follows:

(d)(1)(A) Upon any individual other than one covered by subparagraphs (B), (C) or (D) below, by delivering a copy of the summons and the complaint to the individual personally, or by leaving a copy at the individual's dwelling house or usual place of abode with some person of suitable age and discretion there residing, or by delivering a copy of the summons and the complaint to an agent authorized by appointment or by law to receive service of process,

(d)(1)(B) Upon an infant (being a person under 14 years) by delivering a copy of the summons and the complaint to the infant and also to the infant's father, mother or guardian or, if none can be found within the state, then to any person having the care and control of the infant, or with whom the infant resides, or in whose service the infant is employed,

(d)(1)(C) Upon an individual judicially declared to be of unsound mind or incapable of conducting the person's own affairs, by delivering a copy of the summons and the complaint to the person and to the person's legal representative if one has been appointed and in the absence of such representative, to the individual, if any, who has care, custody or control of the person,

(d)(1)(D) Upon an individual incarcerated or committed at a facility operated by the state or any of its political subdivisions, by delivering a copy of the summons and the complaint to the person who has the care, custody, or

control of the individual to be served, or to that person's designee or to the guardian or conservator of the individual to be served if one has been appointed, who shall, in any case, promptly deliver the process to the individual served,

(d)(1)(E) Upon any corporation not herein otherwise provided for, upon a partnership or upon an unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and the complaint to an officer, a managing or general agent, or other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy of the summons and the complaint to the defendant. If no such officer or agent can be found within the state, and the defendant has, or advertises or holds itself out as having, an office or place of business within the state or elsewhere, or does business within this state or elsewhere, then upon the person in charge of such office or place of business,

(d)(1)(F) Upon an incorporated city or town, by delivering a copy of the summons and the complaint to the recorder,

(d)(1)(G) Upon a county, by delivering a copy of the summons and the complaint to the county clerk of such county,

(d)(1)(H) Upon a school district or board of education, by delivering a copy of the summons and the complaint to the superintendent or business administrator of the board,

(d)(1)(I) Upon an irrigation or drainage district, by delivering a copy of the summons and the complaint to the president or secretary of its board

(d)(1)(J) Upon the state of Utah, in such cases as by law are authorized to be brought against the state, by delivering a copy of the summons and the complaint to the attorney general and any other person or agency required by statute to be served, and

(d)(1)(K) Upon a department or agency of the state of Utah, or upon any public board, commission or body, subject to suit, by delivering a copy of the summons and the complaint to any member of its governing board, or to its executive employee or secretary

(d)(2) Service by mail or commercial courier service

(d)(2)(A) The summons and complaint may be served upon an individual other than one covered by paragraphs (d)(1)(B) or (d)(1)(C) by mail or commercial courier service in any state or judicial district of the United States provided the defendant signs a document indicating receipt

(d)(2)(B) The summons and complaint may be served upon an entity covered by paragraphs (d)(1)(E) through (d)(1)(I) by mail or commercial courier service in any state or judicial district of the United States provided defendant's agent authorized by appointment or by law to receive service of process signs a document indicating receipt

(d)(2)(C) Service by mail or commercial courier service shall be complete on the date the receipt is signed as provided by this rule

(d)(3) Service in a foreign country. Service in a foreign country shall be made as follows:

(d)(3)(A) by any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents,

(d)(3)(B) if there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice

(d)(3)(B)(i) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction,

(d)(3)(B)(ii) as directed by the foreign authority in response to a letter rogatory or letter of request, or

(d)(3)(B)(iii) unless prohibited by the law of the foreign country, by delivery to the individual personally of a copy of the

summons and the complaint or by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the party to be served, or

(d)(3)(C) by other means not prohibited by international agreement as may be directed by the court.

(d)(4) Other service

(d)(4)(A) Where the identity or whereabouts of the person to be served are unknown and cannot be ascertained through reasonable diligence, where service upon all of the individual parties is impracticable under the circumstances, or where there exists good cause to believe that the person to be served is avoiding service of process, the party seeking service of process may file a motion supported by affidavit requesting an order allowing service by publication or by some other means. The supporting affidavit shall set forth the efforts made to identify, locate or serve the party to be served, or the circumstances which make it impracticable to serve all of the individual parties.

(d)(4)(B) If the motion is granted, the court shall order service of process by publication or by other means, provided that the means of notice employed shall be reasonably calculated, under all the circumstances, to apprise the interested parties of the pendency of the action to the extent reasonably possible or practicable. The court's order shall also specify the content of the process to be served and the event or events as of which service shall be deemed complete. Unless service is by publication, a copy of the court's order shall be served upon the defendant with the process specified by the court.

(d)(4)(C) In any proceeding where summons is required to be published, the court shall, upon the request of the party applying for publication, designate the newspaper in which publication shall be made. The newspaper selected shall be a newspaper of general circulation in the county where such publication is required to be made and shall be published in the English language.

(e) Proof of Service

(e)(1) If service is not waived, the person effecting service shall file proof with the court. The proof of service must state the date, place, and manner of service. Proof of service made pursuant to paragraph (d)(2) shall include a receipt signed by the defendant or defendant's agent authorized by appointment or by law to receive service of process. If service is made by a person other than by an attorney, the sheriff or constable, or by the deputy of either, by a United States Marshal or by the marshal's deputy, the proof of service shall be made by affidavit.

(e)(2) Proof of service in a foreign country shall be made as prescribed in these rules for service within this state, or by the law of the foreign country, or by order of the court. When service is made pursuant to paragraph (d)(3)(C), proof of service shall include a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the court.

(e)(3) Failure to make proof of service does not affect the validity of the service. The court may allow proof of service to be amended.

(f) Waiver of Service, Payment of Costs for Refusing to Waive

(f)(1) A plaintiff may request a defendant subject to service under paragraph (d) to waive service of a summons. The request shall be mailed or delivered to the person upon whom service is authorized under paragraph (d). It shall include a copy of the complaint, shall allow the defendant at least 20 days from the date on which the request is sent to return the waiver, or 30 days if addressed to a defendant outside of the United States, and shall be substantially in the form of the Notice of Lawsuit and Request for Waiver of Service of Summons set forth in the Appendix of Forms attached to these rules.

(f)(2) A defendant who timely returns a waiver is not required to respond to the complaint until 45 days after the date on which the request for waiver of service was mailed or delivered to the defendant, or 60 days after that date if addressed to a defendant outside of the United States.

(f)(3) A defendant who waives service of a summons does not thereby waive any objection to venue or to the jurisdiction of the court over the defendant.

(f)(4) If a defendant refuses a request for waiver of service submitted in accordance with this rule, the court shall

impose upon the defendant the costs subsequently incurred in effecting service.

## Utah **Rules** of Civil Procedure, **Rule 52**

West's Utah Code Annotated Currentness

### State Court **Rules**

Utah **Rules** of Civil Procedure (Refs & Annos)

\* Part VI. Trials

### ➔**RULE 52. FINDINGS BY THE COURT**

**(a) Effect.** In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to **Rule 58A**; in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. It will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court following the close of the evidence or appear in an opinion or memorandum of decision filed by the court. The trial court need not enter findings of fact and conclusions of law in rulings on motions, except as provided in **Rule 41(b)**. The court shall, however, issue a brief written statement of the ground for its decision on all motions granted under **Rules 12(b)**, **50(a)** and **(b)**, **56**, and **59** when the motion is based on more than one ground.

**(b) Amendment.** Upon motion of a party made not later than 10 days after entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to **Rule 59**. When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the district court an objection to such findings or has made either a motion to amend them, a motion for judgment, or a motion for a new trial.

**(c) Waiver of Findings of Fact and Conclusions of Law.** Except in actions for divorce, findings of fact and conclusions of law may be waived by the parties to an issue of fact:

- (1) by default or by failing to appear at the trial;
- (2) by consent in writing, filed in the cause;
- (3) by oral consent in open court, entered in the minutes.

[Amended effective January 1, 1987.]

**Rule 56. Summary judgment.**

(a) For claimant A party seeking to recover upon a claim, counterclaim or cross-claim or to obtain a declaratory judgment may at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move for summary judgment upon all or any part thereof

(b) For defending party A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought, may, at any time, move for summary judgment as to all or any part thereof

(c) Motion and proceedings thereon The motion, memoranda and affidavits shall be in accordance with Rule 7 The judgment sought shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages

(d) Case not fully adjudicated on motion If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted It shall thereupon make an order specifying the facts that appear without substantial controversy including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly

(e) Form of affidavits, further testimony, defense required Supporting and opposing affidavits shall be made on personal knowledge shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the pleadings, but the response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial Summary judgment if appropriate, shall be entered against a party failing to file such a response

(f) When affidavits are unavailable Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just

(g) Affidavits made in bad faith If any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party presenting them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt