



OFFICE OF THE
UTAH STATE AUDITOR

October 13, 2015

Jordanelle Special Service District
c/o Mark Gaylord, Esq.
BALLARD SPAHR LLP
201 S. Main Street
Salt Lake City, Utah 84111

I have received your Notice of Appeal dated September 28, 2015, appealing the Office of the Utah State Auditor's (Office's) August 27, 2014 response to your records request made pursuant to the Government Records Access and Management Act ("GRAMA"). Your original request was for the following:

1. All documents and other records, including all communications between the Office of the Utah State Auditor and any other person, that relate to the "Standstill Agreement," a copy of which is attached hereto as Exhibit A.
2. All documents and other records, including all communications, received from any person as part of the Utah State Auditor's Audit of JSSD which resulted in the issuance of Report No. 13-JDDS-8L, dated April 16, 2015.
3. All documents and other records, including all communications, from or related to any person who approached or requested the Utah State Auditor to undertake an audit of JSSD or make a claim that JSSD should be investigated by the Utah State Auditor.
4. All documents and other records, including all communications, from or related to any person who made an anonymous complaint about or related to JSSD in advance of or subsequent to the Utah State Auditor commencing its investigation or audit of JSSD.
5. All documents and other records, including all communications, that the Utah State Auditor relied upon in making the Findings and Recommendations set forth in the Audit Report, including all drafts of the Audit Report,
6. All documents and other records, including all communications between the Utah State Auditor and any other person that the Utah State Auditor relied on, used, or considered in its decision to commence an investigation or Audit of JSSD.
7. All documents and other records, including all communication between the Utah State Auditor and any other person that conveyed information, communications, or documents to the Utah State Auditor implying, alleging, or suggesting that JSSD has engaged or will engage in some or any form of waste, fraud, abuse, wrongdoing, or wrongful conduct.
8. All documents and other records, including all communications between the Utah State Auditor and any other person, about or referring to the litigation or legal dispute between JSSD and Cummings Land & Livestock LLC; or JSSD and VR Acquisitions LLS; JSSD and BV Jordanelle, LLC and BV Lending, LLC; or JSSD and USAA and Wells Fargo & Co.
9. All documents and other records, including all communications between the Utah State Auditor and any other person that provided any guidance or support to the Utah State Auditor in its Audit or investigation of JSSD.
10. All documents and other records, including all communications between the Utah State Auditor and any person related to JSSD's water reservation fee resolutions, program, or contracts.

11. All documents and other records, including all communications between the Utah State Auditor and any person related to JSSD's alleged misuse of public funds.
12. All documents and other records, including all communications between the Utah State Auditor and any person related to any alleged conflict of interest involving JSSD.
13. All documents and other records, including all communications between the Utah State Auditor and any person related to the creation of Jordanelle Special Service District 2005-02 (hereinafter "Area C"), the construction of improvements within Area C, the levying of assessments, or the collection of assessments.
14. All documents and other records, including all communications between the Utah State Auditor and any person related to property acquired by JSSD for a water treatment facility, including, but not limited to, the transaction between JSSD and Fishin With Bread, LLC.
15. All documents and other records, including all communications, evidencing or showing that the JSSD Governing Board, as that term is understood by the Utah State Auditor, has delegated their role of governing the District to another individual or group who cannot be held accountable to the citizenry.
16. All complaints, in any form, that the Utah State Auditor received regarding JSSD.
17. All communications between the Utah State Auditor and the news media, including the Deseret News, and the Salt Lake Tribune.
18. All documents and other records, including all communications between the Utah State Auditor and any member, employee, or representative of the Utah Governor's Office, or any Utah Congressperson, or any representative, past or present, of the Utah Legislature, about, related to, or concerning JSSD.
19. All documents and other records, including all communications between the Utah State Auditor and any of the following individuals and entities that relate, refer, or concern the Audit and/or JSSD: a. P. Matthew Muir; b. James W. Anderson; c. Miller Guymon, P.C.; d. Miller Toone, P.C.; e. Jodi S. Hoffman; f. Hoffman Law; g. Cummings Land & Livestock, LLC; h. DC Transport & Excavating, Inc.; i. David Cummings; j. Douglas Ray Cummings; k. VR Acquisitions, LLC; l. Michael R. Johnson; m. Matthew M. Cannon; n. Matthew N. Evans; o. Robert G. Wing; p. Jennifer R. Korb; q. Ray Quinney & Nebeker P.C.; r. Timothy J. McCaffery; s. Freeborn & Peters LLP; t. BY Jordanelle, LLC; u. BV Lending, LLC; v. Cortney Liddiard; w. Douglas J. Payne; x. Fabian & Clendenin; y. Wells Fargo & Co.; z. USAA Mutual Funds Trust; aa. Koch Financial Corporation; bb. Alan L. Sullivan; cc. James D. Gardner; dd. Amber M. Mettler; ee. Adam L. Sisitsky; ff. Matthew D. Levitt; gg. Snell & Wilmer L.L.P.; hh. Mintz Levin Cohn Ferris Glovsky and Popeo P.C.; ii. Richard H. Moche; jj. Poonam Patidar; kk. Adelaide Maudsley; ll. Janet Carson; mm. Steven Jackson; nn. LeeRoy Farrell; oo. John Gavin; pp. Jeffrey Graham; mm. J.R. Christensen; nn. Mower; oo. Sorenson.

Although not required to respond under GRAMA, in the interests of public disclosure and transparency, on or about August 27, 2015, the Office of the Utah State Auditor ("Office") provided to you 590 pages of documents, charging a minimal charge of \$.05 per copy, and expended at least 20 hours retrieving and compiling these records. It should be noted that we did not provide copies of documents it was assumed JSSD already possessed because the copies were originally provided to the Office by JSSD.

After a careful review of your Notice of Appeal, I adopt and re-affirm Ms. Siebenhaar's decision and reasoning, and also make the following additional findings:

1. Under the statute dictating the functions and duties of the State Auditor, records and audit work papers to the extent they would disclose the identity of a person who during the course of an audit, communicated the existence of any waste of public funds, property or manpower, or a violation or suspected violation of law, rule or regulation adopted under the laws of this state, is a protected record under GRAMA "if the information was disclosed on the condition that the identity of the person be protected." Utah Code § 67-3-1(15)(a)(ii). There is no discretion given to the Office for disclosure of the name of these types of "whistleblowers."

2. The protections afforded by GRAMA to the Office of the State Auditor are also broad. “Records of a governmental audit agency relating to an ongoing or planned audit until the final audit is released” are protected records. Utah Code § 63G-2-305(16). The authority of the Office to classify records related to an ongoing or planned audit as “protected” was upheld by the Utah State Records Committee in the *JSSD v. Office of the Utah State Auditor*, State Records Comm. Case No. 14-21 (2014), decision.
3. Similarly, GRAMA also protects records if the release of records created or maintained for audit purposes, reasonably could be expected to interfere with the audit or disclose audit techniques. See, Utah Code § 63G-2-305(10).
4. The purpose of -305(10) & -305(16) is to allow an audit agency, such as the Office of the State Auditor, to have the ability to gather, evaluate, and generate documents concerning a governmental entity for an audit without the concern of the very governmental entity that is being audited interfering with the audit through a GRAMA request.
5. A review of your lengthy GRAMA request and your lengthy appeal to the Office’s response, makes it clear that it is the intent of JSSD to interfere with the statutory and constitutional functions of the Office of the State Auditor. This Office must have the ability to receive information from individuals who request anonymity in order to have sufficient information to investigate and audit governmental entities. If the Office was required to give all information received concerning complaints about a governmental entity, including the identities of those who have complained to the Office, there would be a “chilling effect” upon those desiring to give this information to the Office. As the Auditor for the State of Utah, there is an overriding strong public interest in allowing the Office to obtain as much information as possible in order to safeguard the proper use of public monies throughout the State of Utah.
6. Additionally, although we responded to your GRAMA request, our review of GRAMA shows that the statute does not provide governmental entities with a right to file a GRAMA request as outlined in Utah Code § 63G-2-204.
7. Pursuant to Utah Code § 63G-2-201(2), every “person” has the right to inspect a public record. Pursuant to Utah Code § 63G-2-204(1), a “person” making a request for a record is required to furnish a written request containing certain information. GRAMA defines a “person” in Utah Code § 63G-2-103(17) as an individual, a nonprofit or profit corporation, a partnership, a sole proprietorship, another type of business organization, or any combination acting in concert with one another. Noticeably absent from the GRAMA definition of a “person” is a “governmental entity.”
8. It is clear that a “governmental entity” is a defined organization because GRAMA includes a definition of what constitutes a governmental entity in Utah Code § 63G-2-103(11). Noticeably absent from the definition of a governmental entity is the word “person.”
9. GRAMA does provide governmental entities a method to obtain records from other governmental entities through the “sharing records” provisions of Utah Code § 63G-2-206. Records including private, controlled, or protected records, may be shared between governmental entities if they comply with the provisions of Utah Code § 63G-2-206. Before sharing a record or record series with another governmental entity, the originating governmental entity is required to inform the recipient of the record’s classification and of any accompanying restrictions on access to the record. Utah Code § 63G-2-206(4).
10. The concept of “public access” to records through GRAMA requests does not make sense when the requester is a governmental entity. The fundamental question that should be asked is whether GRAMA provides a way for a governmental entity to obtain records from another

governmental entity when the originating governmental entity has classified those records as non-public. Except as provided by the Legislature in Utah Code § 63G-2-206, the answer to that question is clearly “No.”

11. When GRAMA is considered as a whole, it makes sense that the only way a governmental entity may receive a record is through the record sharing provisions of Utah Code § 63G-2-206, and not through a “GRAMA request” under Utah Code § 63G-2-204. A person making a request for a record under Utah Code § 63G-2-204 is required to provide “the person’s name, mailing address, and daytime telephone number,” information that obviously would not be required for a governmental entity. There is no need to verify a governmental entities’ request for records by requiring their mailing address and daytime telephone number as required by Utah Code § 63G-2-204.
12. Access by a governmental entity to records of another governmental entity is not “public access.” Otherwise, there would be no meaning to the word “public” in GRAMA if it also included all governmental entities. Further, the weighing provisions of Utah Code § 63G-2-403 and -404 would be nonsensical if the “requester” included governmental entities.
13. The Legislature has provided a method for Utah governmental entities to receive records from other Utah governmental entities, and that method is through the sharing records provisions of Utah Code § 63G-2-206. Utah Code § 63G-2-204 provides a method for the “public” to receive records from Utah governmental entities. JSSD, who is unquestionably a governmental entity by definition, cannot also be considered to be a member of the general “public” according to GRAMA. This Office and JSSD are both governmental entities of the State of Utah, and it was not the intent of the Utah Legislature to have Utah governmental entities spend considerable resources litigating records access issues.

Accordingly, the Office does not believe that JSSD has the right to make a GRAMA request to the Office of the State Auditor pursuant to Utah Code § 63G-2-203, and therefore, also does not have the right to the appeal provisions provided by GRAMA for “persons” requesting a record from a governmental entity. Nonetheless, you can attempt to appeal this decision by filing an appeal within thirty (30) days to either the Utah State Records Committee or, for judicial review, in a Utah District Court pursuant to Utah Code §§ 63G-2-403(1) and 63G-2-404(2). An appeal to the Utah State Records Committee should be filed with the following individual:

State Records Committee
Attn: Nova Dubovik, Executive Secretary
State Archives
346 S. Rio Grande
Salt Lake City, Utah 84101

For further information concerning the procedures of an appeal; please review Utah Code §§ 63G-2-402, -403, & -404, and Utah Admin. Code R. 35-2.



John Dougall, Utah State Auditor