

2002

# James C. Godfrey v. Utah : Brief of Appellant

Utah Supreme Court

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James Godfrey; Appellant.

Peggy Stone; Assistant Attorney General; David Wilson; Attorney for Weber County; Allan L. Larson; Snow, Christensen and Martineau; Attorney for Ogden City; Attorneys for Appellee.

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Gunninson, Utah 84634

## IN THE SUPREME COURT OF UTAH

---

James C. Godfrey, Appellant

v.

State of Utah, et al., Appellee

: Brief of Appellant  
:  
:  
:  
:  
:

★ 20020552

Civil Case No. 010905553SC

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**FILED**  
UTAH SUPREME COURT

JUN 24 2002

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IN THE SECOND DISTRICT COURT FOR THE DISTRICT OF UTAH

WEBER COUNTY, STATE OF UTAH

---

JAMES C. GODFREY

Plaintiff,

vs.

STATE OF UTAH, et al.,

Defendants.

:

:

:

:

:

**ORDER GRANTING DEFENDANT  
DEPARTMENT OF  
ADMINISTRATIVE SERVICES'  
MOTION TO DISMISS**

Civil No. 010905553

Judge: Ernie W. Jones

---

The Department of Administrative Services filed a motion to dismiss the complaint in this action on several grounds. The parties filed supporting and opposing memoranda and the Court to the matter under advisement. After reviewing the matter and being fully advised in the law and premises, the Court entered a Memorandum Decision on November 23, 2001 granting the Motion to Dismiss. Based upon that Memorandum Decision:

IT IS HEREBY ORDERED, DECREED AND ADJUDGED:

1. The Department of Administrative Services, State Records Committee's *Motion to Dismiss* is granted.

2. Plaintiff's Complaint is barred under the Governmental Immunity Act, Utah Code Ann. § 63-30-1.

3. The issuance of motor vehicle titles and record keeping are governmental functions that are immune from liability under Utah Code Ann. § 63-30-1 because immunity has not been waived.

4. The Governmental Immunity Act provides further immunity for the Department of Administrative Services. The Act has exceptions to the waiver of immunity for certain acts or omissions by defendants in certain functions. *See* Utah Code Ann. § 63-30-10 (1), (2), (3) and (6). Negligent or intentional misrepresentations by a governmental employee are immune by virtue of Utah Code Ann. § 63-30-10(6).

5. Plaintiff's damage claims fail under the immunity provisions of Utah Code Ann. § 63-30-1 or the exceptions to the waiver of immunity under § 63-30-10. Accordingly, plaintiff's damage claims against the Department of Administrative Services, are precluded.

6. The Government Records Access Management Act ("GRAMA") does not provide plaintiff a damage remedy. GRAMA only provides for injunctive relief and attorney fees.

7. Accordingly, plaintiff's action against the Department of Administrative Services,

State Records Committee is dismissed with prejudice.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2001.

BY THE COURT


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HONORABLE ERNIE W. JONES  
District Court Judge

**CERTIFICATE OF SERVICE**

I hereby certify that I mailed a true and correct copy of the foregoing, **ORDER GRANTING DEFENDANTS' MOTION TO DISMISS AND DISMISSING PLAINTIFF'S COMPLAINT WITH PREJUDICE**, this 10<sup>th</sup> day of December, 2001, to the following:

JAMES C. GODFREY, #26153  
C.U.C.F.  
P.O. BOX 550  
GUNNISON, UT 84634



IN THE SECOND JUDICIAL DISTRICT COURT, STATE OF UTAH  
WEBER COUNTY, OGDEN DEPARTMENT

JAMES C. GODFREY,

Plaintiff,

vs.

STATE OF UTAH,

Defendant.

MEMORANDUM DECISION

Case No. 010905553

Honorable Ernie Jones

The defendant, Department of Administrative Services, State Records Committee, filed a motion to dismiss plaintiff's complaint on September 12, 2001.

The plaintiff filed a reply brief on September 21, 2001. The Court, having reviewed the matter and being advised in the law, grants defendant's motion to dismiss.

The Court makes the following findings:

1. The complaint is barred by the Government Immunity Act, pursuant to 63-30-1 U.C.A.
2. The case of Metropolitan Financial Company vs. State of Utah, 714 P2d 293 (Utah 1986) appears to be on point. The Utah Supreme Court said that the issuance of motor vehicle titles and record keeping was a governmental function immune from liability under 63-30-3 U.C.A.
3. Also, the Government Immunity Act provides immunity from suit for the negligent acts

or omissions by defendants in certain functions. See 63-30-10(1)(2)(3)(6), U.C.A. Even misrepresentations (whether negligent or intentional) by a government employee are immune under 63-30-10 (6), U.C.A.

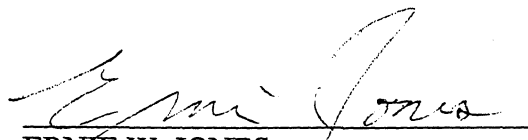
4. Plaintiff's damage claims fall under the immunity provisions in 63-30-3, U.C.A., or the exclusions found in 63-30-10, U.C.A. Plaintiff's claims are, therefore, precluded.

5. Finally, the Government Record Access Management Act (GRAMA) does not provide plaintiff with a damage remedy. GRAMA only provides for injunctive relief and attorney fees.

6. Plaintiff's action against the State Records Committee is dismissed.

7. Defendant will please prepare an order consistent with this ruling.

Dated this 23 of Nov, 2001.

  
\_\_\_\_\_  
ERNIE W. JONES  
DISTRICT COURT JUDGE

DAVID C. WILSON, NO. 5824  
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---

IN THE SECOND JUDICIAL DISTRICT COURT OF WEBER COUNTY  
OGDEN DEPARTMENT, STATE OF UTAH

---

JAMES C. GODFREY,

Plaintiff,

vs.

STATE OF UTAH, ET AL.,

Defendants.

**ANSWER OF WEBER COUNTY  
AND WILLIAM F. DAINES**

Case No. 010905553

Judge Ernie W. Jones

---

Defendants Weber County and William F. Daines answer plaintiff's Complaint as follows:

**FIRST DEFENSE**

Plaintiff's Complaint fails to state a claim against defendants upon which relief can be granted.

**SECOND DEFENSE**

Defendants deny each and every allegation of plaintiff's Complaint except as herein specifically admitted.

**THIRD DEFENSE**

This Court lacks jurisdiction over the subject matter of this action and over the persons of these defendants.



#### **FOURTH DEFENSE**

Service of process upon these defendants is defective and insufficient, and the Court lacks jurisdiction over the persons of these defendants.

#### **FIFTH DEFENSE**

These defendants are immune by virtue of the Utah Governmental Immunity Act, Chapter 63-30, Utah Code.

#### **SIXTH DEFENSE**

Defendants Weber County and William F. Daines are not legal entities susceptible to suit.

#### **SEVENTH DEFENSE**

Plaintiff's Complaint is, apparently, a collateral attack on a criminal conviction, and same is accordingly barred by the doctrines of *res judicata* and collateral estoppel.

#### **EIGHTH DEFENSE**

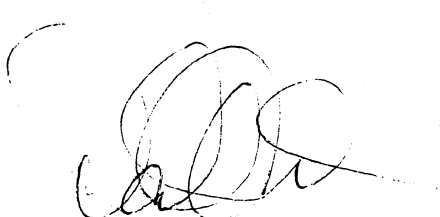
The information requested by the Plaintiff has already been provided or such records are not records of the Defendant.

#### **NINTH DEFENSE**

Plaintiff has failed to exhaust his administrative remedies which are a prerequisite to filing an action.

WHEREFORE, having fully answered plaintiff's Complaint, defendants demand that same be dismissed and that they be awarded their costs herein incurred.

DATED this 19<sup>th</sup> day of October, 2001.



---

DAVID C. WILSON  
Deputy County Attorney

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Gunninson, Utah 84634  
Appellant (pro se)

## IN THE SUPREME COURT OF UTAH

---

James C. Godfrey, Plaintiff/Appellant	:	<b>Brief of Appellant</b>
	:	
v.	:	
	:	
State of Utah, et al., Defendant/Appellee:	:	Civil Case No. 010905553SC
	:	Judge Jones

---

## BRIEF OF APPELLANT

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## **JURISDICTION STATEMENT**

The Utah Court of Appeal has jurisdiction pursuant to the Ut.R.App.P., R4(b) and § 78-2a-3(2)(a) and/or § 78-2a-3(2)(b)(i). Multiple Parties include Weber County, Ogden City and the State of Utah. All claims and/or issues and/or questions exhausted by MEMORANDUM DECISION(S) dated 22 April 2002. On June 10<sup>th</sup>, 2002, Appellant mailed a Stipulation, Rule 26(a) for an enlargement of time.

## **ISSUES PRESENTED AND STANDARD OF REVIEW**

1. **Did the Second District Court commit error by dismissing Plaintiff's G.R.A.M.A. complaint for injunctive relief when the Second District Court applied collateral estoppel to; defendants that were not previous parties; and completely different issues / records that were never requested in the Third District Court GRAMA complaint?**

We have held that under Rule 41(b) "a dismissal for lack of jurisdiction does not result in an adjudication on the merits." *Beaver County v. Qwest Inc.*, 31 P.3d 1147 (Utah 2001), see *Miller v. USAA Casualty Insurance Company*, 438 Utah Adv. Rep. 31, ¶ 61.

The party moving a court to dismiss on claim preclusion grounds bears the burden of establishing three elements. *Macris & Assocs., Inc. v. Neways, Inc.*, 2000 UT 93, 16 P.3d 1214 First, both cases must involve the same parties or their privies. Second, the claim that is, alleged to be barred must have been presented in the first suit or must be one that could and should have been raised in the first action. Third, the first suit must have resulted in a final judgment on the merits. quoting *Madsen v. Borthick*, 769 P.2d 245 (Utah 1988)

For issue preclusion to apply, four criteria must be met: (1) the party against whom issue preclusion is asserted must have been a party to or in privity with or party to the prior adjudication, (2) the issue decided in the prior adjudication must be identical to the one presented in the instant action, (3) the issue in the first action must have been completely, fully and fairly litigated, and (4) the first suit must have resulted in a final judgment on the merits. *Murdock v. Springville*, 1999 Utah 39, ¶15; 982 P.2d 65; *Career Serv. Review Bd. v. Utah Dept. of Corr.*, 942 P.2d 933 (Utah 1997)

2. **Did the Second District Court abuse its discretion in finding Ogden City and Weber County provided the Plaintiff with the G.R.A.M.A. records within their control?**

In ruling on a motion to dismiss the Court must accept the factual allegations in the complaint as true and consider them, and all reasonable inferences to be drawn from them, in the light most favorable to the non-moving party. see e.g. *St. Benedict's Dev. Co. v. St. Benedict's Hospital.*, 811 P.2d 194, 196 (Utah 1991) "Only if there is no evidence upon which the plaintiff can properly state a claim can the Court dismiss the case." *James C. Godfrey v. State of Utah, et al.*, case no 010205373, MEMORANDUM DECISION on Defendant's Motion to Dismiss, pg.3)

In reviewing a grant of summary judgment, we consider the facts in light most favorable to the nonmoving party." *Hebertson v. Bank One, Utah, N.A.* 1999 UT App. 342, ¶ 2, 383 Utah Adv. Rep. 15 (quoting *Parker v. Dodgion*, 971 P.2d 496 (Utah)

Summary judgment is only warranted when there is no disputed material facts and the moving party is entitled to judgment as a matter of law, *Scott v. Majors*, 1999 UT. App 139, 980 P.2d 214. Nor is the Court supposed to decide disputed facts or assess credibility on a summary judgment. *Wilson v. Williams*, 997 F.2d 348 (7<sup>th</sup> Cir. 1993) Generally, summary judgment should not be granted if discovery is incomplete. *Downtown Athletic Club v. Horman*, 740 P.2d 275 (Utah Ct. App.) cert. denied, 765 P.2d 1277 (Utah 1987)

An abuse of discretion occurs only when a decision is based on an erroneous conclusion of law or where there is no rational basis in the evidence for the ruling. *Lungrin v. Clayton*, 619 F.2d 61 (10<sup>th</sup> Cir 1980)

3. **Did the Second District Court commit clear error, dismissing Plaintiff's monetary damage claims when the Plaintiff alleged public records were denied by fraud and the existence of public records were denied by fraud?**

Questions of law are reviewed for correctness. *State v. O'Neil*, 848 P.2d 694 (Ct. App. 1993), *State v Taylor*, 818 P.2d 561 (Ct. App. 1991)

A plaintiff may not bring or pursue any other civil action or proceeding based upon the same subject matter against the employee or the estate of the employee whose act or omission gave rise to the claim, unless (i) the employee acted or failed to act through fraud or malice; or... U.C.A. § 63-30-4(3)(b)

U.C.A. § 63-2-802(5) Claims for attorney fees as provided in this section or for damages are subject to Title 63, Chapter 30, Governmental Immunity Act.

**PROVISIONS, STATUTES AND ORDINANCES**

§ 63-2-201(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...

§ 63-2-301(1) The following records are public... (f) judicial records unless a court orders the records to be restricted under the rules of civil or criminal procedure or unless the records are private under this chapter.

§ 63-2-304 The following records are protected if properly classified by a governmental entity: (8) Records created or maintained for civil, criminal, or administrative enforcement purposes or audit purpose, or for discipline, licensing, certification, or registration purposes, if release of the records (c) would create a danger of depriving a person of a right to a fair trial or impartial hearing.

§ 63-2-404(8)(a) The Court may, upon consideration and weighting of the various interests and public policies pertinent to the classification and disclosure or non-disclosure, order the disclosure of information properly classified as private, controlled, or protected if the interest favoring access outweighs the interest favoring restriction of access.

§ 63-2-203(4) A governmental entity may fulfill a record request without charge and is encouraged to do so when it determines that: (b) the individual requesting the record is the subject of the record, or an individual specified in subsection § 63-2-202(1) or (2); or (c) the requester's legal rights are directly implicated by the information in the record, and the requester is impecunious.

§ 63-2-404(3) The petition for judicial review shall be a complaint governed by the Utah Rules of Civil Procedure and shall contain (d) a request for relief specifying the type and extent of relief requested.

§ 63-2-802(5) Claims for attorney fees as provided in this section or for damages are subject to Title 63, Chapter 30, Governmental Immunity Act.

In all averments of frauds or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other conditions of the mind of a person may be averred generally. Utah Rule Civil Procedure, Rule 9(b)

## **STATEMENT OF CASE**

This is an appeal from the Second District Court of Utah – Ogden Department, Judge Jones, April 22, 2002  
MEMORANDUM DECISION(S) dismissing Plaintiff's complaint for injunctive relief under G.R.A.M.A.  
for public records and monetary damages when public records were denied by committing acts of fraud.

## **STATEMENT OF FACTS**

1. On October 23<sup>rd</sup>, 1998 a letter was written to the State of Utah, Department of Motor Vehicle. In the letter, the following was requested:
  - A. D.M.V. Inventory Records for Weber County on July 10<sup>th</sup>, 1995.
  - B. D.M.V. Distribution Schedule for Weber County on July 10<sup>th</sup>, 1995.
  - C. The date license plates 244 HXA and 371 HXG were issued. The date these license plates were entered into the D.M.V. computer.
  - D. The date HX\* series plates, specific the HXA series plates were issued. The date the HX\* series plates were first entered into the D.M.V. computer.
  - E. The Registration applications for 244 HXA and 371 HXG.The letter also stated, "I am not interested in any personal [protected] information, who [owns] the plates, or any addresses. I am interested in just the list of license plate numbers." No response was given.
2. The Plaintiff filed a G.R.A.M.A. suit in the Third District Court, Salt Lake Department, Civil Case No. 000906065, before Judge MEDLEY, against defendants Mindy Maughan; The State Of Utah – Archive, Research Center; and Brent Burningham, Tax Commission. The case was dismissed without prejudice. The complaint was refiled and given case number 010904931, Judge Dever. Judge Dever issued a minute entry, "On order of Judge Dever, deft's Motion to Dismiss is granted. Lack of jurisdiction."
3. On April 12<sup>th</sup>, 2001 Twenty-Six (26) items were requested from the Weber County District Attorney; Second District Court of Utah, Clerk of the Court; Public Defender Office; Ogden City Police Department - Chief of Police. No response was timely and the failure to respond was appealed.
4. On May 4<sup>th</sup>, 2001 a GRAMA appeal was mailed to the Department of Administrative Services, State Records Committee. The information was not released.
5. On May 8<sup>th</sup>, 2001 the Ogden Police Records Division stated by letter that the request would be completed by May 31<sup>st</sup>, 2001.
6. On June 4<sup>th</sup>, 2001 an appeal was mailed to the Ogden City Recorder, by June 25<sup>th</sup>, 2001 no response was made.
7. On June 26<sup>th</sup>, 2001 an appeal was mailed to the Department of Administrative Services, State Records Committee.
8. On July 5<sup>th</sup>, 2001 a hand written letter requesting a hearing was mailed to the Ogden City Recorder.
9. On July 6<sup>th</sup>, 2001 the Plaintiff received a letter dated June 28<sup>th</sup>, 2001 from Ogden City. A handwritten supplement appeal/response was mailed to the Ogden City Recorder. Several records were claimed to have been improperly destroyed and/or never recorded. The District Attorney was also sent a third request for the items within their control. A complaint was made with the Utah State Bar Association.
10. By August 7<sup>th</sup>, 2001 the Records Committee did not respond. A lawsuit was caused to be sent by U.S. mail, certified return receipt no 7099 3220 0002 6765 4288, postmark August 7<sup>th</sup>, 2001.



11. On August 8<sup>th</sup>, 2001 the Plaintiff, James Godfrey, received a letter from the Records Review Board, dated August 1<sup>st</sup>, 2001. The letter informed Godfrey that the Board had scheduled a hearing for Friday, August 10<sup>th</sup>, 2001 at Ten (10) a.m.
12. A prison caseworker called the Records Board in behalf of Godfrey on August 8<sup>th</sup>, 2001. That same day the call was returned by Ogden City Attorney, Andy Blackburn, and Godfrey informed Counsel that a lawsuit had been mailed.
13. On Friday, August 10<sup>th</sup>, 2001 at the hearing Godfrey objected to the fact that the hearing was not scheduled in accordance with Ogden City Ordinance 3.28.260(D), and informed the Board that they were defendants to a civil lawsuit.
14. During the August 10<sup>th</sup> hearing the Board stated the appeals were received on July 11<sup>th</sup>, 2001. Godfrey objected to the fact that the Board did not schedule a hearing by July 16<sup>th</sup>, 2001. (within three business days)
15. The August 10<sup>th</sup>, 2001 the hearing was continued to hear testimony from Detective David Lucas.
16. On August 11<sup>th</sup>, 2001 the Plaintiff mailed evidence to the Records Review Board. (August 11<sup>th</sup> letter) Again Godfrey objected to the fact that the hearing was not conducted in accordance with Ogden City Ordinance 3.28.260(D). The hearing was held on September 10<sup>th</sup>, 2001 which was thirty-one (31) days after receiving the appeals on August 11<sup>th</sup>, 2001.
26. The Ogden Records Review Board by August 27<sup>th</sup>, 2001 letter informed Plaintiff the board would reconvene on September 17<sup>th</sup>, 2001, to hear testimony from Detective Lucas.
27. The Plaintiff on August 28<sup>th</sup>, 2001 wrote to Carl Hurst and Mindy Maughan requesting their appearance at the hearing.
28. On August 31<sup>st</sup>, 2001 subpoenas for Ms. Maughan and Mr. Hurst were requested from the Ogden Record Review Board and the Second District Court – Ogden Department, pursuant to Utah Rules of Civil Procedure, Rule 45.
29. The Records Board responded by letter dated September 10<sup>th</sup>, 2001 that the Board does not have the power or authority to issue subpoenas.
30. At the hearing, Plaintiff objected to the fact that adequate time was not allowed for service of the subpoenas upon Carl Hurst or Mindy Maughan. The Plaintiff gave testimony and presented the notes of a private investigator, Carl Hurst, interview notes with Mindy Maughan as evidence.
31. The Board in their September 21<sup>st</sup>, 2001 final ORDER found that the Plaintiff had a right to these records, but claimed other agencies or parties were responsible for releasing the records and that Ogden City released all records within their control. The Weber County District Attorneys office never responded to any G.R.A.M.A. requests or G.R.A.M.A. appeals.

### **SUMMARY OF ARGUMENTS**

1. The Second District Court committed clear error by dismissing Plaintiff's G.R.A.M.A. complaint for injunctive relief when the Second District Court applied collateral estoppel to defendants that were not a party to a previous Third District Court GRAMA complaint and applied collateral estoppel to completely different issues / records that were never requested in the Third District Court GRAMA complaint.

Third District - Judge Dever lacked jurisdiction to rule on the merits. The Court has held under Rule 41(b) "a dismissal for lack of jurisdiction does not result in an adjudication on the merits."

*Beaver County v. Qwest Inc.*, 31 P.3d 1147 (Utah 2001), see *Miller v. USAA Casualty Insurance Company*, 438 Utah Adv. Rep. 31, ¶ 61.

The party moving a court to dismiss on claim preclusion grounds bears the burden of establishing three elements. *Macris & Assocs., Inc. v. Neways, Inc.*, 2000 UT 93, 16 P.3d 1214. Therefore claim preclusion, “Third [element], the first suit must have resulted in a final judgment on the merits” quoting *Madsen v. Borthick*, 769 P.2d 245 (Utah 1988) has not been established.

For issue preclusion to apply, four criteria must be met: “(4) the first suit must have resulted in a final judgment on the merits” *Murdock v. Springville*, 1999 Utah 39, ¶15; 982 P.2d 65; *Career Serv. Review Bd. v. Utah Dept. of Corr.*, 942 P.2d 933 (Utah 1997) has not been met.

Clearly, Ogden City, David Lucas, Weber County, William Daines and the other defendants in the Second District Court were not parties in the Third District Court complaint. Clearly Judge Jones committed error in applying claim preclusion to cases involving (1) different parties. Nor could Judge Jones apply issue preclusion because (2) the issue decided in the prior adjudication (ie lack of subject matter jurisdiction) was not identical to the one presented in the instant action. The Ogden Department complaint involved different records and different facts. Wherefore, Judge Jones Memorandum Decisions granting summary judgment should be overturned and this case sent back to the trial court for an evidentiary hearing and for the relief requested.

2. The Second District Court abused its discretion in finding Ogden City and Weber County provided the Plaintiff with the G.R.A.M.A. records within their control.

“[Defendants’] Counsel conveniently left out the disputed facts articulated in the Appeal of Ogden City’s denial of the records. (see complaint for complete list)

- 2–3 Ms. Maughan [D.M.V.] stated to a private investigator, “D.M.V. records were given to Detective Lucas.” [The] assertion that the search was done manually is false.
- 4-5 The police report states; “It showed not on file so I went to the Department of Motor Vehicles in Ogden.” Detective Lucas went to the D.M.V. to check Distribution and Inventory Records.” These records are considered evidence and these records are not manual records.
- 12, 24 A ULENE search was entered into evidence as exhibit S-37. The ULENE search is not manual and [the] assertion is false.

ITEMS 9 thru 11, 13, 18 thru 22, 25, 26 have been requested from the Ogden Court and Weber County.”

Even Ogden City in their June 28<sup>th</sup>, 2001 response admitted several records were not given to the Appellant and indicated that the Weber County District Attorney's Office possessed the records in question.

9. thru 11      ...they may be in the possession of... Weber County Attorney's Office.  
13.              Case was presented by Weber County Attorney's Office...  
18. thru 22      Check with Weber County...

Again the Ogden City Records Review Board on September 21<sup>st</sup>, 2001 stated that concerning numbers 2, 3, 4, 5, 6, 7, 8, and 12 these records were not given to the Appellant, quoting "at this point the record was... turned over to the Weber County Attorney's Office..."

The Weber County District Attorney's Office never responded to any G.R.A.M.A. request or G.R.A.M.A. appeals. The record clearly indicates that not all of the records were provided to the Appellant.

"The Court must accept the factual allegations in the complaint as true and consider them, and all reasonable inferences to be drawn from them, in the light most favorable to the non-moving party." *see e.g. St. Benedict's Dev. Co. v. St. Benedict's Hospital.*, 811 P.2d 194, 196 (Utah 1991); *Hebertson v. Bank One, Utah, N.A.* 1999 UT App. 342, ¶ 2, 383 Utah Adv. Rep, 15 (quoting *Parker v. Dodgion*, 971 P.2d 496 (Utah))

The present case involves disputed material facts. The record clearly establishes that the records requested were not given to the Appellant. Rather, the parties attempted to play a "shell game" hiding the records under one of many shells. When the Appellant requested records from one agency, that agency simply claimed someone else has the record. "Summary judgment is only warranted when there is no disputed material facts and the moving party is entitled to judgment as a matter of law," *Scott v. Majors*, 1999 UT. App 139, 980 P.2d 214 "Nor is the Court supposed to decide disputed facts or assess credibility on a summary judgment." *Wilson v. Williams*, 997 F.2d 348 (7<sup>th</sup> Cir. 1993)

Wherefore the Utah Court of Appeals should overturn Judge Jones Memorandum Decisions granting summary judgment and sends this case back to the trial court for an evidentiary hearing to determine the facts, assess credibility and for the relief requested.

3. The Second District Court commit clear error, dismissing Plaintiff's monetary damage claims when the Plaintiff alleged public records were denied by fraud and the existence of public records were denied by fraud.

The Appellant's alleges acts of fraud and acts of malice in the complaint. The Utah Government Immunity Act (U.G.I.A.) U.C.A. § 63-30-4(3)(b) allows the Appellant "civil action" against (i) the employee [who] acted or failed to act through fraud or malice; or....

The Government Records Access and Management Act (G.R.A.M.A.) provides for fees and damages, therefore an employee may be liable for acts of fraud. see (U.G.I.A.) U.C.A. § 63-30-4

U.C.A. § 63-2-802(5) Claims for attorney fees as provided in this section or for damages are subject to Title 63, Chapter 30, Governmental Immunity Act.

Wherefore the Utah Court of Appeals should overturn Judge Jones Memorandum Decisions granting summary judgment and sends this case back to the trial court for the monetary relief requested.

**THE PLAINTIFF IS A PRO SE APPELLANT AND THE COURT FOLLOWS THE FOLLOWING STANDARD WHEN CONSIDERING THE PLAINTIFF'S AFOREMENTIONED QUESTIONS / ISSUES?**

Pro se litigants pleadings are to be construed liberally and held to less stringent standard than formal pleadings drafter by lawyers; if court can reasonably read pleadings to state valid claim on which litigant could prevail, it should do so despite failure to cite proper legal authority, confusion of legal theories, poor syntax and sentence construction, or litigant's unfamiliarity with pleading requirements. *Green v. Branson*, 108 F.3d 1296 (10<sup>th</sup> Cir. 1997), *Boag v. MacDougall*, 454 U.S. 364, 102 S.Ct. 700 (1982), *Haines v. Kerner*, 404 U.S. 519, 30 L.Ed.2d. 652, 92 S.Ct. 594 (1972)

**ARGUMENT**

1. **Did the Second District Court commit clear error by dismissing Plaintiff's G.R.A.M.A. complaint for injunctive relief when the Second District Court applied collateral estoppel to defendants that were not a party to a previous Third District Court GRAMA complaint and applied collateral estoppel to completely different issues / records that were never requested in the Third District Court GRAMA complaint?**

Third District - Judge Dever's ruling is clear, "1. This Court lacks subject matter jurisdiction over this matter." Utah Rules of Civil Procedure, Rule 41(b) expressly states, "Unless the Court in it's order for dismissal otherwise specifics, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction... Operates as an adjudication upon the merits." When Judge Dever found a lack of jurisdiction, the Court could not "otherwise specifics" the merits of the complaint. This question has already been decided in *Beaver. id.*

We have held that under Rule 41(b) "a dismissal for lack of jurisdiction does not result in an adjudication on the merits." *Beaver County v. Qwest Inc.*, 31 P.3d 1147 (Utah 2001), see *Miller v. USAA Casualty Insurance Company*, 438 Utah Adv. Rep. 31, ¶ 61.

“To establish the existence of plain error, a defendant must demonstrate that (1) an error exists, (2) the error should have been obvious to the trial court, and (3) the error is harmful ” *State v Eldredge*, 773 P 2d 29 (Utah 1989), *State v Ostler*, 996 P 2d 1065, quotation *State v Dunn*, 850 P 2d 1201 (Utah 1993) Second District - Judge Jones committed error by relying upon Judge Dever’s ruling Rule 41(b) expressly excludes lack of jurisdiction as adjudication upon the merits, therefore (2) the error should have been obvious to the trial court *Richin* and *Bowen* establish that both Judge Dever’s and Judge Jones’s dismissals upon the merits were void

A judgment is void only if the Court that rendered it lacked jurisdiction over the subject matter or over the parties or was other wise incompetent to render judgment *Richins v Delbert, Chipman & Sons*, 817 P 2d 382 (Utah Ct App 1991)

It is a basic rule that a judgment is void and subject to collateral attack if lack of jurisdiction in the Court appears on the face of the record *Bowen v Olson*, 122 Utah 66, 246 P 2d 602 (1952)

The final question to be answered, is “(3) the error harmful ” Judge Jones application of *res judicata* denied the Plaintiff access to public records These “public records” involve substantial rights, including records necessary to bolster an appeal of a criminal conviction Judge Burton, in James C Godfrey v State of Utah, et al , civil no 010205373, ruled, “Apparently, evidence about Plaintiff’s license plate number was used to convict Plaintiff of an unspecified offense and Plaintiff is now seeking the requested license plate information to bolster his appeal The overriding principle of GRAMA is that all governmental records are public ” The denial of due process apparently applies to the present case, and the Court in *State Dept of Social Services v Vigil* addressed that issue

A denial of a motion to vacate a judgment under subdivision 60(b) is ordinarily reversed only for an abuse of discretion However, when a motion to vacate a judgment is based on a claim of lack of jurisdiction, the district court has no discretion if jurisdiction is lacking, the judgment cannot stand without denying due process to the one against whom it runs *State Dept of Social Services v Vigil*, 784 P 2d 1130 (Utah 1989)

The Plaintiff further argued by Motions (see MOTION TO AMEND JUDGMENT, RULE 59(7) and MOTION TO AMEND JUDGMENT AND RELIEF FROM JUDGMENT) that the defendants and issues were different The ultimate determination of whether *res judicata* bars an action is a question of law reviewable for correctness *Macris & Assocs , Inc v Neways, Inc* , 2000 UT 93, 16 P 3d 1214 *Res Judicata* encompasses two distinct doctrines claim preclusion and issue preclusion *Macris & Assocs , Inc v Neways, Inc* , 2000 UT 93, 16 P 3d 1214

With regards to both distinct doctrines the following standards are followed

The party moving a court to dismiss on claim preclusion grounds bears the burden of establishing three elements. *Macris & Assocs., Inc. v. Neways, Inc.*, 2000 UT 93, 16 P.3d 1214 First, both cases must involve the same parties or their privies. Second, the claim that is, alleged to be barred must have been presented in the first suit or must be one that could and should have been raised in the first action. Third, the first suit must have resulted in a final judgment on the merits. quoting *Madsen v. Borthick*, 769 P.2d 245 (Utah 1988)

For issue preclusion to apply, four criteria must be met: (1) the party against whom issue preclusion is asserted must have been a party to or in privity with or party to the prior adjudication, (2) the issue decided in the prior adjudication must be identical to the one presented in the instant action, (3) the issue in the first action must have been completely, fully and fairly litigated, and (4) the first suit must have resulted in a final judgment on the merits. *Murdock v. Springville*, 1999 Utah 39, ¶15; 982 P.2d 65; *Career Serv. Review Bd. v. Utah Dept. of Corr.*, 942 P.2d 933 (Utah 1997)

As argued above Judge Dever lacked jurisdiction to rule on the merits. Therefore claim preclusion, third element and issue preclusion, number (4) have not been satisfied. Clearly, Ogden City, David Lucas, Weber County, William Daines and the other defendants in the Second District Court were not parties in the Third District Court complaint. Clearly Judge Jones committed error in applying claim preclusion to cases involving different parties. Nor could Judge Jones apply issue preclusion because (2) the issue decided in the prior adjudication (ie lack of subject matter jurisdiction) was not identical to the one presented in the instant action. The Ogden Department complaint involved different records and different facts. Quoting from the MOTION TO AMEND JUDGMENT AND RELIEF FROM JUDGMENT.

“The Court cannot apply collateral estoppel because the requested records in Third District Court - Salt Lake Department were different. The following records were requested in the Salt Lake Complaint

1. Weber County D.M.V., June and July 1995 Distribution Schedule.
2. Weber County D.M.V., May, June and July 1995 Inventory of HX\* series plates. (If record is lengthy, please provide just the first page of listings for each month.)
3. Copy of the D.M.V. Records and Application for Registration Form for 244 HXA and 371 HXG. Copy of any reference key, etc. which explains the codes and abbreviations used.

In the Ogden complaint the following was requested:

2. Detective Lucas’ license plate search conducted at the police station. (R653:10)
3. Detective Lucas’ and Ms. Mindy Maughan’s D.M.V. license plate search. (R45:17, R653:15)
4. D.M.V. Distribution Schedule as of July 10<sup>th</sup>, 1995. (R45:13, Weber County DMV, Utah)
5. D.M.V. Inventory Record as of July 10<sup>th</sup>, 1995. (R45:13, Weber County DMV, Utah)

The Ogden complaint includes items 1-3 and 6-26 (see Attachment 2) that are completely different from the records requested in the Salt Lake complaint. Item #2 – is controlled by Detective Lucas and/or Ogden City Police. Therefore this item #2 was never requested in the Salt Lake Complaint. Item #3 – Is the Detective’s search and the search conducted by Ms Maughan that she gave to the Detective. The Plaintiff provided a copy of statements made by Ms. Maughan to a private investigator. Ms. Maughan stated she gave her search and DMV records to the Detective. The Court abused its discretion by applying collateral estoppel to records never requested.”

Judge Jones committed error because the issues and claims were not identical. *Schaer* specifically includes different facts.

Where the two causes of action rest on different facts; and evidence of a different kind or character is necessary to sustain them, the claims are not the same for purpose of res judicata – *Schaer v. Department of Transportation*, 657 P.2d 1337 (Utah 1983) quoting *State in Interest of J.J.T.*, 877 P.2d 161 (Utah App. 1994)

*In re A.S.* the Court considered social policies and values more important than convenience.

“Doctrines of preclusion should be flexible and must give way when their mechanical application would frustrate other social policies based on values equally or more important than the convenience afforded by finality in legal controversies.” *In re A.S.*, 752 P.2d 705; 12 Kan.App.2d 594 (1988) The Appellant’s complaints are for public records under G.R.A.M.A. and records in which Godfrey is the subject of the record. The following statutes are social policies enacted by legislation in the State of Utah of far greater importance than withholding evidence:

§ 63-2-201(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...

§ 63-2-304 The following records are protected if properly classified by a governmental entity: (8) Records created or maintained for civil, criminal, or administrative enforcement purposes or audit purpose, or for discipline, licensing, certification, or registration purposes, if release of the records (c) would create a danger of depriving a person of a right to a fair trial or impartial hearing.

§ 63-2-203(4) A governmental entity may fulfill a record request without charge and is encouraged to do so when it determines that: (b) the individual requesting the record is the subject of the record, or an individual specified in subsection § 63-2-202(1) or (2); or (c) the requester’s legal rights are directly implicated by the information in the record, and the requester is impecunious.

WHEREFORE THE APPELLANT PRAYS THE UTAH COURT OF APPEALS OVERTURNS JUDGE JONES MEMORANDUM DECISIONS GRANTING SUMMARY JUDGMENT AND SENDS THIS CASE BACK TO THE TRIAL COURT FOR AN EVIDENTIARY HEARING AND FOR THE RELIEF REQUESTED.

**2. Did the Second District Court abuse its discretion in finding Ogden City and Weber County provided the Plaintiff with the G.R.A.M.A. records within their control?**

Both the MOTION TO AMEND JUDGMENT, RULE 59(7) and MOTION TO AMEND JUDGMENT AND RELIEF FROM JUDGMENT argued disputed facts. Quoting from the MOTION TO AMEND JUDGMENT AND RELIEF FROM JUDGMENT.

“Ogden city has not already supplied plaintiff with all records in its possession. Clearly, the question in Ogden is whether or not the City disclosed impeachment evidence within their control. (see Respondent’s Objection Exhibit A, Plaintiff James C. Godfrey civil lawsuit complaint) Questions of fact

not law. [Defendants'] Counsel conveniently left out the disputed facts articulated in the Appeal of Ogden City's denial of the records. (see complaint for complete list)

- 2-3 Ms. Maughan [D.M.V.] stated to a private investigator, "D.M.V. records were given to Detective Lucas." [The] assertion that the search was done manually is false.
- 4-5 The police report states; "It showed not on file so I went to the Department of Motor Vehicles in Ogden." Detective Lucas went to the D.M.V. to check Distribution and Inventory Records." These records are considered evidence and these records are not manual records.
- 12, 24 A ULENE search was entered into evidence as exhibit S-37. The ULENE search is not manual and [the] assertion is false.

ITEMS 9 thru 11, 13, 18 thru 22, 25, 26 have been requested from the Ogden Court and Weber County."

Even Ogden City in their June 28<sup>th</sup>, 2001 response admitted several records were not given to the Appellant, indicating that the Weber County District Attorney's Office possessed the records in question.

- 9. thru 11 ...they may be in the possession of... Weber County Attorney's Office.
- 14. Case was presented by Weber County Attorney's Office...
- 18. thru 22 Check with Weber County...

Again the Ogden City Records Review Board on September 21<sup>st</sup>, 2001 stated that some of the records were not given to the Appellant.

- (3) Concerning... numbers 2 and 3. Detective Lucas may have received a list of variations of license plate numbers from Mindy Maughan..... At this point the record was... turned over to the Weber County Attorney's Office...
- (4) ...Concerning... number 4 and 5. ...may also be in the possession of the Weber County Attorney's Office...
- (5) Concerning... 6,7 and 8... or attached to the case file and given to the Weber county Attorney's Office...
- (6) Concerning... number 12 ULENE search.... Detective Lucas made a sample exhibit of how ULENE worked and gave it to the Weber County Attorney's Office.

The Weber County District Attorney's Office never responded to any G.R.A.M.A. request or G.R.A.M.A. appeals. The record clearly indicates that not all of the records were provided to the Appellant. Counsel David Wilson for Weber County, and William Daines served the Appellant only one response to the Complaint. (see Answer of Weber County and William F. Daines; Appendix) Judge Jones initially ruled that the response was not a motion to dismiss. (see Memorandum Decision - item II, dated January 30<sup>th</sup>, 2002; Appendix) On April 22<sup>nd</sup>, 2002 Judge Jones granted Weber County's response to dismiss. (see Memorandum Decision - number 1, dated April 22<sup>nd</sup>, 2002; Appendix) The Weber County Defendants' provided no evidence that they have responded to any G.R.A.M.A. request, any G.R.A.M.A. appeal, or have ever provided any records to the Appellant. The standard for granting a motion to dismiss follows:



In ruling on a motion to dismiss the Court must accept the factual allegations in the complaint as true and consider them, and all reasonable inferences to be drawn from them, in the light most favorable to the non-moving party. *see e.g. St. Benedict's Dev. Co. v. St. Benedict's Hospital*, 811 P.2d 194, 196 (Utah 1991) "Only if there is no evidence upon which the plaintiff can properly state a claim can the Court dismiss the case." *James C. Godfrey v. State of Utah*, et al., case no 010205373, MEMORANDUM DECISION on Defendant's Motion to Dismiss, pg.3)

In reviewing a grant of summary judgment, we consider the facts in light most favorable to the nonmoving party." *Hebertson v. Bank One, Utah, N.A.* 1999 UT App. 342, ¶ 2, 383 Utah Adv. Rep, 15 (quoting *Parker v. Dodgion*, 971 P.2d 496 (Utah)

Summary judgment is only warranted when there is no disputed material facts and the moving party is entitled to judgment as a matter of law, *Scott v. Majors*, 1999 UT. App 139, 980 P.2d 214. Nor is the Court supposed to decide disputed facts or assess credibility on a summary judgment. *Wilson v. Williams*, 997 F.2d 348 (7<sup>th</sup> Cir. 1993) Generally, summary judgment should not be granted if discovery is incomplete. *Downtown Athletic Club v. Horman*, 740 P.2d 275 (Utah Ct. App.) cert. denied, 765 P.2d 1277 (Utah 1987)

The present case involves disputed materials facts. The record clearly establishes that the records requested were not given to the Appellant. Rather, the parties attempted to play a "shell game" hiding the records under one of many shells. When the Appellant requested records from one agency, that agency simply claimed someone else has the record. The trial court's factual findings underlying its decision are examined for clear error. *State v. Pena*, 869 P.2d 932 (Utah 1994)

In the present case like *Katy v. Pierce*, 732 P.2d 92 (Utah 1986) "the Trial Court mechanically adopted the findings of fact and conclusions of law submitted by the State [and Defendants] and the findings of fact were contrary to the evidence. The Courts review this issue under an abuse of discretion standard."

An abuse of discretion occurs when a decision is based on an erroneous conclusion of law or where there is no rational basis in the evidence for the ruling. *Lungrin v. Clayton*, 619 F.2d 61 (10<sup>th</sup> Cir 1980)

There is no rational basis for concluding the Weber County District Attorney's Office provided the records to the Appellant. The Trial Court record is void of any facts proving William Daines, Weber County, the District Attorney, or State produced any G.R.A.M.A. records. There is no rational basis for concluding David Lucas, Lupe Huntley, or Ogden City Police produced all of the G.R.A.M.A. records in question.

The Ogden City Records Review Board's findings are inconsistent. On the one hand claiming David Lucas created records then gave them away, and then on the other hand claiming records (relevant evidence Lucas used to arrest and secure a criminal conviction) were given to Lucas, but it's

not his record. The Appellant provided evidence of a private investigator's notes of any expert witness, Mindy Maughan. The expert's report given to David Lucas is Lucas' record. The D.M.V. search Lucas conducted is Lucas' record. The Appellant pursuant to the Government Records Access and Management Act (G.R.A.M.A.) has a legal right to the records in question.

Because appellate courts are in as good a position as trial courts to interpret case law, the issue before the court presents a question of law and therefore the review of the trial courts decision is for correctness. *State v. Richardson*, 843 P.2d 517 (Utah Ct. App. 1992), *Stevenson v. Goodson*, 924 P.2d 339 (Utah 1996)

The GRAMA statutes are clear; the records requested by the Appellant should be produced:

U.C. A. § 63-2-201(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....

U.C.A. § 63-2-301(1) The following records are public... (f) judicial records unless a court orders the records to be restricted under the rules of civil or criminal procedure or unless the records are private under this chapter.

U.C.A. § 63-2-304 The following records are protected if properly classified by a governmental entity: (8) Records created or maintained for civil, criminal, or administrative enforcement purposes or audit purpose, or for discipline, licensing, certification, or registration purposes, if release of the records (c) would create a danger of depriving a person of a right to a fair trial or impartial hearing.

U.C.A. § 63-2-203(4) A governmental entity may fulfill a record request without charge and is encouraged to do so when it determines that: (b) the individual requesting the record is the subject of the record, or an individual specified in subsection § 63-2-202(1) or (2); or (c) the requester's legal rights are directly implicated by the information in the record, and the requester is impecunious.

WHEREFORE THE APPELLANT PRAYS THE UTAH COURT OF APPEALS OVERTURNS JUDGE JONES MEMORANDUM DECISIONS GRANTING SUMMARY JUDGMENT AND SENDS THIS CASE BACK TO THE TRIAL COURT FOR AN EVIDENTIARY HEARING TO DETERMINE THE FACTS, ACCESS CREDITABILITY AND FOR THE RELIEF REQUESTED.

**3. Did the Second District Court commit clear error, dismissing Plaintiff's monetary damage claims when the Plaintiff alleged public records were denied by fraud and the existence of public records were denied by fraud?**

Questions of law are reviewed for correctness. *State v. O'Neil*, 848 P.2d 694 (Ct. App. 1993), *State v Taylor*, 818 P.2d 561 (Ct. App. 1991) The question is whether or not G.R.A.M.A. or the Utah Government Immunity Act (U.G.I.A.) bars monetary damages for acts of fraud.

The Appellant's alleges acts of fraud and acts of malice in the complaint. The Utah Government Immunity Act (U.G.I.A.) U.C.A. § 63-30-4(3)(b) allows the Appellant "civil action." "A plaintiff may not bring or pursue any other civil action or proceeding based upon the same subject

matter against the employee or the estate of the employee whose act or omission gave rise to the claim, unless (i) the employee acted or failed to act through fraud or malice; or.... see also § 63-30-4(4)”

The Trial Record demonstrates that the Ogden City defendants committed fraud. Ogden City’s response June 28<sup>th</sup>, 2001 states, “2. thur 5. – These records are done manually; therefore, no records ever existed.” On August 10<sup>th</sup>, 2001, at a hearing before the Ogden City Records Review Board, Detective David Lucas testified that Ms. Mindy Maughan gave him no records. Ogden City Records Review Board on September 21<sup>st</sup>, 2001 found, (3) Concerning... numbers 2 and 3. Detective Lucas may have received a list of variations of license plate numbers from Mindy Maughan..... Both statements cannot be true. Whether or not Detective Lucas received plate numbers from Ms. Maughan is a material fact known to David Lucas and Mindy Maughan. David Lucas’ testimony and Mindy Maughan’s statements to a private investigator cannot both be true. The Appellant pursuant to G.R.A.M.A. has a right to these records. These records may not be denied by fraud.

Governmental immunity cannot apply where a claimant alleges that the state or a state employee violated his constitutional rights. *Colman v. Utah State Land Bd.*, 795 P.2d 622 (UT 1990), *Butt v. Deland*, 922 P.2d 173 (UT 1996)

The Government Records Access and Management Act (G.R.A.M.A.) provides for fees and damages, therefore an employee may be liable for acts of fraud. see (U.G.I.A.) U.C.A. § 63-30-4

U.C.A. § 63-2-802(5) Claims for attorney fees as provided in this section or for damages are subject to Title 63, Chapter 30, Governmental Immunity Act.

G.R.A.M.A. also indicates the Utah Rules of Civil Procedure govern.

§ 63-2-404(3) The petition for judicial review shall be a complaint governed by the Utah Rules of Civil Procedure and shall contain (d) a request for relief specifying the type and extent of relief requested. A Judge pursuant to § 63-2-404(d) may grant a request for relief as specified by the Plaintiff as to the type and extent of relief requested.

The Utah Rules of Civil Procedure, Rule 9(b) states, “In all averments of frauds or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other conditions of the mind of a person may be averred generally.”

WHEREFORE THE APPELLANT PRAYS THE UTAH COURT OF APPEALS OVERTURNS JUDGE JONES MEMORANDUM DECISIONS GRANTING SUMMARY JUDGMENT AND SENDS THIS CASE BACK TO THE TRIAL COURT FOR THE MONETARY RELIEF REQUESTED.

### **CONCLUSION AND RELIEF REQUESTED**

The Government Records Access and Management Act (G.R.A.M.A.) provide for injunctive relief against agencies attempting to cover-up and keep their secrets. To prevent this from happening the Freedom of Information Act was passed by the United States Congress. Utah passed the Government Records Access and Management Act (G.R.A.M.A.). The Appellant is the subject of these records and these records are judicial records.

*Res Judicata* does not apply because a lack of jurisdiction is not adjudication upon the merits. In fact, the merits of the Appellant's right to these records in question have long ago been decided to the Appellants' favor in U.C.A. § 63-2-301(f); see 5 U.S.C.A. sec. 556(d); the compulsory process clause of the United States Sixth Amendment, and corresponding Constitution of Utah Article; State of Utah, Rules of Evidence, R. 607; U.C.A. § 77-1-6(1)(e); and the Utah Rule of Criminal Procedure, Rule 16(a)(4) & (5).

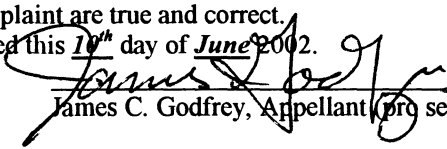
The Defendants provide no proof that they have released all records required under G.R.A.M.A. Judge Jones abused his discretion by ignoring disputed material facts and assessing credibility on summary judgment. At best the Trial Court records demonstrates the Ogden Defendants denied the existence of records, destroyed records, and falsely claimed records never existed, all acts of fraud. The Utah Government Immunity Act (U.G.I.A.) provides monetary damages against defendants that commit acts of fraud.

WHEREFORE THE APPELLANT PRAYS THE UTAH COURT OF APPEALS OVERTURNS JUDGE JONES MEMORANDUM DECISIONS GRANTING SUMMARY JUDGMENT AND SENDS THIS CASE BACK TO THE TRIAL COURT FOR AN EVIDENTIARY HEARING AND FOR THE RELIEF REQUESTED.

I declare that under penalty of perjury that the foregoing statements and facts made in this Appellant's Brief complaint are true and correct.

Dated this 10<sup>th</sup> day of June 2002.

By

  
James C. Godfrey, Appellant (pro se)

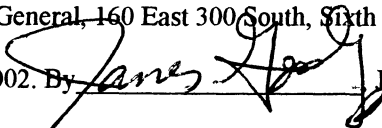
### **CERTIFICATE OF MAILING**

I hereby certify that a true and correct copy of the foregoing Appellant's Brief was mailed U.S. Postage to:

Allan L. Larson, Snow, Christensen and Martineau, 10 Exchange Place, Eleventh Floor, P.O. Box 45000, Salt Lake City, Utah 84145

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Dated this 24 day of June 2002. By  James C. Godfrey, Appellant (pro se)

**APPENDIX FOLLOWS**

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**IN THE SECOND JUDICIAL DISTRICT COURT, STATE OF UTAH  
WEBER COUNTY, OGDEN DEPARTMENT**

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JAMES C. GODFREY,

Plaintiff,

vs.

STATE OF UTAH, et al.,

Defendants.

**MEMORANDUM DECISION**

Case No. 010905553

Honorable Ernie Jones

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On April 11, 2002, the plaintiff filed a motion to submit for decision concerning several motions. The Court, having read the memorandums submitted by the parties, enters the following findings:

1. The Court will grant the motion to dismiss filed by defendant Weber County. The Court finds the same issues apply to the State of Utah, Ogden City, and Weber County. The Court earlier granted motions to dismiss as to Ogden City and the State of Utah. Since the issues are the same or similar as to all defendants, the Court will dismiss as to all defendants. Also, the Court will grant Weber County's motion to dismissed, based on the arguments outlined in the motion.

2. Plaintiff's motion for exhibit copies and transcripts is denied because this case is now dismissed, and therefore, the matter is moot.

3. Plaintiff's answer to Ogden City's motion for summary judgment is considered but denied, based on the ruling for summary judgment.

4. Plaintiff's motion to strike Ogden City's motion for summary judgment is considered but denied based on the Court's ruling in favor of Ogden City for summary judgment.

5. Plaintiff's motion to amend the judgment and relief from judgment is denied. The original judgment stands.

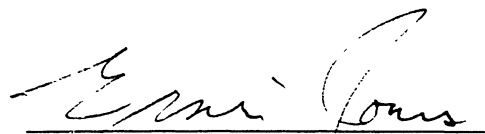
6. Plaintiff's motion to strike Ogden City's second memorandum is denied. See paragraphs #3 and #4 of this decision.

7. Plaintiff's motion to compel discovery and costs and sanctions is denied because the case against William Daines and Weber County is hereby dismissed. See paragraph #1 of this decision.

8. The Court did not rule on these motions earlier because plaintiff filed an appeal with the Utah Court of Appeals. The appeal prevents the District Court from taking any action on pending motions. The appeal was dismissed on March 6, 2002.

9. The Court would request that defendant Weber county prepare an order consistent with this memorandum.

Dated this 22 of April, 2002.

  
ERNIE JONES  
DISTRICT COURT JUDGE

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**IN THE SECOND JUDICIAL DISTRICT COURT, STATE OF UTAH  
WEBER COUNTY, OGDEN DEPARTMENT**

---

JAMES C. GODFREY,

Plaintiff,

vs.

STATE OF UTAH, et al.,

Defendants.

**MEMORANDUM DECISION**

Case No. 010905553

Honorable Ernie Jones

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On January 31, 2002, Ogden City filed a motion for summary judgment. A memorandum of law was also submitted with the motion.

On February 4, 2002, the plaintiff filed an answer to the motion for summary judgment. The plaintiff also filed a motion to strike Ogden City's motion for summary judgment and Rule 11 sanctions.

The Court, having reviewed the memorandums of law submitted by both parties, enters the following findings:

1. Plaintiff's action is barred by collateral estoppel, because Judge Dever dismissed this same case with prejudice. The language in the order is clear. The plaintiff cannot relitigate the same claim in Second District Court.

2. Plaintiff is pro se. Therefore, he is not entitled to attorney's fees. Plaintiff does not have a claim for damages under GRAMA or the Governmental Immunity Act.


3. The GRAMA Act governs access to records. Ogden City is not required to look for records compiled by other agencies or political subdivisions. (See 63-2-701, U.C.A.) Most of the records requested by the plaintiff are not Ogden City records. Also, the records that are Ogden City records have been provided to the plaintiff. The final decision and order of the Ogden Records Committee reflects that these records were sent to the plaintiff earlier.

4. GRAMA is not a general forum for discovery of evidence to support post-conviction relief.

5. The Court will grant summary judgment for Ogden City.

6. Ogden City will prepare an order consistent with this decision.

Dated this 22 of April, 2002.

  
ERNIE JONES  
DISTRICT COURT JUDGE



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**IN THE SECOND JUDICIAL DISTRICT COURT, STATE OF UTAH  
WEBER COUNTY, OGDEN DEPARTMENT**

---

JAMES C. GODFREY,

Plaintiff,

vs.

STATE OF UTAH, et al.,

Defendants.

**MEMORANDUM DECISION**

Case No. 010905553

Honorable Ernie Jones

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The plaintiff filed a motion to submit for decision on January 16, 2002. The plaintiff claims there are several motions pending before the Court for decision. Among the motions are:

**I. Defendant's answer of Ogden City Police Department, Eileen Buck, David Lucas, Ogden City Reporter, Lupe Huntley and motion to dismiss.**

These defendants filed an answer to the complaint on August 30, 2001. However, no motion to dismiss was included with the answer. On January 8, 2002, these defendants filed a motion for summary judgment. That motion was granted. (See memorandum decision dated January 30, 2002.)

**II. Defendants answer of Weber County and William Daines and motion to dismiss.**

These defendants filed an answer on October 22, 2001. Again, no motion to dismiss was included with the answer. Therefore, there is no motion pending for the Court to rule on.

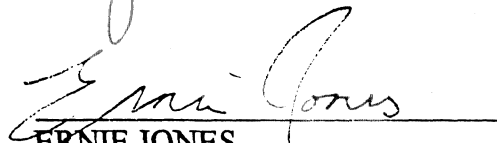
**III. Motion to amend judgment, Rule 59 (7)**

The plaintiff filed a motion to amend the judgment granting the motion to dismiss for the

Department of Administrative Services. Plaintiff's motion was filed December 5, 2001. The Department of Administrative Services filed an objection to the motion on December 10, 2001. The court, having read the memorandums submitted by both parties, rules as follows:

Plaintiff's motion to amend the judgment is denied.

Dated this 30 of Jan., 2002.

  
ERNIE JONES  
DISTRICT COURT JUDGE

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**IN THE SECOND JUDICIAL DISTRICT COURT, STATE OF UTAH  
WEBER COUNTY, OGDEN DEPARTMENT**

---

JAMES C. GODFREY,

Plaintiff,

VS.

STATE OF UTAH, et al.,

Defendants.

**MEMORANDUM DECISION**

Case No. 010905553

Honorable Ernie Jones

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The defendants Ogden City, Ogden City Police Department, Eileen Buck, Dave Lucas, Ogden City Recorder and Lupe Huntley filed a motion for summary judgment on January 8, 2002.

The Court, having reviewed the memorandums of law submitted in this matter, rules as follows:

1. Plaintiff's complaint is barred by collateral estoppel. The plaintiff briefed and argued these same claims in the case before Judge Lee Dever in the Third District Court. Plaintiff's claims were dismissed with prejudice in that case on August 8, 2001. Plaintiff cannot relitigate the same issues which were decided in the previous case. Although some defendants are different, the issues are the same. Collateral estoppel precludes litigation of those same issues.


2. Plaintiff's complaint for damages is barred by the Governmental Immunity Act and Government Records Access Management Act (G.R.A.M.A.). Plaintiff is pro se and therefore, he is not entitled to attorney fees. Plaintiff does not have a cause of action for damages under

G.R.A.M.A. There are no other damages allowed under G.R.A.M.A. Plaintiff's complaint is barred under the Governmental Immunity Act, 63-30-3 and 63-30-10, U.C.A.

3. The defendants' motion for summary judgment dismissing plaintiff's complaint with prejudice is granted.

4. Defendants will prepare an order consistent with this memorandum decision.

Dated this 3<sup>rd</sup> of Jan, 2002.

  
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ERNIE JONES  
DISTRICT COURT JUDGE

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**IN THE SECOND JUDICIAL DISTRICT COURT, STATE OF UTAH  
WEBER COUNTY, OGDEN DEPARTMENT**

---

JAMES C. GODFREY,

Plaintiff,

vs.

STATE OF UTAH, et al.,

Defendant(s).

**MEMORANDUM DECISION**

Case No. 010905553

Honorable Ernie W. Jones  
District Judge

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1. The plaintiff filed a motion requesting that the Court issue subpoenas to several witnesses. The subpoenas did not have a date or time for the witnesses to appear in court. This case is not set for trial or hearing. The Court will deny the request at this time, because the matter is not set for trial or hearing.

2. The plaintiff filed a motion for a change of venue. The motion is denied. Many of the parties to the suit are in Weber County. Although the plaintiff is not in Weber County, the motion does not provide sufficient grounds to transfer the case to another venue.

3. The plaintiff filed a motion for records within the control of the Court. The Court denies the motion. The plaintiff can obtain these records through the use of discovery (interrogatories, dispositions). The Court is not to be involved in the discovery process.

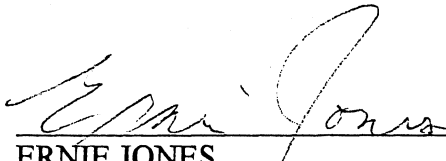
4. The plaintiff filed a motion to supplement his complaint. The motion is granted.

5. Defendant, Department of Administrative Services, State Records Committee, filed a

motion to dismiss. That motion was granted. (See memorandum decision dated 11/23/01.)

6. Plaintiff filed a motion for default judgment against defendants William Daines and Mark DeCaria. An answer was filed timely, therefore, the motion is denied.

Dated this 4 of Dec, 2001.

  
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ERNIE JONES  
DISTRICT COURT JUDGE