



State of Utah

GARY R. HERBERT
Governor

GREG BELL
Lieutenant Governor

Department of Administrative Services
Division of Archives and Records Service

KIMBERLY K. HOOD
Executive Director

PATRICIA SMITH-MANSFIELD
Director

October 10, 2014

John Dougall
Chief Administrative Officer
Office of the Utah State Auditor
East Office Building, Suite E310
Utah State Capitol Complex
Salt Lake City, Utah 84114

Dear Mr. Dougall:

Subject: Jordanelle Special Service District Notice of Appeal to State Records Committee.

The State Records Committee has received a request for an appeal hearing from Ballard Spahr, LLP representing Jordanelle Special Service District. They are appealing the denial of records request relating to the "Standstill Agreement". A hearing has been scheduled at 9:00 a.m. on November 13, 2014. The hearing will be held at the following address:

Utah State Archives.
346 S. Rio Grande St.
Salt Lake City, UT 84101-1106

You are required to submit to me, no later than five business days prior to the hearing, a written statement of facts, reasons, and legal authority supporting your position. Under the Utah Code 63G-2-403(5), you must also send copies of the same statements to the petitioner by first class mail. I will forward copies of any statements I receive to the State Records Committee members for their review prior to the hearing.

The State Records Committee, under the authority of Utah Code 63G-2-403(9)(a), may review the disputed records *in camera*. **Therefore, please have the records in question available at the hearing.**

I am sending a copy of this hearing notice, appeal letter, and attached documentation to parties involved.

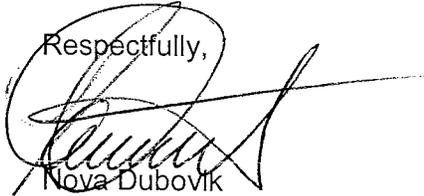
Due to the possibility of multiple hearings at a meeting the schedule is subject to change. For updates, please check the agenda which is available on the Utah Public Notice website: <http://www.utah.gov/pmn/index.html>.

To access information about the State Records Committee members and other pertinent information about appeal hearings refer to the following links: <http://www.archives.state.ut.us/> or <http://www.archives.state.ut.us/src/index.html>

John Dougall]
October 10, 2014
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If you have any questions please contact me, and if you are interested in mediation contact the state government ombudsman, Rosemary Cundiff, at (801) 531-3858.

Respectfully,

A handwritten signature in black ink, appearing to read 'Nova Dubovik', written over a circular scribble.

Nova Dubovik
Executive Secretary
State Records Committee
346 S. Rio Grande
Salt Lake City, UT 84101-1106
801-531-3834
ndubovik@utah.gov

cc: Members of the State Records Committee and legal counsel
Linda Siebenhaar, Records Officer
Mark R. Gaylord, Attorney

Enclosures:

One Utah Center, Suite 800
201 South Main Street
Salt Lake City, UT 84111-2221
TEL: 801.531.3000
FAX: 801.531.3001
www.ballardspahr.com

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OCT 27 2014
Per 

Mark R. Gaylord
Direct: 801.531.3070
Fax: 801.321.9070
gaylord@ballardspahr.com

October 6, 2014

Via Hand Delivery

UTAH STATE RECORDS COMMITTEE
Attn: Nova Dubovik, Executive Secretary
Lex Hemphill, Chairman
State Archives
346 S. Rio Grande
Salt Lake City, UT 84101-1106

NOTICE OF APPEAL

Dear Mr. Hemphill:

Section 403 of the Government Records Access and Management Act (“GRAMA”) allows the Jordanelle Special Service District (“Petitioner” or “JSSD”) to:

Appeal to the records committee by filing a notice of appeal with the executive secretary no later than: (a) 30 days after the day on which the chief administrative officer of the governmental entity grants or denies the record request”

UTAH CODE ANN. § 63G-2-403(1). On September 5, 2014, the chief administrative officer of the Office of the Utah State Auditor, John Dougall, “adopt[ed] and re-affirm[ed]” the denial of Petitioner’s GRAMA request. *See* Mr. Dougall’s Determination, attached as Exhibit 1. Petitioner hereby appeals Mr. Dougall’s determination to this Committee. Petitioner sets forth herein below a short statement of facts, as well as the reasons and legal authority which entitle it to reversal of Mr. Dougall’s determination.

STATEMENT OF FACTS

Jordanelle Special Service District (“JSSD”) is a special service district, which is a body corporate and politic with perpetual succession, created by Wasatch County over twenty years ago. It is a separate and distinct entity in which Wasatch County is the governing body. JSSD is currently embroiled in several lawsuits involving the creation of a special service area (“Area C”) and the construction of certain Improvements within Area C.

In January of 2014, the Utah State Auditor’s office commenced an “investigation” into the “potential misuse of credit cards” On July 21, 2014, Petitioner made a request to the Office of

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the Utah State Auditor (the “Auditor”) under GRAMA. *See* GRAMA Request Form, attached as Exhibit 2. The requested records included the following request:

1. Any and all documents and other records, including all communications between the Office of the Utah State Auditor (“Utah State Auditor”) and any other person, that relate to the “Standstill Agreement,” a copy of which is attached hereto as Exhibit A.

See GRAMA Request Form. On August 4, 2014 Petitioner received a letter from Linda Siebenhaar (“Ms. Siebenhaar”) denying, in part, the GRAMA request. Ms. Siebenhaar explained that the Auditor was “unable to provide [Petitioner] with any records related to [Petitioner’s] request No. 1 because the records are part of an ongoing investigation by [the Auditor].” *See* Notice of Denial, attached as Exhibit 3. Ms. Siebenhaar went on to note that the records responsive to the Request were “classifie[d] as ‘protected’ records” under Section 63G-2-305(16), which protects records (i) “of a governmental audit agency,” (ii) “relating to an ongoing or planned audit.” Ms. Siebenhaar cited no other provisions that exempted the requested records. *Id.*

On August 22, 2014, Petitioner appealed Ms. Siebenhaar’s denial to Mr. Dougall. *See* First Notice of Appeal, attached as Exhibit 4. On September 8, 2014, Petitioner received Mr. Dougall’s written determination, dated September 5, 2014. *See* Auditor Denial Letter. In it Mr. Dougall first “adopt[ed] and re-affirm[ed] Ms. Siebenhaar’s decision and reasoning.” *Id.* at 2. Mr. Dougall then made “findings,” although he cited no authority (*e.g.* Utah Code) granting him the right to make findings. *Id.* The findings were contained in four numbered paragraphs, which findings are either not supported by the record and/or are merely legal conclusions.

First, Mr. Dougall makes the improper finding (in paragraph 1) that Request No. 1 “relates to all of the Office’s audit records concerning JSSD. This finding is incorrect. Request No. 1 does not seek all of the Office’s audit records. In fact, it does not seek any audit records. It only seeks records relating to the “Standstill Agreement” which has nothing to do with the audit of JSSD. The Standstill Agreement, which was not ratified by Wasatch County as the governing body of JSSD, is not an agreement at all, but was merely a document negotiated between private litigants. Hence, the means and manner in which a copy of the Standstill Agreement was obtained by the Auditor is not a protected record. Nor are any communications that occurred between the Auditor’s Office before and after the Standstill Agreement was signed protected records.

Second, Mr. Dougall’s incorrectly finds (paragraph 2) that “any records relating to the Standstill Agreement relate to the audit and would not be subject to disclosure pursuant to Utah Code § 63G-2-305(16).” Again, the Standstill Agreement has nothing to do with the Audit. The fact that it was received by the Auditor’s office while an audit is being undertaken does not render it a protected record. Further, without any explanation, Mr. Dougall claims that the release of the requested documents “could be expected to interfere with the audit or disclose audit techniques” pursuant to Utah Code § 63G-2-305(10). Ignoring the fact that Ms. Siebenhaar’s denial did not rely on Section 305(10), Mr. Dougall’s finding is unsupported by the facts as the mere disclosure of communications between the

Auditor's office and any third-party relating to the Standstill Agreement does not interfere with the "investigation" being undertaken by the Auditor's office.

Third, Mr. Dougall's finding in paragraph 3 is not a finding but a conclusion of law that has nothing to do with why Petitioner is being denied access to the documents responsive to Request No. 1. JSSD's request for documents relating to the Standstill Agreement has nothing to do with JSSD's operations that are being investigated. It has to do with a third-party private litigant's communications with the Auditor's office.

Fourth, Mr. Dougall's finding in paragraph 4 is also a conclusion of law. Again, Request No. 1 has nothing to do with the "honesty and integrity in fiscal affairs, accuracy and reliability of financial statements, effectiveness and adequacy of financial controls, operational performance, and compliance with the law." Rather, Request No. 1 merely asks for information and documents relating to the non-binding Standstill Agreement.

Despite the absence of any factual findings, Mr. Dougall declared:

It is the policy of the Office, based upon its constitutional and statutory authority, that it *alone* has the discretion to determine whether documents can be disclosed relating to an audit of a governmental entity while that governmental entity is being audited.

Id. (emphasis added). While the appeal concerned the denial of a GRAMA request, the Auditor's response simply informs Petitioner of his purported authority. *Id.* at 2-3. Mr. Dougall, however, gave no citation to the "constitutional and statutory authority" it proclaimed granted him "alone" the discretion to make such determinations. *See id.*

Finally, in affirming the Auditor's determination, Mr. Dougall inexplicably provides Petitioner with an update on the status of the "audit," noting vaguely that the "audit [of Petitioner] continues to expand in scope because of the array of concerns [that the Auditor has] and continue[s] to encounter," and further that "attempts to impair and limit the audit continue to cause [the Auditor] unnecessary delays." *Id.* at 3. This unsupported conclusion has no place in this GRAMA request and is not supported by the record. The inflammatory language is belied by the fact that JSSD has fully complied with and provided the Auditor's office with every document requested of it during the Auditor's investigation.

LEGAL AUTHORITY AND REASONING

Ms. Siebenhaar's decision to withhold the requested records was reached in error and contrary to the law, and Mr. Dougall erred in affirming Ms. Siebenhaar's denial. Although not disputed by the Auditor, it is important to note that there is a presumption that "government records are public." *See Southern Utah Wilderness All. v. Automated Geo. Ref. Ctr.*, 2008 UT 88, ¶ 21, 200 P.3d 643. There are of course exceptions to this presumption. UTAH CODE ANN. § 65G-2-305. The exception claimed here -- that the "records of a governmental audit agency relating to an ongoing or planned audit . . ." -- is not supported by the record. *Id.* at § 65G-2-305(16). When construing a

statute, Utah law requires that you look to the statute's plain language. *Salt Lake City Corp. v. Haik*, 2014 UT App 193, ¶ 8. This means giving the language their "plain, natural, ordinary, and commonly understood meaning." *Gohler v. Wood*, 919 P.2d 561, 562–63 (Utah 1996). Although the provision may apply if JSSD were seeking records relating to the audit, that is not the case here.

I. THE DENIAL BY THE AUDITOR IS IMPROPER BECAUSE IT WITHHOLDS PUBLIC RECORDS THAT DO NOT "RELATE TO" AN ONGOING OR PLANNED "AUDIT."

In focusing its request solely on the Standstill Agreement, Petitioner intentionally stayed away from the audit being undertaken by the Auditor. The Standstill Agreement, which was presented to JSSD by counsel of a party who filed a lawsuit against JSSD, reflects an apparent effort between the drafter of the document (Jodi Hoffman) and the Auditor to compel Petitioner to take certain action with regards to pending litigation. *See* Standstill Agreement, attached as Exhibit 5. Yet, Ms. Siebenhaar and Mr. Dougall admit that the Auditor **did not** authorize his name to be included in the Standstill Agreement. (*See* Exhibit 3 and 4.) Based on this admission, Petitioner's request gains greater significance because it demonstrates the inclusion of and reference to the Auditor by the drafter was without authority. In other words, it reveals facts that show it has nothing to do with an audit, and Petitioner is entitled to production of records requested. Moreover, the Standstill Agreement is a litigation tool used by private litigants to seek redress, not part of an audit of JSSD. It has nothing to do with the Auditor's current investigation, nor does it "relate" to an ongoing or planned "audit."

Indeed, it is not clear whether the Auditor is conducting an "audit." Subsection 16 protects records of a governmental audit agency "relating to an ongoing or planned *audit*" (emphasis added). In a letter dated January 19, 2014, the Auditor notified the General Manager of Petitioner that "[t]he Office of the State Auditor is commencing an *investigation* into the potential misuse of credit cards. . . ." *See* Investigation Letter, attached as Exhibit 6 (emphasis added). Subsection 16, however, does not protect records relating to an "investigation." There is a significant difference between the two. For one GRAMA has a specific definition of "audit." *See* UTAH CODE ANN. § 63G-2-103(1). In fact, even the Auditor differentiates between audits and investigations. It notes on its website that it conducts Financial Audits, Performance Audits, and Special Projects that include "internal control reviews, legal compliance and financial related audits, and other *investigations*." *About Us*, OFFICE OF THE UTAH ST. AUDITOR (last visited Aug. 21, 2014), <http://auditor.utah.gov/about-us/> (emphasis added). In other words, if the Auditor is conducting an "investigation" then subsection 16 is not applicable and the records should be disclosed.

That said, the Auditor must disclose records *not* "relating to" the audit or investigation. According to the Auditor, it is investigating the "potential misuse of credit cards at the [JSSD]." *See* Investigation Letter. Therefore, the Auditor can only withhold records "relating to" its audit into the "misuse of credit cards," or at the very most the "fiscal affairs" of JSSD. In contrast, Petitioner's request asked for records, documents, and communications, "that relate to the 'Standstill Agreement,'" which has nothing to do with the "fiscal affairs" of JSSD. Because the Standstill Agreement has nothing to do with the "investigation" or "audit," Mr. Dougall's denial of the Petitioner's GRAMA request was in error. The Standstill Agreement dealt with a request to stand down litigation proceedings pending between third parties, which Agreement was sought under the threat of legislation being passed that would remove management and control of JSSD from Wasatch

County. Thus, to use the “investigation” as a basis for withholding otherwise public information is improper and contrary to law. *See* GRAMA Request Form. Therefore, any records that relate to the Standstill Agreement, but not to the Auditor’s investigation of JSSD’s credit card use, should be disclosed.

II. THE DENIAL BY THE AUDITOR IS IMPROPER TO THE EXTENT IT WITHHOLDS PUBLIC RECORDS THAT WERE NOT CREATED BY, OR ORIGINATED FROM, THE AUDITOR.

Under subsection 16, information or documents withheld must be “records *of* a governmental audit agency.” (emphasis added). The word “of” here would appear to mean “originating at or from,” or “[c]aused by; resulting from.” *OF*, THEFREEDICTIONARY (last visited Aug. 21, 2014), www.thefreedictionary.com/of. In other words, subsection 16 requires that the records be created by or originated from a governmental audit agency. It is not enough that the records were provided to or received by the Auditor, held by the Auditor, or contained in its files. Indeed, where the exemptions require mere receipt or holding, they say so. *See, e.g.*, UTAH CODE ANN. § 65-2-305(50)(a) (“information or records held by the Department of Health”); *id.* at § 305(56) (“records contained in the . . . system”); *id.* at § 305(57) (records provided by or received by the Public Lands Policy Coordinating Office”) (emphases added).

Utah law requires that we “assume the legislature used each term advisedly.” *Miller v. State*, 2010 UT App 25, ¶ 12, 226 P.3d 743. If the Utah Legislature wanted to protect records simply *received by* the Auditor, it “would have been easy for the Legislature to have included such language.” *Id.* at ¶ 13. But the Legislature did not include such language. Utah courts would therefore “presume the Legislature intentionally omitted” such language from subsection (16). *Id.* The Auditor may disagree that this was the Legislature’s intention, but Utah courts have said that if “interpretation [of statutory language] brings about a result contrary to the intention of the Legislature, it is a matter for the Legislature to remedy” and courts “may not do so.” *West Jordan v. Morrison*, 656 P.2d 445, 447 (Utah 1982).

Here, the Petitioner is not seeking records “of” the Auditor or created by the Auditor. To the contrary. The Petitioner is seeking communications between the Auditor (and its office) and third-parties relating to the Standstill Agreement, a document created months after the Auditor commenced its investigation of JSSD and that has nothing to do with the investigation. Mr. Dougall’s suggestion otherwise simply is not supported by the record. What possible relevance does a document seeking a stand down of litigation have to do with JSSD’s fiscal affairs? The answer is nothing and the Committee should reverse Mr. Dougall’s denial.

III. THIS COMMITTEE SHOULD NOT CONSIDER MR. DOUGALL’S FINDINGS OR THE REMAINDER OF HIS DETERMINATION BECAUSE IT COMMITS ERRORS IN SIGNIFICANT PART AND GOES BEYOND ITS AUTHORITY IN DETERMINING A GRAMA APPEAL.

Mr. Dougall’s determination, besides “adopt[ing] and re-affirm[ing] Ms. Siebenhaar’s decision and reasoning,” is improper in several respects. Tracking the content of the determination, Petitioner objects specifically to the following:

1. "A review of your initial request compared to your appeal shows that your appeal differs from your initial request. Since this is an appeal of our initial denial, my decision is based solely upon what you requested in your initial request."

See State Auditor Letter at 2. First, Mr. Dougall provides no explanation of what "differs." But, more importantly, this statement is confusing on its face. It is true, of course, that Petitioner's "appeal differs from [its] initial request"—one is an appeal the other is a GRAMA request form. If, however, the assertion is that Petitioner's "[request for relief as contained in its] appeal differs from [its] initial request," then Mr. Dougall is mistaken. In its original request Petitioner requested:

Any and all documents and other records, including all communications between the Office of the Utah State Auditor ("Utah State Auditor") and any other person, that relate to the 'Standstill Agreement,' a copy of which is attached hereto as Exhibit A.

See Grama Request Form. In its Notice of Appeal, Petitioner "request[ed] the following relief":

Reversal of the denial of the GRAMA request, and disclosure of any and 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," which is attached hereto as Exhibit D.

See First Notice of Appeal at 3. As is plainly noticeable, there exists no material or meaningful difference between the two.

2. "Accordingly, I make the following findings"

In his denial, Mr. Dougall makes certain findings that are not proper. First, Mr. Dougall does not cite to any part of the Utah Constitution, statute, rule, or otherwise, granting him the authority to make findings. Section 401(5)(a) states that "[t]he chief administrative officer shall make a determination." Section 401(7) states "[i]f the chief administrative officer affirms the denial in whole or in part," the denial shall include certain statements, like the right of Petitioner to appeal, the time for appeal, and the name and business address of the executive secretary of the records committee. Mr. Dougall, however, appears to use its unaccounted-for right to make findings which attempt to re-write the GRAMA request to imply it sought more than it did. *See id.* This is improper and should be disregarded by this Committee.

3. "Request #1 as written requests any and all documents and other records that relate to the Standstill Agreement, which includes any and all documents and other records in our possession relating to any persons (including Jordanelle Special Service District ('JSSD') Board members and 'managerial employees') related to the Standstill Agreement. The breadth of this request relates to all of the Office's audit records concerning JSSD."

While Mr. Dougall, in one breath, accuses Petitioner of making a request that differs from its original request, in the next breath, Mr. Dougall misstates Petitioner's Request #1. See State Auditor Letter at 2(¶1). Mr. Dougall omits "including all communications between the Office of the Utah

State Auditor and any other person,” and adds the language “in our possession.” Petitioner’s Request No. 1 seeks the following documents:

Any and all documents and other records, including all communications between the Office of the Utah State Auditor (“Utah State Auditor”) and any other person, that relate to the “Standstill Agreement”

As noted above, it does not seek any information relating to the Auditor’s “investigation.” Nor does it seek any information relating to an audit. It merely seeks documents and records (including written communications) about the Standstill Agreement. Mr. Dougall’s attempt to expand the scope of Petitioner’s request was improper and should be rejected.

4. “The protections afforded by GRAMA to the Office are broad. ‘Records of a governmental audit agency relating to an ongoing or planned audit until the final audit is released’ are protected records These records include records created, received, and/or maintained by the Office of the State Auditor.”

Mr. Dougall attempts to use a finding to interpret the statutory language of “Records of a governmental authority.” (See State Auditor Letter at 2(¶2) (citation omitted).) The meaning of this language is a matter of dispute, which Petitioner raised in its first Notice of Appeal. See First Notice of Appeal at 3. As Petitioner noted then, and notes now, Utah courts have said that if “interpretation [of statutory language] brings about a result contrary to the intention of the Legislature, it is a matter for the Legislature to remedy,” not Mr. Dougall himself. *West Jordan*, 656 P.2d at 447. Mr. Dougall is given no constitutional or statutory authority to interpret language that was duly enacted by the Utah State Legislature. He must apply the plain statutory language to the GRAMA request presented to him.

More importantly, the Auditor fails to demonstrate or provide any facts to support his conclusion that Petitioner’s GRAMA request “relate[s] to an ongoing or planned audit.” Petitioner is left to speculate how the Standstill Agreement (and communications relating thereto) has anything to do with the investigation of JSSD. It certainly has nothing to do with the fiscal affairs of JSSD. Therefore, the Committee should reverse Mr. Dougall’s determination.

5. “Currently the Office is conducting an audit of the JSSD. The Standstill Agreement relates to the JSSD. Therefore, any records relating to the Standstill Agreement relate to the audit and would not be subject to disclosure pursuant to Utah Code § 63G-2-305(16).”

The mere fact the Auditor is purportedly conducting an audit of JSSD does not render JSSD’s GRAMA request subject to denial. Even accepting that JSSD is being audited, Mr. Dougall does not explain how the Standstill Agreement relates to the audit. The reason is simple -- because the Standstill Agreement does not relate to the “audit.” Mr. Dougall’s fallacious logic should be rejected by this Committee.

6. “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).”

Mr. Dougall's inclusion of Section 63G-2-305(10), at this stage, is improper under Utah law. Pursuant to Utah law, if a "governmental entity denies the request in whole or in part, it shall provide a notice of denial to the requester . . ." UTAH CODE ANN. § 63G-2-205(1). The "notice of denial shall contain . . . citations to the provisions of [Chapter 2] . . . that exempt the record or portions of the record from disclosures." *Id.* at § 205(2)(b). Utah courts are very clear that the "meaning of the word *shall* is ordinarily that of command." *Brendle v. City of Draper*, 937 P.2d 1044, 1047 (Utah Ct. App. 1997) (emphasis in original). Ms. Siebenhaar, however never cited Section 63G-2-305(10) as a provision that exempts the record from disclosure. Instead, Ms. Siebenhaar specifically stated:

We are unable to provide you with any records related to your request No. 1 because the records are part of an ongoing investigation by the Office of the Utah State Auditor. Utah Code § 63G-2-305(16) classifies as 'protected' 'records of a governmental audit agency relating to an ongoing or planned audit until the final audit is released.'

Mr. Dougall now attempts to cite 63G-2-305(10) as a basis for denial. This *ex-post* inclusion of Section 63G-2-305(10) by Mr. Dougall is improper under Utah law. What's more, Petitioner never had the benefit of briefing on subsection (10), which violates Petitioner's right to notice and process. Therefore, Mr. Dougall's reference to Section 63G-2-305(10) should be disregarded by this Committee.

7. "The purpose of . . . 305(16) is to allow an audit agency, such as the Office, 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."

Neither Mr. Dougall's interpretation of Section 305(16), nor his personal articulation of the policies underlying Section 305(16), is controlling. (*See* State Auditor Letter at 2(¶3).) The Utah Supreme Court has said:

[I]t is the duty of the court to enforce the [language of a statute] according to the obvious meaning of the words employed, without attempting to change it by adopting a different construction, based upon some supposed policy of the legislature with reference to the subject matter, or upon considerations of injustice or inconvenience resulting from the literal interpretation of the statute, or even to give the law that efficiency and due effect which it will lack when taken literally as it stands.

Evans v. Reiser, 2 P.2d 615, 624 (Utah 1931). Subsection (16) protects "records of a governmental audit agency relating to an ongoing or planned audit . . ." UTAH CODE ANN. § 63G-2-305(16). The primary question is whether the Standstill Agreement relates to the Auditor's audit (if that is what this is) of Petitioner's "potential misuse of credit cards." It does not. As a result, these records must be disclosed, and the Auditor cannot trump the rights of the public to view these records. *See id.* at § 102(1) ("the Legislature recognizes . . . the public's right of access to information concerning the conduct of the public's business").

The remainder of Mr. Dougall's determination is surplusage. This appeal, and the earlier appeal, involve the validity of Ms. Siebenhaar's denial. Neither appeal is for the purpose of

delineating the constitutional and statutory authority of the Auditor. Mr. Dougall's pronouncements of authority are, however, telling of the Auditor's predisposition to Petitioner's rights under GRAMA. In response to a GRAMA request, the Auditor appears to declare he gets to declare what is or is not a protected record regardless of its content and/or source. Contrary to such attitudes, the Auditor does not "alone ha[ve] the discretion," but is subject to oversight and review by this Committee, among other tribunals, to provide a valid justification for denying a GRAMA request. See UTAH CODE ANN. §§ 63G-2-403(1), 404(1)(a) ("A petitioner . . . may appeal to the records committee"). Because Petitioner's GRAMA request does not seek information relating to the "investigation" and/or JSSD's fiscal affairs, there is no reasonable justification to deny Petitioner's GRAMA request. Therefore, the Committee should reverse the Auditor's denial.

CONCLUSION & RELIEF SOUGHT

For the reasons stated above, Petitioner's GRAMA request is not exempt from disclosure by subsection 16, of Section 305. As a result, relief should be granted, and any and all documents, including relevant communications, that are responsive to the GRAMA request should be disclosed.

Specifically Petitioner requests the following relief:

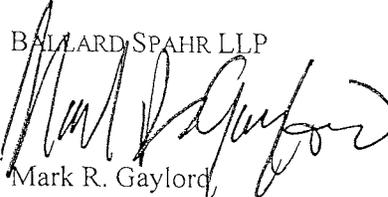
- (a) Reversal of the denial of the GRAMA request, and disclosure of any and all documents and other records, including all communications between the Office of the Utah State Auditor and any other person, that relate to the "Standstill Agreement," which is attached hereto as Exhibit 5.

Or, alternatively if (a) is denied;

- (b) Disclosure of any and all documents and other records, including all communications between the Office of the Utah State Auditor (the "Auditor") and any other person, that relate to the "Standstill Agreement" (attached as Exhibit 5 hereto), but which are *not* (i) records created by or originating from the Auditor, and (ii) related to an ongoing or planned audit by the Auditor into potential misuse of credit cards at the Jordanelle Special Service District.

Very truly yours,

BALLARD SPAHR LLP



Mark R. Gaylord

MRG/ZAS/mjg

Enclosures

cc: Mr. John Dougall
Paul Tonks, Esq.
Leslie Larsen
Linda Siebenhaar

Dan Matthews
Randall Larsen, Esq.