

2007

Khan v. State Record Committee : Brief of Appellee

Utah Court of Appeals

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Ms. Bridget Romano; Assistant Attorney General; Attorney for Appellees.

Nasrulla Khan; Pro Se Appellant.

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No. 20070341-CA

IN THE UTAH COURT OF APPEALS

NASRULLA KHAN,

Plaintiff/Appellant,

vs.

THE STATE RECORDS COMMITTEE and THE UTAH
DEPARTMENT OF PUBLIC SAFETY,

Defendants/Appellees.

ANSWER BRIEF OF APPELLEES

Appeal from a Final Judgment of Dismissal of the
Third Judicial District Court, Salt Lake County, State of Utah,
the Honorable Anthony B. Quinn, presiding

NASRULLA KHAN
1024 Childs Avenue, #205
Ogden, Utah 84044
Telephone: (801) 621-0995
Pro Se Appellant

BRIDGET K. ROMANO, 6979
Assistant Utah Attorney General
160 East 300 South, Sixth Floor
P.O. Box 140856
Salt Lake City, Utah 84114-0856
Telephone: (801) 366-0100
Attorney for Appellees

ORAL ARGUMENT NOT REQUESTED

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Assistant Utah Attorney General
160 East 300 South, Sixth Floor
P.O. Box 140856
Salt Lake City, Utah 84114-0856
Telephone: (801) 366-0100
Attorney for Appellees

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LIST OF ALL PARTIES

All of the parties are listed on the cover of this Brief.

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**THE STATE RECORDS COMMITTEE and THE UTAH
DEPARTMENT OF PUBLIC SAFETY,**

Defendants/Appellees.

ANSWER BRIEF OF APPELLEES

Defendants-Appellees, the State Records Committee and the Utah Department of Public Safety, submit this answer brief responding to Appellant Nasrulla Khan's opening brief.

STATEMENT OF JURISDICTION

This is an appeal from a final judgment of dismissal of the Third Judicial District Court, Salt Lake County, State of Utah, entered on March 21, 2007. R. 438-45; Add. B at 1-8. Khan filed his notice of appeal on April 19, 2007. R. 473-74. This Court has jurisdiction to hear

this appeal under Utah Code Ann. § 78-2a-3(j) (West 2004), providing for jurisdiction in this Court over cases transferred to the Court of Appeals from the Supreme Court.¹

Issues Presented

1. Khan failed to comply with Rule 24(k) of the Utah Rules of Appellate Procedure and the Court should disregard Khan's brief.

Khan's fifty-five (55) page opening brief is repetitive, burdensome, and incomprehensible. Rule 24(k) of the Utah Rules of Appellate Procedure guards against such pleadings and grants this Court the authority to strike and disregard briefs that lack concision, that are not presented logically, and that contain burdensome, or immaterial matters. Utah R. App. P. 24(k). Should this Court refuse to consider Khan's brief for failing to comply with Rule 24(k)?

¹ Khan also filed a Motion for New Trial pursuant to Rules 52 and 59 of the Utah Rules of Civil Procedure. The trial court has not ruled on Khan's motion and Defendants – who neither received a copy of nor learned of the existence of this motion until they reviewed the record on appeal – have not responded to the motion. Because Khan's motion, filed on April 9 not April 4, is not timely, it neither tolls the time for nor obviates this Court's subject matter jurisdiction over Khan's appeal.

A. Standard of review

This issue requires no review of the lower court decision, thus no standard of review applies.

B. Preservation of issue

This issue is unique to this appeal, thus the preservation requirement does not apply.

2. The trial court correctly granted summary judgment to the State Records Committee and Department of Public Safety because they complied with the relevant provisions of GRAMA and the administrative rules in responding to Khan's records request.

In August 2005, Khan made a GRAMA request to the Utah Department of Public Safety. The Department denied Khan's request and subsequent appeal, finding no evidence to support Khan's claims nor records relevant to satisfy Kahn's request. Khan appealed this denial to the State Records Committee, who declined to grant Khan a hearing. Khan next petitioned the district court for judicial review. The court sustained the Department's and the Committee's actions and granted them summary judgment. Did the trial court correctly grant Defendants' summary judgment motion when the Department was not able to locate evidence of an "investigation" of Khan nor records to

satisfy Khan's GRAMA request and Khan was not able to present sufficient evidence to the Records Committee that the requested records did or do exist?

A. *Standard of review*

This Court reviews a grant of summary judgment for correctness and affords no deference to the trial court's legal conclusions. *Granite Credit Union v. Remick*, 2006 UT App. 115, ¶ 7, 133 P.3d 440, 442 (citing *Brown v. Wanlass*, 2001 UT App. 30, ¶4, 18 P.3d 1137). The Court applies the same Rule 56(c) standard as the trial court below and "view[s] the evidence in the light most favorable to the non-moving party and affirm[s] only if there are no disputed issues of material fact and the moving party is entitled to judgment as a matter of law." See Utah R. Civ. P. 56(c); *Graham v. Davis County Solid Waste Mfg. & Energy Recovery Special Serv. Dist.*, 1999 UT App. 136, ¶ 7, 979 P.2d 363, 367.

The proper interpretation of a statute is a question of law, which this Court reviews for correctness. *Utah Dep't of Pub. Safety v. Robot Aided Mfg. Ctr.*, 2005 UT App. 199, ¶ 6, 113 P.3d 1014, 1016.

B. Preservation of issue

This issue was preserved in Defendants' Motion for Summary Judgment and Khan's opposition to that motion. The trial district court addressed this issue with its ruling and order of dismissal. R. 266, 320, 421 & 438.

3. Khan received all of the records in the Department's possession that pertain to Khan, thus his appeal is moot.

On December 6, 2005, Khan filed a petition in the Third District Court, seeking judicial review of the Defendants' denial of Khan's GRAMA request and resulting GRAMA appeal. On July 6, 2006, Khan served Defendants with a request for production of documents. Defendants responded to this request and produced all of the records in their possession that pertained, in any way, to Khan. Because Khan received all of the records in Defendants' possession, may this Court grant Khan any relief as result of this appeal?

A. Standard of review

This Court will not review an issue "when the underlying [claim] is moot. A claim is [moot] when the requested judicial relief cannot affect the rights of the litigants." *Brookside Mobile Home Park, Ltd. v.*

Peebles, 2002 UT 48 ¶ 16, 48 P.3d 968 (alterations in original).

B. Preservation of issue

This issue was raised by Defendants' in the December 2005 hearing and in their Second Motion for Summary Judgment. R. 513 at p. 10-11.

DETERMINATIVE CONSTITUTIONAL
PROVISIONS, STATUTES AND RULES

The following statutory and regulatory provisions, whose interpretation is determinative or of central importance to this appeal, are set out verbatim in Addendum A:

Utah Code Ann. § 63-2-201, -201(8)(a)

Utah Code Ann. § 63-2-204(1), (3)(a)

Utah Code Ann. § 63-2-401(1)(a), (5)(a)

Utah Code Ann. § 63-2-402(1)

Utah Code Ann. §63-2-403(4)

Utah Code Ann. §63-2-802

Utah Admin. Code R. 35-2-2 (West 2005)

Utah R. Civ. P. 52, 56

Utah R. App. P. 24(k)

STATEMENT OF THE CASE

A. Nature of the Case

This case arises out of Khan's request for documents from the Utah Department of Public Safety. The Department denied Khan's request because it possessed no records that were responsive to Khan's request. Khan pursued administrative appeals before the Department and the State Records Committee and a petition for judicial review in the district court. Khan claims he has a constitutional right to public records and that the Department violated that right and GRAMA when it failed to provide Khan with the requested records prior to the time he filed his petition for judicial review. Khan likewise claims the Committee misconstrued the relevant administrative rules when it failed to grant him a hearing.

B. Course of the Proceedings and Disposition Below

On December 6, 2005, Khan filed a Petition for Judicial Review in the Third District Court. R. 1-13. Khan amended that petition on April 6, 2006, adding additional parties and causes of action. R. 33-43. Khan subsequently stipulated and the court ordered the dismissal of

the individual defendants and Khan's negligence and misrepresentation claims. R. 206-07; 210; 223-24.

The trial court held a scheduling conference on June 19, 2006, R. 66, and on June 30, entered a scheduling order granting Khan until September 18, 2006 to complete fact discovery. R. 74-75. On July 6, 2006, Khan served Defendants with his request for production of documents. R. 76-77; 168-72. Defendants responded on August 3, 2006, by producing all of the records relating to Khan that they could locate. R. 79; 139-67. On August 15, 2006, Khan served Defendants with his Request for Admissions, which Defendants answered on September 13. R. 80-81; 192-93

On August 29, 2006, Defendants filed and served a Motion for Partial Summary Judgment and supporting memorandum. R. 82-126. On September 1, Khan moved for a stay of Defendants' motion because discovery was then ongoing. R. 127-30. Defendants filed an opposition memorandum on September 7, 2006, contending Khan failed to comply with Rule 56(f) of the Utah Rules of Civil Procedure. R. 173-76. Khan responded by filing a reply memorandum and a Rule 56(f) Affidavit. R. 178-83; 194-204.

Also on September 1, 2006, Khan filed a Motion for Order Compelling Discovery and supporting memorandum. R. 131-173. The Department responded to that motion on September 13, 2006, and filed a Motion and Memorandum seeking a Protective Order. R. 184-195. Both motions were fully briefed. R. 194-204; 211-22; 225-30.

The district court held a hearing respecting the parties' various motions on December 19, 2006. R. 234-35; 246. By Order issued January 16, 2006, the court dismissed as moot Defendants' summary judgment motion and Khan's motion to stay that motion; the court granted in part and denied in part Khan's motion to compel and Defendants' motion for protective order and directed Defendants to produce two additional documents to Khan in redacted form; and the court denied Khan's remaining discovery requests and directed each party to bear their own costs and fees. R. 263-65.

Defendants filed a second motion for summary judgment, which Khan opposed by written memorandum. R. 266-319; 320-420; 421-35. The court did not hold oral argument, but issued a written Ruling and Order on March 21, 2007, granting Defendants' motion for summary judgment. R. 438-45, Add. B. On April 19, Khan filed a Notice of Appeal. R. 473-74.

STATEMENT OF THE FACTS

In November 2002, Khan sent a letter to the Department, complaining of alleged crimes and terrorism committed against Khan and of alleged, illegal activities by the Ogden City Police Department concerning Khan's complaints to them. In December 2002, Khan met with a Department agent regarding his complaints. Khan and various Department employees exchanged correspondence about Khan's November 2002 letter and complaint throughout the summer of 2003. R. 148-49.

The Department did not hear from or about Khan again until January 2005, when he wrote to the Governor. R. 149. The Department corresponded further with Khan in February and May 2005. In its last letter to Khan, the Department reiterated it still had found no evidence to support Khan's claims and that it had not then, nor had it in the past, taken action respecting Khan's complaint, but considered the matter closed. R. 148, 262.

On August 29, 2005, Khan wrote to the Department, asking it to produce records relative to Khan's November 2002 "complaint of terrorism and crimes against me, and about the illegal actions of the Ogden City Police against me." R. 299, 351, Add. C. The Department

did not immediately respond, so on September 19, 2005, Khan sent the same request and a GRAMA appeal to Department Commissioner, Robert L. Flowers. R. 301, 353, Add. C.

The Department searched its records in response to Khan's request. R. 303-04. Because it had never investigated Khan or his complaints, the Department determined it neither possessed nor controlled any documents that were responsive to Khan's request. R. 303-04. Commissioner Flowers therefore denied Khan's record request and GRAMA appeal in writing on October 3, 2005. R. 355, Add. C.

Khan appealed the Department's denial to the State Records Committee. R. 357-60. Janell Tuttle, the Executive Secretary of the State Records Committee, informed Khan that "the claim that a record does not exist does not constitute a denial." R. 312-13; 362. Ms. Tuttle continued that because the Department determined it had no records and because Khan failed to offer sufficient facts that the records do or did exist, the Committee could not set Khan's appeal for a hearing. R. 312-13; 362.

Khan then commenced this action for judicial review of Defendants' actions. R. 1-13. Khan later filed an amended petition. R. 33-43. In each instance, Khan claimed that Defendants wilfully violated his

constitutional right of access to information under GRAMA and also that Defendants violated GRAMA by not giving him the records he requested and by not setting his GRAMA appeal for a Records Committee Hearing. R. 6, 38-9.

Khan subsequently served Defendants with a request for production of documents. R. 76-77; 168-72. Both the Defendant Department and Defendant Records Committee searched their records in response to this discovery request, seeking documents that pertained, in any way, to Khan. R. 304-10; 313-19, Defendants produced those documents to Khan. R. 78-79; 139-67. None of the documents pertained to a formal investigation of Khan or of Khan's complaint. *Id.*

Khan was not satisfied with Defendants' response and filed a motion for an order compelling Defendants to produce additional records. R. 131-38. Defendants moved for a protective order. R. 184-91; 194-95. The court held a hearing on the parties' motions on December 19, 2006. R. 234-36; 246. There, Defendants represented that save for two documents they wished to have the court review, Defendants had produced to Khan every document they possessed that pertained, in any way, to Khan. R. 264. The court reviewed the additional documents *in camera* and ordered the Department to produce those

documents, in redacted form to Khan. The Department did so. R. 263-65.

At the close of this hearing, the court and the parties had the following colloquy:

THE COURT: Well, there's nothing else I can do about this. Go ahead and prepare an order, Mr. Ferre, that includes your representations that after a diligent search you have produced all the documents you can locate that refer in any way to Mr. Khan, and include in the order my directions with respect to the documents I have looked at today.

MR. FERRE: I think that will dispose of the case, and so that order will be a dismissal of the case in general. Is that – am I wrong? There's no issue left. The documents which he – well, what gave cause to the original action were the documents. He now has everything that the department has. I –

THE COURT: Well, do a motion for summary judgment –

MR. FERRE: Okay.

THE COURT: – with affidavits indicating what searches you've made and what you've done, and I think that that's how we finally dispose of this case.

MR. FERRE: I will do that. I will prepare the order and then it will be filed.

THE COURT: All right.

MR. FERRE: Thank you, your Honor.

MR. KHAN: But I still dispute the summary judgment motion because there's still facts in dispute, so I don't mind responding to the summary judgment motion based on whatever affidavit I can

prepare, but the summary judgment motion should not be denied – I mean should not be granted.

THE COURT: Well, we're going to argue that a different day.

MR. KHAN: Okay.

R. 513, transcript at 10-11.

Defendants filed a second motion for summary judgment, R. 266-320, which they supported, in part, with the Affidavit of Rick Wyss, legal counsel for Utah Department of Public Safety, R. 303-10, Add. D., and with the Affidavit of Janell Tuttle, the then-Executive Secretary of the State Records Committee. R 312-19, Add. D. Each affidavit reiterated Defendants' thorough searches in August 2005 for records relative to Khan's GRAMA request, and, in July 2006 for documents that pertained, in any way, to Khan. R. 304-05; 313-14, Add. D.

Khan opposed Defendants' motion and attempted to controvert Defendants' undisputed facts and sworn affidavits with conjectural statements, R. 320-26, and the bald assertions of his own affidavit. R. 413-19. The court granted the Department's motion in a written Ruling and Order, dated March 21, 2007. R. 438-45.

SUMMARY OF THE ARGUMENT

In November 2002, Khan complained to the Department of Public Safety about alleged crimes and terrorism perpetrated against Khan and about illegal actions Khan believed the Ogden City Police Department had taken against Khan in response to his complaints to them. The Department held a single face-to-face meeting with Khan and thereafter exchanged sporadic written correspondence with him. The Department found no evidence to support Khan's claims and thus never investigated Khan or the crimes Khan alleged had been committed against him.

Accordingly, when, in August and September 2005, Khan requested records from the Department respecting its investigation of Khan or of Khan's November 2002 complaint, the Department properly responded that it had not investigated Khan or his complaint and thus it had no records to satisfy Khan's request. Similarly, because the Department claimed it did not possess records pertinent to Khan's GRAMA request and because Khan failed to provide sufficient information that the Department then possessed, or had at one time possessed, investigative records, the Records Committee properly declined to set Khan's appeal for a hearing.

Finally, though neither Defendant possesses information responsive to Khan's request, each searched their records for, located, and produced to Kahn all of the information they possessed that pertained, in any way, to Khan. Accordingly, even prior to bringing this appeal, Khan received all of the documents Defendants can locate that pertain to him and Khan's further pursuit of his GRAMA rights is moot.

ARGUMENT

1. Khan Failed to Comply with Rule 24(k) of the Utah Rules of Appellate Procedure and this Court Should Disregard Khan's Brief.

Khan's Opening Brief violates Rule 24 of the Utah Rules of Appellate Procedure and the Court should disregard it. Rule 24(k) sets standards for written briefs:

All briefs under this rule must be concise, presented with accuracy, logically arranged with proper headings and free from burdensome, irrelevant, immaterial or scandalous matters.

Utah R. App. P. 24(k). Khan's brief lacks concision and organization.

The brief fails to state whether or where Khan preserved his issues on appeal and it is bereft of a proper standard of review. The brief is little

more than a collection of repetitive assertions that this Court should disregard.

Moreover, Khan may not hide behind the fact he appears *pro se*. Before filing this action, Khan filed seven actions before the U.S. District Court, the Tenth Circuit Court of Appeals, and the United States Supreme Court against the City of Ogden, various Ogden City employees, and members of the Ogden City council, claiming they failed to properly respond to or investigate Khan's telephone harassment and stalking claims to them.² Leniency in reviewing Khan's pleading is neither warranted nor required. *Lundahl v. Quinn*, 2003 UT 11, ¶4, 67 P.3d 1000. Khan should be charged with full knowledge and understanding of the law, relevant statutes, and rules. *Id.* ¶5. Khan has failed to comply with Rule 24(k) and this Court should strike his Opening Brief.

² See *Khan v. Lucas*, 33 Fed. Appx. 381 (10th Cir. 2002), *cert. denied*, 537 U.S. 977 (2002); *Khan v. Thorley*, 23 Fed. Appx. 978 (10th Cir. 2001); *Khan v. Mecham*, 80 Fed. Appx 50 (10th Cir. 2003) (affirming dismissal and *sua sponte* barring Khan from filing additional appeal of same subject matter), *cert. denied*, 543 U.S. 825 (2004); *Khan v. Mecham*, 158 Fed. Appx. 983 (10th Cir. 2005) (affirming dismissal and sanctioning Khan for violating court's order barring further appeal of same subject matter).

II. The Trial Court Correctly Granted Summary Judgment to the State Records Committee and Department of Public Safety Because They Complied With the Relevant Provisions of GRAMA in Responding to Khan's Records Request.

Khan challenges the district court's grant of summary judgment on several bases. Rule 56(c) of the Utah Rules of Civil Procedure permits a court to enter summary judgment in favor of the moving party when the court finds "the pleadings, depositions, answers to interrogatories, and admissions of 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 summary judgment as a matter of law." Utah R. Civ. P. 56(c); *Graham*, 1999 UT at ¶ 7. To determine whether an issue is genuine, the court's function is not to weigh the evidence or to determine the truth of the matter, but only to determine whether the record evidence is such that a reasonable jury could return a verdict for the nonmoving party. *Webster v. Sill*, 675 P.2d 1170, 1170-1171 (Utah 1983). Unsubstantiated, unsupported, and conclusory allegations carry no probative weight and cannot create a genuine issue of material fact. *See Rawson v. Conover*, 2001 UT 24, ¶ 33, 20 P.3d 876 (bald statements do not suffice to establish genuine issue of material fact); *Schnuphase v. Storehouse Markets*, 918 P.2d 476, 477-78 (Utah 1996) (bare

contentions, unsupported by specific facts raise no material facts as will preclude summary judgment). Mere assertion that a factual issue exists, without proper foundation, is insufficient to preclude a grant of summary judgment. *Webster*, 675 P.2d at 1171. Finally, a properly supported motion for summary judgment will not be defeated by the mere existence of some factual dispute between the parties. *See* Utah R. Civ. P. 56(c) (requiring materiality).

A. The trial court correctly determined the Department complied with GRAMA.

The Defendant Department did not violate GRAMA in responding to Khan's records request. The undisputed evidence established that the Department did not possess any records about a Department investigation of Khan or of Khan's November 2002 complaint. This Court should therefore affirm the summary judgment dismissing Khan's complaint against the Department.

"Every person has the right to inspect a public record free of charge." Utah Code Ann. § 63-2-201 (West 2005). But a person making the request, must do so in writing and must describe the requested record with "reasonable specificity." *Id.* § 63-2-204(1). And the government entity to whom a request is made must approve the request, deny the

request, or state that it does not maintain the requested record. *Id.* § 63-2-204(3)(a). No government entity is required to create a record that it does not possess or that does not exist. *Id.* § 63-2-201(8)(a).

This action began on August 29, 2005, when Khan wrote to the Department, “requesting records concerning [his] complaints to the [Department].” Khan attempted to particularize his request by setting out correspondence he had exchanged with the Department over nearly a three-year span and by explaining this correspondence pertained to “my complaint of terrorism and crimes against me, and about the illegal actions of the Ogden City Police against me.” When this letter failed to yield an immediate response, Khan wrote to the Department’s Chief Administrative Officer, stating he “had requested records concerning [his] complaints to the [Department].” Khan again failed to identify the requested information with any degree of specificity, let alone the “reasonable specificity” required by statute. *See Id.* § 63-2-204(1).

Given the vague and general nature of Khan’s request, the Department reasonably interpreted his request as one for investigation records respecting Khan or his November 2002 complaint to the Department. The Department responded to Khan on October 3, 2005, stating “no evidence was found to support your claims and no formal

investigation was conducted . . . the [Department] does not have any records that satisfy your GRAMA request.” The Department therefore denied Khan’s GRAMA request and appeal.

The Department’s interpretation of Khan’s request is fair and reasonable. The Department’s response that it had conducted no investigation and thus had no investigation records is likewise accurate and in compliance with GRAMA. *See Id.* § 63-2-204(3)(a) (stating entity must approve request and provide records, deny request, or notify requester entity does not possess or maintain requested record). Further, the Department’s response and the trial court’s findings are supported by the only competent and undisputed facts in this case.

Regardless of how Khan seeks to characterize his August 2005 request, or, regardless of Khan’s attempt to create a dispute from irrelevant facts or from material facts where no dispute exists, the Department does not now, nor has it ever, possessed records relevant to Khan’s GRAMA request. And though the Department (and the Defendant Records Committee) has now scoured its records in search of documents that pertain to Khan, in any way, those documents do not regard a Department investigation and thus are not responsive to Khan’s GRAMA request. The undisputed, competent evidence supports

the trial court's conclusion. The Department complied with GRAMA, and this Court should therefore affirm the grant of summary judgment to the Department.

B. The trial court correctly determined the Records Committee complied with GRAMA.

When the Department denied Khan's GRAMA appeal, it informed Khan of his appeal rights, which Khan pursued by seeking additional review by the State Records Committee. *See* Utah Code Ann. § 63-2-402(1). The Executive Secretary of the Records Committee reviewed Khan's request pursuant to Utah Code Ann. § 63-2-403(4), to determine the propriety of setting Khan's appeal for a records committee hearing. Under the guidelines promulgated by Utah Administrative Rule 35-2-2, the Executive Director declined to offer Khan a hearing. The Executive Secretary sent Khan written notice of, and the reasons for, her decision. *See* Utah Admin. Code R. 35-2-2(b) (as amended March 2005).³ Like Section 63-2-204(1) requiring a requesting party to identify the relevant

³ Khan is correct that in ruling on Defendants' motion, the trial court quoted from that version of Rule 35-2-2 as last amended in January 2007. This error, however, is harmless and has no impact on the propriety of the court's ruling. *See Crookston v. Fire Ins. Exch.*, 817 P.2d 789, 796 (Utah 1991) (finding error harmless where it is sufficiently inconsequential and there is no reasonable likelihood the error affected outcome of the proceedings).

records with “reasonable specificity,” Rule 35-2-2 required the appealing party to “provide sufficient evidence . . . that [the] record did exist at one time.”

Khan attempts to assail the Records Committee’s determination and trial court’s conclusion with bald assertions and conjectural statements. Khan ignores the Affidavit of Janell Tuttle, the Executive Secretary who made the determination to deny Khan a records committee hearing, and opts instead to assert the Committee had no sound reason to deny him a hearing. By so doing, Khan has failed in his burden to avoid summary judgment. *See Rawson*, 2001 UT ¶ 33; *Schnuphase*, 918 P.2d at 477-78. Just as the trial court had the duty to render judgment, this Court must affirm, when “the pleadings, depositions, answers to interrogatories, and admissions of 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 summary judgment as a matter of law.” Utah R. Civ. P. 56(c); *Graham*, 1999 UT at ¶ 7.

Next, Khan contends the trial court erred by reviewing the Department’s denial of his records request, and not the Records Committee’s refusal to grant Khan a hearing. Under the GRAMA statutory scheme, prior to seeking judicial review of a government

entity's decision, a requester must file a notice of appeal with the chief administrative officer of that entity. Utah Code Ann. ¶ 63-2-401(1)(a). That officer then has five (5) days to make a determination on the appeal. *Id.* § 63-2-401(5)(a). Once the officer denies that appeal, the requester may appeal to the records committee **or** immediately petition the district court for judicial review. *Id.* § 63-2-402(1).

Because Khan could have petitioned for immediate and *de novo* judicial review of the Department's decision instead of seeking interim review from the Records Committee, the trial court's failure to confront the Records Committee's decision to deny Khan a hearing does not constitute error. Further, even if it were error, such error is harmless at best.⁴ See *Crookston v. Fire Ins. Exch.*, 817 P.2d 789, 796 (Utah 1991); see also *Brinkerhoff v. Schwendiman*, 790 P.2d 587, 590 (Utah 1990) (finding trial *de novo* appropriate to cure error committed by agency below).

⁴ The trial court's decision also reflects judicial economy and expedience. To adopt Khan's interpretation of GRAMA's statutory scheme would unduly prolong this matter. Namely, assuming without admitting the trial court reviewed and reversed the Records Committee decision to deny Khan a hearing, Khan could have achieved a meeting with the records committee, an unsatisfactory result from which he could nonetheless appeal *de novo* to the district court.

C. The trial court's order complies with Rule 52(a) of the Utah Rules of Civil Procedure.

Khan also contends the trial court erred by failing to enter specific findings of fact on all material issues. Khan would be correct if this were an action "tried upon the facts without a jury or with an advisory jury." Utah R. Civ. P. 52(a). It was not. This case involves a Rule 56(c) summary judgment motion. Rule 52(a) governs findings of fact and provides a trial court "need not enter findings of fact and conclusions of law [when] ruling on" a summary judgment motion. *Id.* Instead, "[t]he court shall . . . issue a brief written statement of the grounds for its decision . . . when the motion is based on more than one ground." *Id.*; *Neerings v. Utah State Bar*, 817 P.2d 320, 321-22, n.2 (Utah 1991).

The trial court's Ruling and Order comports with this rule. That order contains not only a recitation of the court's finding of "undisputed facts," it sets forth in detail the court's legal conclusions and reasoning. The Ruling and Order adequately addresses the issues raised by Defendants' motion and clearly sets forth the court's finding that no genuine dispute exists as to the material facts underlying Khan's claim and that Defendants are thus entitled to judgment as a matter of law. Because findings of fact are generally not necessary in connection with

summary judgment decisions, *Granite Credit Union v. Remick*, 2006 UT App. 115, ¶ 8, 133 P.3d 440, and because the trial court provided the minimal findings Rule 52(a) requires, that Order should be affirmed.⁵

III. Khan Received All of the Records in Defendants' Possession that Pertain to Khan, Thus His Appeal is Moot.

Despite Khan's unsupported assertion otherwise, even before Khan filed his appeal, Defendants produced all of the records in Defendants'

⁵ Khan also argues Defendants violated his constitutional right of access to the requested records. Khan raised this issue in the trial court below; however, because that court disposed of the case under GRAMA, it did not address Khan's constitutional claim. This is entirely proper. *See Bailey v. Bayles*, 2002 UT 58, ¶26, 52 P.3d 1158 (“[C]onstitutional questions should be avoided if the case can be properly decided on non-constitutional grounds.”) (quoting *Vigos v. Mountainland Builders, Inc.*, 2000 UT 2, ¶ 8, 993 P.2d 207) (citations omitted). Further, had the court addressed this claim, it would not alter the outcome of the case. Khan has no federal constitutional right to access particular documents or information under governmental control. *Houchins v. KQED, Inc.*, 438 U.S. 1 (1978); *see also Smith v. Plati*, 258 F.3d 1167, 1178 (10th Cir. 2001) (“It is well-settled that there is no general first amendment right to access all sources of information within governmental control.”); *Lamphere & Urbaniak v. Colorado*, 21 F.3d 1508, 1511 (10th Cir. 1994) (observing no constitutional right to access government records). Nor does Khan possess a state constitutional guarantee to access particular records. *Redding v. Jacobsen*, 638 P.2d 503 (Utah 1981) (stating public has no absolute constitutional right to immediate access to everything government officials do or that records contain.); *see also State v. Archuleta*, 857 P.2d 234 (Utah 1993).

possession that pertain, in any way, to Khan. Moreover, the fact Khan possesses all of the records Defendants can locate, lends no support to his assertion Defendants violated GRAMA. But, it moots that claim.

“An action becomes moot ‘if the requested relief cannot affect the rights of the litigants.’” *Merhish v. H.A. Folsom & Assocs.*, 646 P.2d 731, 732 (Utah 1982) (quoting *Duran v. Morris*, 635 P.2d 43, 45 (Utah 1981)); see *Shipman v. Evans*, 2004 UT 44, ¶ 37, 100 P.3d 1151 (finding claim moot where court has lost “ability to provide judicial relief to the litigants.”) It is settled in Utah, that courts on appeal do not address moot claims. *Black v. Allstate Ins. Co.*, 2004 UT 66, ¶ 29, 100 P.3d 1163.

Because Khan received in discovery all of the documents in Defendants’ collective possession that pertain to Khan, and because Khan has produced no reliable evidence to the contrary, there is no justiciable issue before this Court. Khan’s request is therefore moot. The trial court recognized this on summary judgment and so too should this Court.⁶

⁶ Khan also contends the trial court abused its discretion and committed manifest injustice against him as follows: (1) the court’s grant of summary judgment was premature; (2) the court failed to rule on Khan’s request for service costs or to consider his request for an award of punitive damages; (3) the court’s decision evidences bias

CONCLUSION

Khan used the procedures of GRAMA to gain access to information that he is entitled to under law. Khan's dissatisfaction with the results does not alter the undisputed evidence in this case. Defendants received and handled Khan's request as directed and required by

against Kahn. Because each argument fails, Defendants address Khan's claims only briefly.

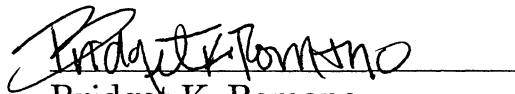
First, the court's dismissal came six months after the close of fact discovery and three months after the court disposed of Khan's motion to compel. Further, when faced with Defendants' second summary judgment motion, Khan neither moved to stay that motion nor filed an affidavit as required by Rule 56(f) of the Utah Rules of Civil Procedure. The court's consideration of Defendants' second motion for summary judgment was both timely and sound.

Second, implicit in the court's order dismissing Khan's petition, is the court's denial of Khan's request for an award of costs and/or punitive damages. Additionally, had Khan prevailed below, Utah Code Ann. § 63-2-802 precludes a court from awarding damages.

Finally, the trial court showed no bias in granting Defendants' motion and Khan has shown none. The colloquy set out in full on pp. 12-13 above reveals the trial court did not dismiss Khan's case at the close of the December 2006 hearing as Defendants orally requested; but the court determined Defendants should be put to their proof and disposed of Khan's petition only after Defendants met their burden under a properly filed and supported summary judgment motion. *See* R. 513 at p. 10-11.

GRAMA. Defendants adhered to the procedures in that scheme and therefore acted appropriately under the law. Further, in response to Khan's extraneous, discovery requests, Defendants have given Khan all of the information they possess and that pertains to him. Defendants were thus entitled to summary judgment as granted by the trial court. Defendants ask this Court to affirm that decision.

RESPECTFULLY submitted this 9th day of November, 2007.

A handwritten signature in black ink, appearing to read "Bridget K. Romano", written over a horizontal line.

Bridget K. Romano
Assistant Utah Attorney General
Attorney for Appellees

CERTIFICATE OF SERVICE

I certify that two true and correct copies of the foregoing Answer Brief of Appellees was served by U.S. mail, first-class postage prepaid, this 9th day of November, 2007, to the following:

NASRULLA KHAN
1024 Childs Avenue, #205
Ogden, Utah 84044
Telephone: (801) 621-0995
Pro Se Appellant

A handwritten signature in cursive script that reads "Peggy Wheeler-Estrada". The signature is written in black ink and is positioned to the right of the printed text.

ADDENDUM A

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

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Last revised: Thursday, July 19, 2007

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

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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.

Amended by Chapter 280, 1992 General Session

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63-2-402. Option for appealing a denial.

(1) If the chief administrative officer of a governmental entity denies a records request under Section 63-2-401, the requester may:

- (a) appeal the denial to the records committee as provided in Section 63-2-403; or
- (b) petition for judicial review in district court as provided in Section 63-2-404.

(2) Any person aggrieved by a determination of the chief administrative officer of a governmental entity under this chapter, including persons who did not participate in the governmental entity's proceeding, may appeal the determination to the records committee as provided in Section 63-2-403.

Amended by Chapter 280, 1992 General Session

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Last revised: Thursday, July 19, 2007

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 intervenor'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

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Last revised: Thursday, July 19, 2007

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

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[Sections in this Chapter](#)[|](#)[Chapters in this Title](#)[|](#)[All Titles](#)[|](#)[Legislative Home Page](#)

Last revised: Thursday, July 19, 2007

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:

(c)(1) by default or by failing to appear at the trial;

(c)(2) by consent in writing, filed in the cause;

(c)(3) by oral consent in open court, entered in the minutes.

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.

Rule 24. Briefs.

(a) Brief of the appellant. The brief of the appellant shall contain under appropriate headings and in the order indicated:

(a)(1) A complete list of all parties to the proceeding in the court or agency whose judgment or order is sought to be reviewed, except where the caption of the case on appeal contains the names of all such parties. The list should be set out on a separate page which appears immediately inside the cover.

(a)(2) A table of contents, including the contents of the addendum, with page references. (a)(3) A table of authorities with cases alphabetically arranged and with parallel citations, rules, statutes and other authorities cited, with references to the pages of the brief where they are cited.

(a)(4) A brief statement showing the jurisdiction of the appellate court.

(a)(5) A statement of the issues presented for review, including for each issue: the standard of appellate review with supporting authority; and

(a)(5)(A) citation to the record showing that the issue was preserved in the trial court; or

(a)(5)(B) a statement of grounds for seeking review of an issue not preserved in the trial court.

(a)(6) Constitutional provisions, statutes, ordinances, rules, and regulations whose interpretation is determinative of the appeal or of central importance to the appeal shall be set out verbatim with the appropriate citation. If the pertinent part of the provision is lengthy, the citation alone will suffice, and the provision shall be set forth in an addendum to the brief under paragraph (11) of this rule.

(a)(7) A statement of the case. The statement shall first indicate briefly the nature of the case, the course of proceedings, and its disposition in the court below. A statement of the facts relevant to the issues presented for review shall follow. All statements of fact and references to the proceedings below shall be supported by citations to the record in accordance with paragraph (e) of this rule.

(a)(8) Summary of arguments. The summary of arguments, suitably paragraphed, shall be a succinct condensation of the arguments actually made in the body of the brief. It shall not be a mere repetition of the heading under which the argument is arranged.

(a)(9) An argument. The argument shall contain the contentions and reasons of the appellant with respect to the issues presented, including the grounds for reviewing any issue not preserved in the trial court, with citations to the authorities, statutes, and parts of the record relied on. A party challenging a fact finding must first marshal all record evidence that supports the challenged finding. A party seeking to recover attorney's fees incurred on appeal shall state the request explicitly and set forth the legal basis for such an award.

(a)(10) A short conclusion stating the precise relief sought.

(a)(11) An addendum to the brief or a statement that no addendum is necessary under this paragraph. The addendum shall be bound as part of the brief unless doing so makes the brief unreasonably thick. If the addendum is bound separately, the addendum shall contain a table of contents. The addendum shall contain a copy of:

(a)(11)(A) any constitutional provision, statute, rule, or regulation of central importance cited in the brief but not reproduced verbatim in the brief;

(a)(11)(B) in cases being reviewed on certiorari, a copy of the Court of Appeals opinion; in all cases any court opinion of central importance to the appeal but not available to the court as part of a regularly published reporter service; and

(a)(11)(C) those parts of the record on appeal that are of central importance to the determination of the appeal, such as the challenged instructions, findings of fact and conclusions of law, memorandum decision, the transcript of the court's oral decision, or the contract or document subject to construction.

(b) Brief of the appellee. The brief of the appellee shall conform to the requirements of paragraph (a) of this rule, except that the appellee need not include:

(b)(1) a statement of the issues or of the case unless the appellee is dissatisfied with the statement of the appellant; or

(b)(2) an addendum, except to provide material not included in the addendum of the appellant. The appellee may refer to the addendum of the appellant.

(c) Reply brief. The appellant may file a brief in reply to the brief of the appellee, and if the appellee has cross-appealed, the appellee may file a brief in reply to the response of the appellant to the issues presented by the cross-appeal. Reply briefs shall be limited to answering any new matter set forth in the opposing brief. The content of the reply brief shall conform to the requirements of paragraphs (a)(2), (3), (9), and (10) of this rule. No further briefs may be filed except with leave of the appellate court.

(d) References in briefs to parties. Counsel will be expected in their briefs and oral arguments to keep to a minimum references to parties by such designations as "appellant" and "appellee." It promotes clarity to use the designations used in the lower court or in the agency proceedings, or the actual names of parties, or descriptive terms such as "the employee," "the injured person," "the taxpayer," etc.

(e) References in briefs to the record. References shall be made to the pages of the original record as paginated pursuant to Rule 11(b) or to pages of any statement of the evidence or proceedings or agreed statement prepared pursuant to Rule 11(f) or 11(g). References to pages of published depositions or transcripts shall identify the sequential number of the cover page of each volume as marked by the clerk on the bottom right corner and each separately numbered page(s) referred to within the deposition or transcript as marked by the transcriber. References to exhibits shall be made to the exhibit numbers. If reference is made to evidence the admissibility of which is in controversy, reference shall be made to the pages of the record at which the evidence was identified, offered, and received or rejected.

(f) Length of briefs. Except by permission of the court, principal briefs shall not exceed 50 pages, and reply briefs shall not exceed 25 pages, exclusive of pages containing the table of contents, tables of citations and any addendum containing statutes, rules, regulations, or portions of the record as required by paragraph (a) of this rule. In cases involving cross-appeals, paragraph (g) of this rule sets forth the length of briefs.

(g) Briefs in cases involving cross-appeals. If a cross-appeal is filed, the party first filing a notice of appeal shall be deemed the appellant, unless the parties otherwise agree or the court otherwise orders. Each party shall be entitled to file two briefs. No brief shall exceed 50 pages, and no party's briefs shall in combination exceed 75 pages.

(g)(1) The appellant shall file a Brief of Appellant, which shall present the issues raised in the appeal.

(g)(2) The appellee shall then file one brief, entitled Brief of Appellee and Cross-Appellant, which shall respond to the issues raised in the Brief of Appellant and present the issues raised in the cross-appeal.

(g)(3) The appellant shall then file one brief, entitled Reply Brief of Appellant and Brief of Cross-Appellee, which shall reply to the Brief of Appellee and respond to the Brief of Cross-Appellant.

(g)(4) The appellee may then file a Reply Brief of Cross-Appellant which shall reply to the Brief of Cross-Appellee.

(h) Permission for over length brief. While such motions are disfavored, the court for good cause shown may upon motion permit a party to file a brief that exceeds the limitations of this rule. The motion shall state with specificity the issues to be briefed, the number of additional pages requested, and the good cause for granting the motion. A motion filed at least seven days before the date the brief is due or seeking five or fewer additional pages need not be accompanied by a copy of the brief. A motion filed less than seven days before the date the brief is due and seeking more than 5 additional pages shall be accompanied by a copy of the draft brief for in camera inspection. If the motion is granted, any responding party is entitled to an equal number of additional pages without further order of the court. Whether the motion is granted or denied, the draft brief will be destroyed by the court.

(i) Briefs in cases involving multiple appellants or appellees. In cases involving more than one appellant or appellee, including cases consolidated for purposes of the appeal, any number of either may join in a single brief, and any

appellant or appellee may adopt by reference any part of the brief of another. Parties may similarly join in reply briefs.

(j) Citation of supplemental authorities. When pertinent and significant authorities come to the attention of a party after that party's brief has been filed, or after oral argument but before decision, a party may promptly advise the clerk of the appellate court, by letter setting forth the citations. An original letter and nine copies shall be filed in the Supreme Court. An original letter and seven copies shall be filed in the Court of Appeals. There shall be a reference either to the page of the brief or to a point argued orally to which the citations pertain, but the letter shall without argument state the reasons for the supplemental citations. Any response shall be made within 7 days of filing and shall be similarly limited.

(k) Requirements and sanctions. All briefs under this rule must be concise, presented with accuracy, logically arranged with proper headings and free from burdensome, irrelevant, immaterial or scandalous matters. Briefs which are not in compliance may be disregarded or stricken, on motion or sua sponte by the court, and the court may assess attorney fees against the offending lawyer.

Advisory Committee Note. Rule 24 (a)(9) now reflects what Utah appellate courts have long held. See *In re Beesley*, 883 P.2d 1343, 1349 (Utah 1994); *Newmeyer v. Newmeyer*, 745 P.2d 1276, 1278 (Utah 1987). "To successfully appeal a trial court's findings of fact, appellate counsel must play the devil's advocate. 'Attorneys must extricate themselves from the client's shoes and fully assume the adversary's position. In order to properly discharge the marshalling duty..., the challenger must present, in comprehensive and fastidious order, every scrap of competent evidence introduced at trial which supports the very findings the appellant resists.'" *ONEIDA/SLIC, v. ONEIDA Cold Storage and Warehouse, Inc.*, 872 P.2d 1051, 1052-53 (Utah App. 1994) (alteration in original)(quoting *West Valley City v. Majestic Inv. Co.*, 818 P.2d 1311, 1315 (Utah App. 1991)). See also *State ex rel. M.S. v. Salata*, 806 P.2d 1216, 1218 (Utah App. 1991); *Bell v. Elder*, 782 P.2d 545, 547 (Utah App. 1989); *State v. Moore*, 802 P.2d 732, 738-39 (Utah App. 1990).

The brief must contain for each issue raised on appeal, a statement of the applicable standard of review and citation of supporting authority.

33. 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

- - 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)

ADDENDUM B

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

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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.

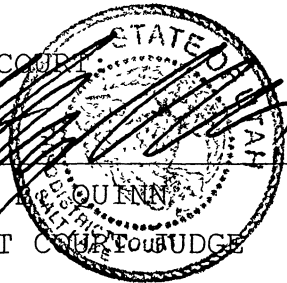
The Court finds defendants have complied with the applicable laws and procedures of GRAMA and have given plaintiff information to which he was entitled in response to his requests. Defendants have complied with GRAMA, have acted appropriately under the law, and accordingly defendants are entitled to 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 21st day of March 2007.

BY THE COURT

ANTHONY J. QUINN
DISTRICT COURT JUDGE



444

CERTIFICATE OF MAILING

I certify that I mailed a true and correct copy of the foregoing Memorandum Decision dated this 21 day of March 2007, postage prepaid, to the following:

Nasrulla Khan
663 22nd Street, #16
Ogden, UT 84401

Joel A. Ferre
Assistant Utah Attorney General
Mark L. Shurtleff
Utah Attorney General
160 East 300 South, Sixth Floor
P.O. Box 140856
Salt Lake City, UT 84114-0856

1145

ADDENDUM C

Nasrulla Khan
663 22nd 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.

Nasrulla Khan
663 22nd Street, # 16
Ogden, Utah 84401

(801) 621-0995

September 19, 2005

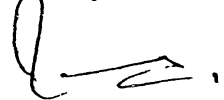
The Chief Administrative Officer
Utah Department of Public Safety
4501 South 2700 West
Box 141775
Salt Lake City, UT 84114

Re: Government Records Access and Management Act Appeal

Dear Chief Administrative Officer:

On August 29, 2005, I had sent my Government Records Access and Management Act Request to the Utah Department of Public Safety, and had requested records concerning my complaints to the Utah Department of Public Safety and to the Utah Homeland Security Department (copy enclosed). According to Utah Code Section 63-2-204, Subsection 3(a), the Utah Department of Public Safety was required to respond to my request within ten business days after receiving my written request. The Utah Department of Public Safety has failed to provide me the requested records or to issue a denial within the specified time period. Hence, according to Subsection 63-2-204 (7), that failure is considered the equivalent of a determination denying me the access to the requested records. Therefore, I am 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.

Sincerely,



Nasrulla Khan

Attachments

State of Utah

M. HUNTSMAN, JR.
Governor

JARY R. HERBERT
Lieutenant Governor

Commissioner

October 3, 2005

Mr. Nasrulla Khan
663 22nd 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



ARCY DIXON PIGNANELLI
Department Director

State of Utah

M. HUNTSMAN, JR.
Governor

GARY HERBERT
Lieutenant Governor

Division of Archives

ALICIA SMITH-MANSFIELD
Division Director

November 7, 2005

Nasrulla Khan
663 22nd Street, #16
Ogden, UT 84401

Dear Mr. Khan:

Your appeal information was received by the State Records Committee on November 2, 2005. It was read and reviewed, but I am unable to schedule a hearing before the State Records Committee. 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.

You stated in your appeal that the Ogden Police have committed illegal acts. The State Records Committee only has jurisdiction over records issues and cannot assist you in your allegations concerning the Ogden Police. The Government Records Access and Management Act (GRAMA) specifies that you have the right to appeal this decision to a district court following the procedures listed in UCA 63-2-404.

I have enclosed a copy of Administrative Rule R35-2 and UCA 63-2-404 for your reference.

Sincerely,

Janell B. Tuttle
Executive Secretary
State Records Committee

ADDENDUM D

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

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.

:

AFFIDAVIT OF RICK WYSS

:

: Case No. 050921490

: Judge Anthony Quinn

:

STATE OF UTAH)

: ss

County of Salt Lake)

RICK WYSS, legal counsel for Defendant Utah Department of Public Safety, being first
duly sworn on oath, deposes and says:

1. That I am currently serving as legal counsel for the Department of Public Safety (the "Department").

2. That I was and have been legal counsel during all relevant times pertaining to this case brought by Mr. Nasrulla Khan.

3. In response to Mr. Khan's requests for public documents, I researched and made initial determinations whether the Department had custody of documents responsive to his requests and, if so, whether to release or deny release of documents to Mr. Khan.

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 the Department of Public Safety never conducted such an investigation.

6. In the course of discovery in this case, however, I provided the documents listed on the attached document index to Assistant Attorney General Joel Ferre that pertained to Mr. Khan.

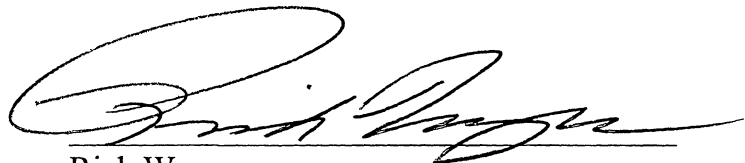
7. I made a diligent search of the records of the Department, and contacted various Department employees in an effort to determine the existence and whereabouts of documents pertaining to Mr. Khan and I did not find any records beyond those listed on the attached index.

8. I have been unable to locate other records in the Department's possession that pertain to Mr. Khan.

9. The Department cannot provide records which it does not have or of which it has no knowledge.

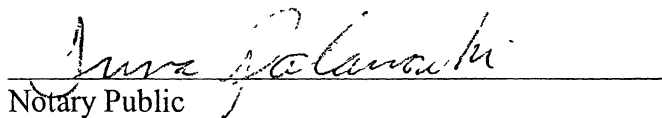
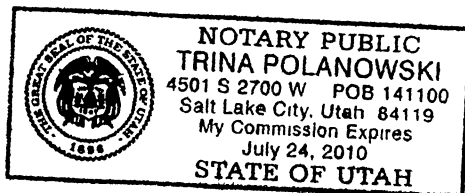
10. So far as I am aware, those non-privileged records the Department could locate that did or may have pertained to Mr. Khan have been made available to Mr. Khan.

DATED this 23 day of January, 2007.



Rick Wyss
Department of Public Safety

SUBSCRIBED AND SWORN to before me this 23 day of January, 2007.



Notary Public

Commission Expires July 24, 2010

Nasrulla Khan v. State Records Committee, et al.,

Third District Court Case No. 040921490

**DOCUMENT INDEX OF DOCUMENTS RECEIVED FROM
DEPARTMENT OF PUBLIC SAFETY AND STATE RECORDS COMMITTEE**

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DPS/SRC 2	Nasrulla Khan	Suzanne Rainwater	e-mail re: crimes and terrorism.
DPS/SRC 3.	Robert Flowers	Nykhan	re: crimes and terrorism
DPS/SRC 4	Nasrulla Khan	Governor, R Flowers	Letter to Governor Leavitt referencing e-mail of 7-3-2003.
DPS/SRC 5	Captain Mitch McKee DPS	Nasrulla Khan	Response to request for reports dated 2-4-2005.
DPS/SRC 6	Nasrulla Khan	Governor John Huntsman Jr	re: letter dated 1-26-05 re: conduct against him and discrimination by Utah officials concerning terrorism and crimes against him
DPS/SRC 7	Nasrulla Khan	Captain Mitch McKee DPS	re: letter 2-4-05.
DPS/SRC 8	Captain Mitch McKee DPS	Nasrulla Khan	Responding to letter to Gov. Huntsman dated 1-26-04.
DPS/SRC 9-12	Nasrulla Khan	Governor Jon Huntsman Jr	Letter Re: wrongful conduct against him, discrimination by Utah officials concerning repeated terrorism and crimes.
DPS/SRC 13	Nasrulla Khan	Captain Mitch McKee	Received letter dated 2-4-2005.
DPS/SRC	Nasrulla Khan	Janell Tuttle,	Notice of Intent to Appeal Committee's

14-15		Ex Sec St Records Committee	Order
DPS/SRC 16-17	Nasrulla Khan	Janell Tuttle	Duplicate <i>see</i> 14-15 above.
DPS/SRC 18-19	Nasrulla Khan	State Records Committee, Janell Tuttle	Notice of Claim.
DPS/SRC 20-21	Nasrulla Khan	Janell B. Tuttle	Notice of Claim - <i>see</i> above.
DPS/SRC 22-23	Nasrulla Khan	blank	Waiver of service of summons and envelope
DPS/SRC 24-26	Nasrulla Khan	Janell Tuttle, Exec Sec, State Records Committee	Faxed copy of 14 & 15 above Notice of Intent to Appeal Committee's Order
DPS/SRC 27	Janelle B. Tuttle, Exec Sec SRC	Nasrulla Khan	State Records Committee Order.
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DPS/SRC 31-34	Nasrulla Khan	Janell Tuttle, Ex Sec SRC	Notice of Appeal concerning GRAMA.
DPS/SRC 35-36	Nasrulla Khan	Third District Court	Waiver of Service of Summons form mailed 1-10-2006.
DPS/SRC 37-38	Nasrulla Khan	Janell B Tuttle	Form 3A Notice of Lawsuit and Request for Waiver of Service of Summons to Janell B. Tuttle.
DPS/SRC 39-61	Justin M. McFadden,	Mark Burns, AAG	Faxed copy of Summons and First Amended Petition for Judicial Review,

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DPS/SRC 96			Administrative Rule R35-1-4
DPS/SRC 97-98			Administrative Rule R35-2.
DPS/SRC 99			Administrative Rule R35-3-1.
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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

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

NASRULLA KHAN,	:	
	:	AFFIDAVIT OF JANELL B. TUTTLE
Plaintiff,	:	
vs.	:	Case No. 050921490
THE STATE RECORDS COMMITTEE,	:	Judge Anthony Quinn
UTAH DEPARTMENT OF PUBLIC	:	
SAFETY, MR. ROBERT L. FLOWERS,	:	
MS. JANELL B. TUTTLE, ET AL.,	:	
Defendants.	:	

STATE OF UTAH)
 : ss
County of Salt Lake)

JANELL B. TUTTLE, being first duly sworn on oath, deposes and says:

1. I was serving as executive secretary for the Utah State Records Committee (the

“Records Committee”), from March 2004 to August 2006 and am currently serving as executive secretary for the Utah State Historical Records Advisory Board.

2. I was executive secretary during all relevant times pertaining to this case brought by Mr. Nasrulla Khan.

3. I sent a letter to Mr. Khan on November 7, 2005 notifying him that the Records Committee could not hear his appeal of a denial of records by the Department of Public Safety because the Department of Public Safety notified him that it had no records responsive to his request. According to the Administrative Rule in place at the time of Mr. Khan’s appeal, the Records Committee did not have the ability to hear appeals from a claim that responsive records do or did not exist, unless the petitioner could provide sufficient evidence that the record did exist.

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.

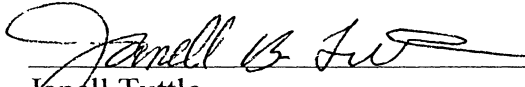
5. In the course of this case, I made a reasonably diligent search of the records of the State Records Committee in an effort to determine the existence and whereabouts of records pertaining to Mr. Khan, and I did not find any records beyond those listed on the attached index.

6. I provided the non-privileged documents listed on the attached document index to Assistant Attorney General Joel Ferre and that, to my knowledge, he provided those documents to Mr. Khan in response to his discovery requests.

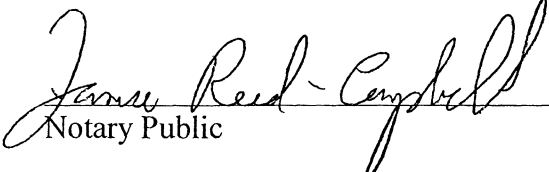
7. That the Records Committee, based upon its searches and belief, has no other records, nor am I aware of any other records in the Records Committee's possession pertaining to Mr. Khan.

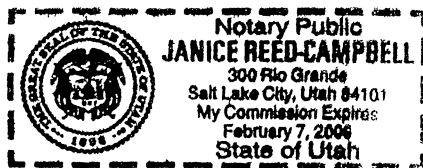
8. That the Records Committee cannot provide records which it does not have or of which it has no knowledge.

DATED this 23rd day of January, 2007.


Janell Tuttle
Utah State Records Committee

SUBSCRIBED AND SWORN to before me this 23rd day of January, 2007.


Notary Public



Nasrulla Khan v. State Records Committee, et al.,

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