

Stephen R. Capson  
1979 Cherry Lane  
Heber City, Utah 84032

November 7, 2014

Office of the Utah State Auditor  
John Dougall, Utah State Auditor and Chief Administrative Officer  
Utah State Capitol Complex,  
East Office Building, Suite E310  
Salt Lake City, Utah 84114-2310

**RE: APPEAL PURSUANT TO UTAH CODE § 63G-2-401**

Dear Mr. John Dougall:

Pursuant to Utah Code § 63G-2-401, I appeal the denial of my GRAMA request (Exhibit A) as follows.

As stated in my GRAMA request (Exhibit B), Ms. Hoffman filed, on October 10, 2014, with the Fourth District Court, a declaration stating that "Upon *information* and belief, the Office of the Legislative Auditor and the Office of the State Auditor *have also* opened investigations of appointed officials in the Jordanelle Special Service District."

First, Ms. Hoffman clearly stated in her declaration before the court that she has *information* that the Office of the State Auditor *has also* (meaning in addition to and apart from) opened investigations of appointed officials. To be clear, as an elected Official in Wasatch County and as an appointed official of Jordanelle Special Service, I am asking for all audit/investigation files, notes, documents, emails and records related to me; NOT the records related to the audit of Jordanelle Special Service District.

Second, the denial of my request states that "because any records we *might* have pursuant to your request *would* be considered part of an ongoing investigation by the Office of the Utah State Auditor and, as such, *would* be protected at this point in time." I do not recognize the right of the Office of the State Auditor under Utah Code § 63G-2-305(10), § 63G-2-305(16), § 67-3-1(14) or any other part of Utah Code to deny what *might* exist and *would* be "protected" if such record might, should, could, or would exist. Therefore, if requested records DO actually exist, I demand that the Office of the State Auditor strike such ambiguous language or clearly state that "no such records exist." The plain language in Utah Code does not give the Office of the State Auditor the right to insinuate or allege the existence of a "protected" record when such a record does not exist. I will construe any continued insinuation as slander.

Third, if such records do indeed exist, upon disclosing the mere existence of such to third parties (Jodi Hoffman and others), the Office of the State Auditor gave up its right to declare related records as "protected" under the Utah Code. Based upon information and belief that *possible* records pertaining to an investigation of me (or other appointed officials), or the knowledge or existence of such, or the insinuation of such, has clearly been disclosed to Ms. Jodi Hoffman and possibly others to smear, besmirch and slander me (and other appointed officials), I have a right to know if I am being investigated.

If the requested records do **actually** exist, then I demand to know the following:

1. Who communicated "protected" information to Ms. Jodi Hoffman (and possibly others)?
2. Will you immediately undertake an investigation of the dissemination of a "protected" record so that appropriate legal action can be taken in accordance with GRAMA and Utah Code? Under what circumstances is it permissible or acceptable for the Office of the State Auditor to share "protected" records with a paid lobbyist and attorney or anyone else for that matter?
3. What are the reference name and/or numbers of the requested records so that I may refer to them specifically in later appeals, hearings, subpoena, motions, etc.?
4. That I receive the requested records upon completion of your audit or investigation so that I may proceed with possible action.
5. That no additional illegal dissemination of these "protected" records occurs by the Office of the State Auditor.
6. That the "protected" and "private" records not be made public until after I have assessed all my legal options.
7. That I receive a copy of the audit or investigation of the illegal dissemination of the "protected" records upon completion.

To the best of my knowledge and belief I have acted honorably in fulfilling the duties of my elected and appointed offices. I have no knowledge of substantiated claims against the entities I serve, other officials, or me. As such, it seems preposterous that such records of me exist and that the declaration by Ms. Jodi Hoffman must be either a lie or is not aimed at me. However, if the Office of the State Auditor should fail to clarify the existence of such requested records, or if such alleged or insinuated records do actually exist and they fail to pursue an investigation of the illegal dissemination of a "private" and "protected" record, I will be left to assume that the Office of the State Auditor is a party to the slander against me.



Stephen R. Capson



Exhibit A

OFFICE OF THE  
UTAH STATE AUDITOR

November 3, 2014

Stephen Capson  
1979 Cherry Lane  
Heber City, Utah 84032

Dear Mr. Capson:

This letter is in response to your GRAMA request delivered to the Office of the State Auditor on October 24, 2014 in which you requested the following records:

1. Any and all audit/investigation files, notes or documents related to Stephen Capson, Councilman Capson, Board Member Capson, etc. as Wasatch County Councilman or Board Member of Jordanelle Special Service District.
2. All communications concerning Stephen Capson from, to or within the Office of the Utah State Auditor including but not limited to communications from or to John Dougall, Jodi Hoffman, L. Tasman Biesinger, Max Britton, Michael Johnson, Jeff Rogers, or Paul Rogers.

Unfortunately, we are unable to provide you with records related to your request because any records we *might* have pursuant to your request would be considered part of an ongoing investigation by the Office of the Utah State Auditor and, as such, would be protected at this point in time per the following sections of Utah Code:

- Utah Code § 63G-2-305(10) classifies as "protected" "records created or maintained for ... audit purposes,... if release of the records ... (b) reasonably could be expected to interfere with audits; ... (e) reasonably could be expected to disclose investigative or audit techniques, procedures, policies, or orders ... if disclosure would interfere with ... audit efforts."
- 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."
- Utah Code § 67-3-1(14) (a) classifies as "protected" records "(iii) before an audit is completed and the final audit report is released... (iv) records that would disclose an outline or part of any audit survey plans or audit program."

Although Utah Code § 63G-2-202 allows records classified as "private" to be disclosed to subjects of the record, it does not provide for "protected" records to be disclosed. However, you may submit a request for documents related to our investigation once we have finished our investigation.

Pursuant to Utah Code § 63G-2-401, you have the right to appeal the denial of this request to the chief administrative officer, John Dougall, Utah State Auditor. Your notice of appeal must be submitted within 30 days of the above denial date and must include your name, mailing address, daytime telephone number, and an explanation of the relief sought. You may also include any supporting information with your notice of appeal. Your appeal may be submitted at the address listed below.

Please be aware that all GRAMA requests are posted on our website as a matter of office practice. We do this to provide transparency and accountability to the public at large.

Sincerely,

  
Linda Siebenhaar, Records Officer

**GRAMA Request Form**

**Note:** Utah Code § 63G-2-204 (GRAMA) requires a person making a records request furnish the governmental entity with a written request containing the requester's name, mailing address, daytime telephone number (if available); and a description of the record requested that identifies the record with reasonable specificity.

**Requester's information**

Name: Stephen Capson  
Address: 1979 Cherry Lane  
City/State/zip: Heber City, UT 84032  
Daytime telephone number: 801-913-7357

**Request made to**

Government agency or office: Office of the Utah State Auditor  
Address: East Office Building, Suite E310, Utah State Capital Complex  
City/State/zip: Salt Lake City, UT 84114

**Records requested**

**Note:** The more specific and narrow the request, the easier it will be for an agency or office to respond to the request. If you are unsure about the records' description, contact the agency or office records officer.

**Note:** Government keeps records in "series" or groups of records. To find out what series an agency or office maintains, visit the Archives' website, <http://archives.utah.gov>. The record series retention schedules on the Archives' website include relevant descriptions.

Title or series number of records (if known): \_\_\_\_\_

Description of records including all relevant information—location of event(s) described in records, city, county, address; date range of the records; names of the person(s); and subject of the request.

Declaration of Jodi Hoffman filed on October 10, 2014, in the Fourth District Court of Wasatch County State of Utah, statement number 15 states: "Upon information and belief, the Office of the Legislative Auditor and the Office of the State Auditor have also opened investigations of appointed officials in the Jordanelle Special Service District."

**I AM REQUESTING COPIES OF THE FOLLOWING:**

1. Any and all audit/investigation files, notes or documents related to Stephen Capson, Councilman Capson, Board Member Capson, etc. as Wasatch County Councilman or Board Member of Jordanelle Special Service District.
2. All communications concerning Stephen Capson from, to, or within the Office of the Utah State Auditor including but not limited to communications from or to John Dougall, Jodi Hoffman, L. Tasman Biesinger, Max Britton, Michael Johnson, Jeff Rogers, or Paul Rogers.



(private, but not protected)

**Note:** If the record has a restricted access, GRAMA provides that certain individuals may still receive access.

- ☒ I am the subject of the record
- ☐ I am the authorized representative of the subject of the record
- ☐ I provided the information in the record

**Considerations about the desired response**

I would like to:

- ☐ View or inspect the records only
- ☐ Receive a copy of the records and pay associated fees. Please notify me if the amount will exceed \$ \_\_\_\_\_
- ☒ Receive a copy of the records and request a fee waiver. According to Utah Code § 63G-2-203,
- ☐ Releasing the record primarily benefits the public
- ☒ I am the subject, or authorized representative, of the record
- ☐ My legal rights are directly implicated by the information of the record because \_\_\_\_\_, and I am impecunious
- ☐ Receive an expedited response (5 days) because releasing the record benefits the public; I request the information for a story or report for publication or broadcast to the general public