THE UTAH REPORTERS ALMANAC

By The Utah Investigative Journalism Project

© The Utah Investigative Journalism Project
2022 Edition

Design and production by Kolbie Peterson
Edited by Kolbie Peterson and Dan Harrie

Cover image by Skitterphoto from pixabay

All portraits were provided by the subjects unless otherwise specified.

UtahInvestigative.org

TABLE OF CONTENTS

© Adobe Stock

Welcome to the inaugural publication of The Utah Reporters Almanac!

When The Utah Investigative Journalism Project was founded in 2016, one of our very first ambitions was to print and publish a tangible resource guide for journalists in the state. Something you could thumb through for help filing public records requests under GRAMA (Government Records Access and Management Act) or keeping up with legislation affecting journalists. Something you could keep to highlight relevant sections of code or dog-ear pages for good advice dealing with particular story obstacles. If nothing else, maybe something you give a good read and then use to prop up a wobbly coffee table leg.

Initially, we thought one guide could easily encapsulate training advice on everything from digging through databases to filing GRAMAs and conducting investigative interviews. We quickly realized, however, that creating a textbook of sorts might be more challenging than we could muster as our fledgling watchdog operation got its feet under it.

Since that time, we also realized how much can change in these different fields of inquiry, so we've focused most of our educational efforts on free trainings we've provided. Since our start, we're proud to say we've conducted over 70 such trainings for newsrooms big and small, from St. George to Logan and most every newsroom in between.

As you can tell by reading this now, we didn't give up on the dream of a written resource guide, but we have modified it. The landscape for Utah journalists, we've realized, is an often shifting one. New laws are passed every year that affect government transparency and access to records. Every year, new court cases define and clarify these laws even further, and affect reporters' ability to do their work and the public's ability to understand and access their government. Similarly, every year, new decisions are made by the Utah State Records Committee that also provide critical guidance on which records can be released to the public and which cannot.

So we decided to experiment with an ongoing resource guide — an almanac — that will keep you up to date with court and state records committee decisions, the Legislature's most recent (and often misguided) attempts at changing transparency laws and more.

Inside, you'll learn about the state records ombudsman and how she can help with your records requests and appeals. You'll learn about the court decisions that prevented politicians from blocking records that would embarrass them. You'll learn from a true crime writer in Texas how she got decades-old cold case files released and was even able to cross-examine a detective. You'll also learn the ways the 2022 Legislature sought to restrict access to formerly public records and how to work around their anti-media legislating. You'll also hear about two winners of our GRAMA contest, a citizen activist and a journalist, and learn about the deft records requests and appeals they filed.

In the spirit of one of our great Founding Fathers (and a publisher himself), Ben Franklin, you could call this the "The Poor Journalist's Almanac." And while it may not contain as many clever adages ("Three can keep a secret if two of them are dead" is a favorite) we still hope you find it useful.

As we like to say: "A GRAMA a day helps keep corruption at bay." (Apologies to Ben.)

Sincerely,

Eric S. Peterson
Executive director
The Utah Investigative Journalism Project

Dear journalists,

As advisory board members for the Utah Investigative Journalism Project, we are pleased to be part of the incredible team that created the Utah Reporters Almanac for journalists across the state. This resource reflects our commitment to credible, well-researched and in-depth investigative reports.

Each of us has a deep connection to this state's media. Some of us have been journalists, others have been called as sources of information. We have experienced first-hand the power of thorough media coverage, and the harmful impacts of stories approached with a pre-determined narrative and an effort to fit all facts into that narrative. In other words, we understand that your work is critical to our collective fates and seek to support professional, ethical journalism that dives into issues.

An unbiased news media, committed to uncovering the sausage-making of politics, the potentially detrimental policies or practices of businesses, and the very real impacts of decisions by the powerful on those with little, helps to build a stronger and better Utah. We cannot, and thankfully do not have to, imagine our state without a news corps dedicated to getting the story behind the media release. We are grateful to you all for making the calls, hounding the powerbrokers, and checking and rechecking the facts.

We are also grateful for the many Utahns who have contributed to the Almanac and the Utah Investigative Journalism Project. Our rapidly changing world needs investigative journalism, and it is encouraging to see strong recognition of the value of this work from so many across our state.

We hope the Almanac serves you well and wish you many future investigations,

The Utah Investigative Journalism Project Advisory Board

Jean Welch Hill
Jorge Fierro
Pete Ashdown
Scott Parkinson
Pam Parkinson

Free trainings

The Utah Investigative Journalism Project offers free trainings and consultations to newsrooms big and small and interested community groups in Utah. Our aim is to better equip journalists with the skills they need to utilize databases, fight for public records, and employ better investigative techniques.

OUR COURSES:

"Investigative Techniques and Strategies" gives an overview of strategies for developing investigative stories and provides an introduction to GRAMA and helpful public databases.

"GRAMA-Nomics: Making the Most of Public Records Requests" focuses on how to make GRAMAs or public records requests, how to fight records request denials, and strategies for getting the records you need.

"Digging With Databases" surveys numerous useful databases reporters can tap into to scour through everything from municipal budget documents to nonprofit financials and court records.

"State Records Committee Consultation" is a specialized service where we help focus in on a specific records dispute that you might take to the State Records Committee for appeal. We can help assess how strong the appeal is and help prepare oral and written arguments for the appeal.

"Investigative Interviewing" is all about the interview. How to talk to reluctant sources, get useful information and better quotes, and even how to assess the truthfulness of what the interview subject is telling you.

All trainings are designed and taught by the Project's executive director, Eric Peterson, a veteran Utah reporter who currently serves as president of the board for the Utah Headliners Chapter of the Society of Professional Journalists, and previously served as the board's training chairman.

Since training is brought directly to your newsroom, it can be tailored to fit the interests of participants and could blend components of all three training programs, as well as offer journalists the opportunity to ask specific questions about stories and projects they're working on.

We also now offer trainings as a paid service to non-media groups.

If you're interested in setting up a training, contact Eric Peterson at epeterson@utahinvestigative.org.

Thanks to our sponsors!

This publication would not exist without the generosity of some incredible individuals and institutions in our community. Remember their names because they are heroes in our book!

Champions of the First Amendment, $5,000+:
Jean Welch Hill, The Salt Lake Tribune, The Joseph Simmons Foundation, Sentry Investments

Defenders of Democracy, $1,000-$4,999:
The Dave and Rosemary Lesser Foundation; The Law Firm of Parr, Brown, Gee & Loveless; Scott and Pam Parkinson; Josh Kanter; George Hall; Sarah Woolsey; Michael Rubin; Ronna Cohen; Stan Rosenzweig

Friends of the Fourth Estate, NewsMatch donors of $200+, or new donors of $15+ a month from our end-of-year fundraising drive:
Steve and Jill Terry, Tom Love, Suzanne Stensaas, Matthew Peters, Susan Fleming, Jack and Bonnie Whalen, Susan McCrady, Francoise Hibbs

SECTION I

GRAMA and STATE RECORDS COMMITTEE DECISIONS

© Adobe Stock

GRAMA Filing 101

By Eric S. Peterson | The Utah Investigative Journalism Project

Utah's Government Records Access and Management Act, or GRAMA, is a powerful tool that every journalist and curious citizen ought to be comfortable using to learn more about their government and public institutions. While GRAMA, like any other law, has a lot of legalese and sophisticated nuance to it, the act of filing a GRAMA request is pretty straightforward. Here's how to get started.

The request

GRAMA code states simply that requests need only include a description of records sought, your name, the date and your mailing address.

You can call the media or records person at an agency to ask who you can e-mail a GRAMA to, or you can also visit the Utah Open Records Portal at OpenRecords.utah.gov. You can create a free account and easily search for agencies and fill out and file your GRAMA online.

Agencies are allowed to require that fees be paid to produce the records. If your request would benefit the public, you can ask the fee to be waived, but that decision is up to the agency. You can also ask to have the request expedited, but again, that is up to the agency.

At The Utah Investigative Journalism Project, we advise taking an easy and conversational approach to a GRAMA request that could be as simple as:

"Hello my name is ___. I would like to request documentation of your agency's contract agreements entered into from Jan. 1 2022, to the present. Please let me know if there are any fees associated with producing these records. If you have any questions, please let me know, I hope to make this request as straightforward as possible and don't want to cause your staff any undue burden. I would like to receive the records electronically. Thanks for your consideration."

Appeal basics

It's important to remember that you have the right to appeal request denials to the chief administrative officer of the agency (usually the agency director), and further than that if you are denied again up to the State Records Committee, or in some cases municipal boards (See "McKitrick v. Gibson" page 28).

But a key thing to remember is that agencies are required to respond to your request in 10 business days. They may ask for more time to complete the request if it's

» See next page

large or there are "extraordinary circumstances," but you are entitled to an official response in 10 business days. If you don't receive one, then it is considered a de facto denial and you can file your appeal.

The response letter

Response letters that are filed are required to let you know if any records were withheld from your request and why. They may state they don't have "responsive" records. They may cite privacy concerns or other sections of code. But they should let you know if they are withholding records and they should explain your appeal rights and let you know who to address an appeal to and the timeframe to do so.

There's a lot more to GRAMA strategy and appealing denials, of course. If you're interested in receiving our GRAMA training, reach out to us at epeterson@utahinvestigative.org. You can also always reach out to the Utah state records ombudsman (See "Meet Rosemary Cundiff, the state records ombudsman," page 16) for GRAMA and appeals advice. •

Cashing in on Petito: How not to get overcharged for records

Don't pay for records an agency has already produced.

By Eric S. Peterson | The Utah Investigative Journalism Project

In the summer of 2021, the nation and world became obsessed with the mysterious disappearance of Gabby Petito, a young social media influencer traveling the country and documenting her adventurous "van life." That journey took a tragic detour when she was found murdered by strangulation. Ultimately, her fiance, Brian Laundrie, hid out in a remote Florida swamp, took his own life and left a note admitting to killing Petito. A key development in the story came from bodycam footage from Moab police officers who spoke with the couple on Aug. 12, 2021 — roughly a month before Petito's disappearance.

Salt Lake Tribune reporter

Moab Police Department

Gabby Petito talks to an officer after police pulled over the van she was traveling in with her fiance, Brian Laundrie, near Arches National Park on Aug. 12, 2021.

Paighten Harkins remembers taking part in a conversation with colleagues about how the Moab police department was planning on charging the paper $98 for a copy of the bodycam footage, even though the video had by that time already appeared on local TV news outlets.

"It immediately raised an eyebrow for me because I had seen other news agencies with this video and my understanding of GRAMA was that an agency can only charge once for a record, and they had already done the work to redact it," Harkins said.

"Once the document is made, everyone should have it without charge."

Harkins' understanding was exactly right. Under GRAMA, government agencies are allowed to charge reasonable fees to prepare records for a requester. That might mean gathering documents, redacting sensitive information, and preparing it in a digital format, for example.

But these are one-time expenses. According to **Utah**

» See next page

"A lot of media organizations, especially local ones that are struggling, they maybe don't have $100 to throw at a GRAMA request. So it almost becomes an access issue or a transparency issue."

— Paighten Harkins, reporter

code 63G-2-203 (1), "A governmental entity may charge a reasonable fee to cover the governmental entity's actual cost of providing a record."

This means that a record, once prepared and paid for, should be free of charge to the next requester as the agency doesn't need to take any additional actions to prepare the record.

Harkins said The Tribune asked for a fee waiver, but the request was denied. Appealing the matter would likely entail weeks of delays, and since the Petito case was breaking news with tremendous public interest, the paper agreed to pay the fee under protest.

She followed up later and decided to file a GRAMA request about the GRAMA requests in this case and how much Moab police charged each entity requesting the footage. The dozens of requesters — mostly media outlets — were charged $98 apiece, and the fees added up to nearly $3,000.

When challenged on it, the city said the charges were a mistake and that it would refund the money to those who had been overcharged.

Harkins did a little more investigating and found that the police department typically budgets $1,000 in estimated revenue from GRAMA fees — a third of what it brought in from the Petito case alone.

Harkins acknowledged that the amounts involved in this case might not be large, but noted that many media

outlets are working with tight budget constraints.

"A lot of media organizations, especially local ones that are struggling, they maybe don't have $100 to throw at a GRAMA request," Harkins said. "So it almost becomes an access issue or a transparency issue."

Tips and takeaways

Don't pay fees that have already been paid:

Harkins said journalists should keep an eye out for records that have already been published elsewhere and make sure they don't get charged for them. She noted that some agencies may even provide logs showing records previously released in response to GRAMA requests and that these should be free upon request.

"That might give you an idea of what's already been requested," Harkins said.

It's also true that a reporter can file a GRAMA request to see what other GRAMA requests have been filed.

Records can also be inspected for free:

In 2009, then-Attorney General Mark Shurtleff was running for the U.S. Senate against Sen. Bob Bennett. The Bennett campaign paid over $8,000 in GRAMA request fees for records of how Shurtleff's office was being run, essentially as opposition research. The campaign stopped pursuing the records when Shurtleff abruptly dropped out of the race for what he said were family reasons, but the boxes of records had already been paid for.

I was at the time a Salt Lake City Weekly reporter and requested to see the records. I was quoted a price of $1,400 to receive copies, but instead chose to inspect the records for free, a provision allowed under **GRAMA code 63G-2-203 (5)(b)**.

I spent three days reviewing boxes of records in the attorney general's office and was allowed to bring along a portable copier/printer to copy only those I was interested in. Thanks to the generous budget of the Bennett campaign, the fishing expedition cost me nothing, and I ended up turning up an important story from a "confidential" document squirreled away in a box. •

How to be a polite 'pain in the butt' when it comes to records requests

Best GRAMA contest winner Raphael Cordray talks about her Inland Port inquiry.

By Eric S. Peterson | The Utah Investigative Journalism Project

Raphael Cordray has long been an eco-gadfly in the state, agitating against various projects with big and potentially devastating environmental impacts. Her primary activist base is in the Utah Tar Sands Resistance Project, which for years has maintained an ongoing protest against proposed efforts to strip mine tar sands from the Tavaputs Plateau in eastern Utah.

But she's also a member of the "Stop the Polluting Port" coalition and got intrigued by the Inland Port's satellite site plans, especially in Tooele County. So on Aug. 25, 2021, she filed a GRAMA with Tooele County seeking various records on the satellite port proposal for the previous three years.

The county quickly came back saying it would cost $500 in fees to prepare the records. Cordray said it appeared to be a standard fee since they had quoted the exact amount to a colleague a year earlier.

"They tell everyone it's a $500 minimum," Cordray said.

So she decided to appeal the fee as unreasonable.

"I don't have the money to pay for fees," Cordray said. "I got more time than money, I guess."

The appeal paid off as she immediately sought out State Records Ombudsman Rosemary Cundiff and asked to set up a mediation to hopefully avoid going to the State Records Committee.

In mediation, Cordray compromised on her original request, which sought numerous documents, including maps, memos, calendars and photographs. Instead, she accepted a thumb drive with almost 1,000 pages of emails about the project for the

Courtesy photo

Raphael Cordray is a longtime activist who understands how to use GRAMA politely but effectively.

three-year time period and got them for free.

Since then, she's been sharing the documents among members of her group and using them to research more about the satellite port's spread in the area. The records were especially useful in understanding plans for a rail spur that would cross Great Salt Lake wetlands to connect to a business park being developed by The Romney Group, a company founded by U.S. Sen. Mitt Romney's son Josh Romney.

"It's shaping up to be a satellite port, and what they want to do is revive a rail line that hasn't been used in 50 years, and they already went and started doing this without even telling all the people whose property the rail travels through," Cordray said.

She even linked up with a group of people trying to incorporate Erda, who are fighting off annexation attempts from neighboring Grantsville.

"The people in Erda have been trying to incorporate since 2018, and Grantsville and Josh Romney were trying to annex off pieces of Erda so they can have housing for the satellite port in that area," Cordray said. She shared emails with an attorney for the Erda group, and they were able to use a handful of the missives in a restraining

» See next page

order to stop the annexation attempts.

Tips and takeaways

File GRAMAs and follow through on appeals:

Cordray says she's learned from experience that GRAMA requests can't stop at a denial. Taking the matter through appeals and mediation will always result in more information coming out.

"You've got to be prepared to follow all the way through with all the steps and appeals. You've got be prepared to do that because otherwise they don't give you that stuff," Cordray said.

Request mediation:

Cordray is a big believer in mediation for settling and resolving disputes and for even just getting more information from the other side.

"I squeak out more info with mediation even when I've had to continue to a [State Records Committee] hearing, I've found." It can, she said, be more productive than going to the hearings themselves.

Don't let your GRAMA get chopped up:

"I had to learn the first few times that you don't want to ask for like four different things," Cordray said. "I try to keep [the GRAMA request] to one or two specific, related topics, because if you don't, they'll split it up."

According to GRAMA, an agency that considers a request to be made for a "voluminous quantity of records" is allowed the option to "treat a request for multiple records as separate record requests and respond sequentially to each request." This could potentially mean further, significant delays in getting records back that you're after. It could also make it harder to keep track of your request if it gets divided up and dealt with by the agency in a piecemeal fashion.

Be polite but persistent:

Cordray understands that being tenacious is important, but that doesn't mean being difficult with records clerks. No matter your righteous indignation over any one particular cause or against any entity, that doesn't mean you should take it out on the public employees that are just trying to do their jobs. That's why she is abundantly gracious to records clerks that handle her requests.

"I can be a pain in the butt, but also really, really polite," Cordray said. •

Need help with GRAMA? Meet the state records ombudsman.

Rosemary Cundiff is ready to assist with records request disputes, mediation and appeals.

By Eric S. Peterson | The Utah Investigative Journalism Project

Government records sometimes contain juicy details about crime and corruption, but the Utah law governing public records isn't usually the subject of high drama.

The exception was in 2011, when state lawmakers introduced House Bill 477.

The legislation would have drastically rewritten GRAMA, the Government Records Access and Management Act, in ways that would have severely hampered journalists and the public from being able to access government records. The last-minute bill — rushed to passage after being vetted in closed-door party caucus meetings — provoked an explosive backlash. Lawsuits were threatened, a fusillade of blistering editorials were fired off from every major news outlet in the state, and angry chants of "Our house!" reverberated throughout the Capitol Rotunda during a citizens' protest in the session's waning days.

Rosemary Cundiff

Surprised by the level of controversy, lawmakers a

» See next page

short time later returned to the Capitol to repeal the legislation. Out of the mess came a desire to improve public transparency statewide. Among a number of related reforms was the creation of the position of state records ombudsman. For the first time, Utah would fund an employee to help all interested Utahns in using GRAMA to better understand their government.

Truly all Utahns. While GRAMA is often wielded by the media, State Records Ombudsman Rosemary Cundiff says in her day-to-day work, she mostly deals with those outside the media.

"[The] biggest proportion of calls by far is the public in general. After that, it's local government records officers and then, after that, it would be people in state government, and media would be last," Cundiff said.

Questions from the public are wide-ranging and not always about GRAMA. She's had people call to ask about getting criminal records expunged, and one individual trying to figure out who operated a street light at a particular intersection. One woman called because her son was homeless somewhere in Utah and she needed advice on tracking him down.

Cundiff worked in the Utah State Archives when she was appointed to the position in 2012 as a result of the post-HB477 reforms. Her mandate was simple: to help anyone with records requests or appeals.

That means she often offers advice to those seeking records, as well as perhaps agencies trying to maintain the confidentiality of some records. This may even involve her advising both sides of the same issue. She's never found it to be a conflict because she simply tries to stick to the law, which attempts to strike a balance between the accessibility of public records and the protection of personal information or other records that require confidentiality.

"The best conflict resolution is to just follow the statute and treat everyone with the respect that the law affords, because every person has the same rights," Cundiff said.

Mediation is a big part of Cundiff's job. If you've appealed a records request to the State Records Committee, you should count on Cundiff reach-

ing out to you about mediating the dispute.

During mediation, Cundiff meets with the requester and the government agency to discuss the dispute and talk over possible solutions. The mediation discussion is off the record, and matters discussed are not allowed to be brought up at the records committee if the parties decide to press on with the appeal.

Some 70% of appeals, however, are resolved in mediation, Cundiff said. Oftentimes, it's the first opportunity the parties have to meet face to face in person or over Zoom and talk candidly about the dispute.

Tips and takeaways for filing better GRAMAs and winning appeals

Ask for help:

Cundiff is ready and able to help requesters. Not only is she fully versed in the GRAMA statute, but she has extensive knowledge of previous cases and State Records Committee decisions. You can look up past committee decisions at archives.utah.gov/src. But those decisions don't always spell out the nuances. Cundiff can provide extensive context on past cases and how they might affect or shape your appeal.

Be specific:

Cundiff isn't a reporter, but she holds a master's degree in history and understands the give and take that comes in research and requesting records from archival sources. She finds that small, specific requests often lead to more refined and targeted additional requests that produce the desired information more effectively than making large and cumbersome requests initially.

"The more specific you can be the better," Cundiff said. "If you can make a specific request and get records, then you can let those records guide a further request."

Explain the public interest:

Appeals to the State Records Committee are most effective when the requester, journalist or not, articulates why the release of records matters to the general public, Cundiff said. Too often this aspect is overlooked because a requester assumes the general benefit is obvious. •

The cold argument

An archivist/blogger successfully argues for release of "cold case" info on victim of serial killer Ted Bundy.

By Eric S. Peterson | The Utah Investigative Journalism Project

The name Nancy Wilcox is essentially a footnote to the bloody and notorious case of serial killer Ted Bundy. If Wilcox is known at all, it's as one in a long list of mostly forgotten victims of Bundy, whose macabre celebrity has spawned countless books, movies, TV miniseries, podcasts — even collectibles on Etsy. (Yes, sadly, that is a thing.)

That rubbed researcher Tiffany Gilman the wrong way, so she embarked on a quest to tell the stories of every known Bundy victim, making them count as people and not simply as numbers in his ghoulish body count.

"They deserve to be known and heard," Gilman said from her home in Austin, Texas. Gilman isn't a journalist, but she knows how to go after records.

"I got a few irons in the fire," Gilman said. "I'm an archivist and a legal librarian for the state court system here in Austin. So this [project] is kind of like a hobby of mine that I fell into."

She began requesting old case files from law enforcement agencies where Bundy undertook his grisly work and started delving into the lives of his 21 identified victims. She created a blog for the project, then got funding through Patreon (a membership platform) and is now working on a book and collaborating with a documentary

Tiffany Gilman

Courtesy photo

Nancy Wilcox, 16, left her Holladay home on Oct. 2, 1974, and was never seen again. Ted Bundy later confessed to killing her.

filmmaker on a similar project.

She had little trouble gathering the case files she needed from police departments in Idaho, Colorado and Washington state — but Utah was another matter.

Little is known about Nancy Wilcox's case. The 16-year-old left her Holladay home on Oct. 2, 1974, and was never seen again. While Bundy made a detailed confession to her killing prior to his 1989 execution, he also couldn't lead detectives directly to the location of her body.

It was for that reason that the Unified Police Department denied Gilman's request for the case file.

Gilman went to the State Records Committee on March 11, 2021, and argued that despite the mystery over the location of her final remains, the matter had actually been closed at the time of Bundy's execution. At that time, Salt Lake County Sheriff Pete Hayward held a news conference saying that investigators accepted Bundy's confession in Wilcox's murder and considered the case closed.

Since the case was closed, Gilman argued, the records could not legally be withheld. She noted that a special web page created by Unified Police even identified the case as closed, though the victim's remains were never recovered. After Gilman's request and appeal, however, the website was changed and she was informed the case was still active.

"I think this is problematic that ... if they don't feel like releasing the records they can just flip them to open [case status] and say there was an error," Gilman told the committee.

At the hearing the suspicious transformation of the case from closed to open was ex-

» See next page

plained as a clerical error, with the assigned detective claiming that the case was never officially closed and there was a miscommunication in regard to the information placed on the cold case website.

The question of an open vs. closed investigation is a critical distinction as records of closed investigations are commonly released as public under Utah's open records law, GRAMA.

At the committee hearing, Assistant Attorney General Harry Souvall explained that there were also privacy issues to consider for the family of Wilcox, noting that she was only 16 when she went missing. He also said that without a body, there was still the possibility that Wilcox may have been murdered by someone other than Bundy, in which case, releasing case file information might jeopardize the ongoing investigation.

"There's not the certainty you would have if he led us to a body," Souvall told the committee, adding that meant investigators needed to continue to play their cards close to the vest even if another murder suspect was by now perhaps very old.

"Nazi prison guards have been shipped back to Germany as recently as this year, regardless of their age, to face justice," Souvall said. "So, it's hard to put a deadline on when a file has to be opened because it's too old."

Gilman, countered that Wilcox had few living relatives left, which countered privacy concerns, especially when her whole project was about honoring and remembering the humanity of Bundy's victims.

"Everyone knows Ted Bundy, how many people know the name Nancy Wilcox?" Gilman asked the committee. "Those are the people that need to be remembered, and her case file is important to that — it creates the story of what happened."

She even pointed out that a separate police department in Utah had released a Bundy victim's case file despite never having located the remains.

Gilman had the opportunity to directly question the cold case detective on the Wilcox case and was able to ask him about the quality of any evidence and the lack of activity on the case file.

Ultimately, the committee decided to review the records themselves in camera. When the members reconvened the following month, they agreed to

order the public release of the case file with minor redactions of "names not known outside of government." The committee's order notes that "release of the records would not be considered a clearly unwarranted invasion of personal privacy because the story about Mr. Bundy is well known by the public and [Wilcox's] disappearance occurred more than 45 years ago."

Tips and takeaways for pursuing public release of records

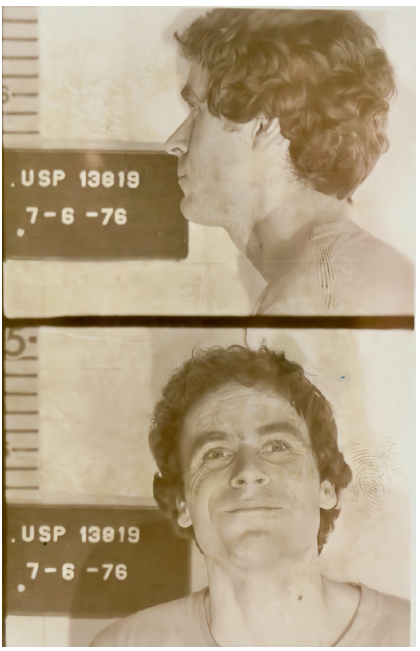
You can question a government agency's witness:

Not every hearing involves witnesses, but in Gilman's case, she was allowed to ask the detective questions about the case to feel out how "active" the investigation was. While this does not happen often, Gilman simply asked for the opportunity and was given free rein to question the detective for roughly 10 minutes.

Don't be intimidated by legalese:

Gilman readily admits she's no lawyer, but having worked in a law library she knows how to follow a legal argument. When Unified Police cited a legal case to deny the records based on protecting the victim against an invasion of privacy, Gilman looked the case up and saw that it referenced someone seeking graphic photos of a victim's body and crime scene. She was easily able to counter that she was looking for narrative and not sensitive materials like crime scene photos.

"If opposing counsel cites a case, it's a good idea to look at the case and see if it applies or it doesn't," Gilman said. "Often they're going to tell a half-truth when the case only kind of, sort of applies." •



Utah State Prison
Ted Bundy

A records appeal slugfest

The court cases and arguments that Sam Stecklow used to win six state records appeals in one day.

By Eric S. Peterson | The Utah Investigative Journalism Project

Former heavyweight champion George Foreman once put on an exhibition where he fought five opponents in a single night. It was an inspired bit of boxing carnival from Don King, though not quite the Olympian feat it was billed as (most of the opponents were no match for Foreman and it showed).

Sam Stecklow wasn't looking to put on a show, but it ended up that way when the Utah State Records Committee decided to schedule six of Stecklow's denial hearings all in one day. On June 10, 2021, Stecklow was arguing against attorneys representing six different police departments for records related to investigations of police shootings.

Sam Stecklow

"I was talking all day," Stecklow said. "Maybe six and a half hours."

At the end of the day, Stecklow came out with six wins under his belt despite it being only his second-ever appearance before the committee. He doesn't credit his success to legal know-how, since he's not a lawyer, but rather to the fact that he did his homework and faced opponents that assumed that he hadn't.

"I'm not a lawyer and I don't even have an undergrad degree, I'm actually finishing it right now and I was able to beat several lawyers," Stecklow

said. “Which isn’t to say I’m a genius, it’s to say they underestimate anyone who goes against them. They assume you are not going to do your homework and be prepared and able to say why things are public under the law.”

Stecklow has been involved in police accountability reporting since 2017, working for the Invisible Institute in Chicago. The nonprofit is perhaps best known for the Citizens Police Data Project, a database of decades worth of data on police misconduct that maps out everything from use-of-force incidents and illegal searches to disciplinary actions and maps them out across Chicago.

Stecklow moved to Utah and was able to join with The Salt Lake Tribune as a contractor to help them build out their police shooting database and help them with the reporting into police shootings as part of the collaborative documentary with Frontline, “Shots Fired.”

As part of that project, Stecklow filed dozens of GRAMA requests with police departments across the state. These requests often resulted in records being provided, albeit begrudgingly. But Stecklow nevertheless had to file appeals with the State Records Committee for denials he received from the Cottonwood Heights, West Jordan, Clinton and Salt Lake City police departments, as well as the Washington County Sheriff’s Office and the Salt Lake City Police Department Review Board.

A lot of the requests were for “Garrity statements” — internal documents that departments create in interviewing officers about uses of force to make sure their conduct was by the book and conformed with department policy. That included an appeal with Cottonwood Heights over the death of Zane James, where court records from 2021 showed an officer had intentionally crashed into James’ motorbike before shooting and killing him in 2018.

While Stecklow is satisfied by the records victories, The Salt Lake Tribune is still fighting the battle in court against West Jordan, which appealed the State Records Committee decision in district court.

» See next page

Takeaways

Lawrence vs. Utah Department of Public Safety

A useful court case for agencies denying the release of investigation records is that of Lawrence v. Utah Department of Public Safety, a 2013 case where a man won at district court to obtain the release of records into officers that had arrested him on a traffic stop.

"It found there was a public interest in the release of the internal investigation documents even though there wasn't a finding of misconduct," Stecklow said.

Stecklow notes that the case might not have precedent-setting value in court, as it was not appealed, but it does hold weight with the State Records Committee. The committee cited the case in most of the appeals they ruled in Stecklow's favor. One SRC order supporting Stecklow's appeal noted that the court determined in Lawrence that "[T]he public's right to know the response of public officials charged with the responsibility of investigating alleged constitutional violations substantially exceeds any individual interests of those public officials or the interest of a Trooper charged with the responsibility protecting the safety and rights of the State's citizens."

The Lawrence case specifically references cases of alleged constitutional violations, which made it ideal for appealing denials related to police shootings, Stecklow said. Regardless, he said an attorney in one appeal challenged that "there weren't any alleged constitutional violations in these cases, which is pretty absurd," Stecklow said, noting a police shooting certainly suggests the strong possibility of a constitutional violation — a point the committee agreed with in ruling for release of the records.

Deseret News vs. Salt Lake County

This is a foundational case for GRAMA in Utah, which the Utah Supreme Court heard and ruled on in 2008 and used to establish GRAMA's "balancing test." That test says that when the public's right to know outweighs the government's interest in secrecy that the scales tip toward public disclosure. This ruling allows for even protected records to be made public when the requester can make a case for the public's right to know. Stecklow successfully argued the public had a

deep and compelling interest in understanding the investigations into police use of force.

The case law itself refers to an investigation into sexual harassment allegations against a Salt Lake County supervisor. In that case, the county decided there was no merit to the allegation and tried to block release of the agency's investigative report into the claims. The Supreme Court, however, found that exoneration by the agency wasn't enough to block release when the records were of such public value.

Stecklow notes the case itself is silent on certain aspects of applying the balancing test, but still made a critical ruling about the value of an informed public.

"It doesn't really provide a whole lot of insight on how that balancing test should happen, but it does very helpfully create a requirement for the public interest to be considered," Stecklow said.

The justices also made it clear that the law "favor[s] public access when ... countervailing interests [of privacy and public interest] are of equal weight."

'Unsustained' findings

Section 63G-2-301-3 says certain records are "normally public" but in some instances "may be restricted," including records identified under subsection (o): "records that would disclose information relating to formal charges or disciplinary actions against a past or present governmental entity employee if: (i) the disciplinary action has been completed and all time periods for administrative appeal have expired; and (ii) the charges on which the disciplinary action was based were sustained."

Often agencies will use this section to argue investigation records can only be released if charges against the employee were sustained. Essentially that only when an agency finds one of its own was guilty of some misconduct should the record be released.

GRAMA, however, does not make this the only case. In fact, GRAMA categorically states under 63G-2-201(2) that "all records are public unless otherwise expressly provided by statute."

For Stecklow, this makes clear that the presumption is that records are public.

"GRAMA is a disclosure law, that is its central purpose, it's not a withholding law," Stecklow said. "If it's not private, then it's public, and the presumption should be for release." •

SECTION II

LEGAL

© Adobe Stock

McKitrick v. Gibson

How the Utah Supreme Court opened investigation records when a politician fought to keep them closed.

By Eric S. Peterson | The Utah Investigative Journalism Project

In 2017, former Weber County Commissioner Kerry Gibson was under investigation for misuse of government resources. In May 2018, he triumphantly announced the police investigation had cleared him of all wrongdoing. Beyond his claims, however, there was almost zero information available to the public about the allegations against Gibson and the findings of investigators. Rather than seeking to help clear his name by pushing for release of the records, Gibson hired an attorney and fought for years to keep them buried.

Utah Investigative Journalism Project board member and contributor Cathy McKitrick first sought release of the records in the summer of 2018, but it would take more than three years before the matter was resolved in a battle that went from Ogden City all the way to the Utah Supreme Court. Gibson fought the opening of the investigation records every step of the way, arguing their contents would be embarrassing to him and his family. His legal maneuver came as he prepared to run for Congress in Utah's 1st District race in 2020.

When finally released, the report showed investigators found insufficient evidence to charge Gibson with misuse of public resources stemming from accusations that he had enlisted county employees to do work on his personal property. They also declined to prosecute him for allegedly assigning a county aid to raise campaign contributions.

In an interview with McKitrick in 2021, Gibson bemoaned the fact that "baseless allegations" could be used to hamstring an elected

» See next page

leader.

"A political foe or disgruntled employee can make an accusation, and even if it's false, they will still attack your family and drag your name through the mud," Gibson told McKitrick in a text message.

While Gibson was never charged in the corruption case, he was nevertheless lambasted in a 2020 state audit that found improper uses of government resources and employees while he was commissioner of the Utah Department of Agriculture and Food.

His entry into the McKitrick case was unusual because records battles are between requesters — often journalists — and government agencies that possess the materials in question. In this case, it was Gibson, the subject of the requested records, suing Ogden City to keep the documents secret.

Twists and turns

McKitrick filed her GRAMA request in the summer of 2018 with Ogden City as the police there conducted the initial investigation. She received her first denial on July 3, 2018, from the city attorney, saying the public's interest in disclosure did not outweigh the city's interest in classifying the records as private and protected.

Her appeal went before the city's chief administrative officer, who upheld the denial.

In many situations, requesters would then have the opportunity to take their appeal to the Utah State Records Committee, but in this case, Ogden had its own municipal appeals board, the Ogden City Records Review Board. This board heard McKitrick's argument and ruled that, in fact, the compelling public interest would "outweigh any interest in restricting the records" and ordered release of the report with minor redactions.

Gibson then sued the city for the decision, arguing that making the record public would constitute a "clearly unwarranted invasion of personal privacy."

That's when David Reymann and Jeremy Brodis, attorneys with Parr, Brown, Gee & Loveless, stepped in and on a pro bono basis helped

Courtesy photo

Attorney David Reymann helped journalist Cathy McKitrick take her records fight to the courts.

McKitrick take the fight to the courts.

Reymann said McKitrick had reached out to the firm through its Utah Freedom of Information Hotline (1-800-574-4546) and he had provided her advice for her first request. He said the firm finds that journalists are usually more than up to fighting their own battles, sometimes with just a little coaching.

"We can do a decent job as lawyers, but I think journalists are always in the best position to advocate for themselves," Reymann said.

McKitrick's case took an unusual twist, however, when Gibson sued Ogden in court, but didn't file against McKitrick, so that she was initially unaware of his legal maneuvers.

Reymann said the "behind the scenes" help changed at that point.

"We said we'll just represent you at court because this [claim] is bullshit," Reymann said. With the firm's help, McKitrick filed in court to dismiss Gibson's petition for lacking legal standing.

The matter went to district court, where the judge cited "ambiguities in GRAMA" and concerns over Gibson's constitutional concerns of privacy to rebuff McKitrick's claim.

This forced Reymann to file a special "interlocutory" appeal to the Utah Supreme Court.

In May 2021, the justices heard the arguments. While Gibson claimed his privacy was at stake, Reymann said what truly hung in the balance was the ability of public officials to skirt the law to stymie the release of documents and keep the

» See next page

public in the dark about the results of investigations into elected or appointed government leaders.

"That person could sue and clog up the release of records for years in litigation," Reymann said. "That's especially true for well-heeled people like Gibson who have the money to hire an attorney."

Standing

At issue before the Utah Supreme Court was the matter of standing. In order to challenge the city's release of the records, Gibson argued he had constitutional protections that gave him the legal standing to challenge the city's decision, as well as privacy considerations under GRAMA.

The high court rejected Gibson's arguments on both points. The court's opinion noted that GRAMA clearly spells out that only a records requester and the government agency controlling the records in question are able to seek judicial review of a decision — no one else.

"GRAMA doesn't authorize a person to bring this [judicial review claim]," Reymann said. "In fact, this was done by the Legislature to prevent this exact type of action."

The state high court echoed that point.

"Despite his status as the subject of the records here, we conclude that Gibson is not within the scope of those authorized by the Legislature to seek such review," the court's ruling states.

Takeaways

Reymann said the case was not just unique in Utah's legal history but demonstrates some key lessons for reporters seeking investigative reports.

Know where you're appealing:

It's important to realize that GRAMA has allowed municipalities to set up their own records appeals board like Ogden did. It's something to consider when you're filing.

Reymann said appeals boards have improved, as GRAMA now requires that they be composed of a member of the governmental entity or political subdivision

and also two members of the public who are not employed by the government.

Appealing to a local board may change how you plan your appeal and the timing of it. Requesters should remember that they can still appeal a local appeals decision to the State Records Committee or to district court if they want.

Don't allege corruption when you don't know what the file says:

Reporters and members of the public might want to see an investigative file to see if it provides proof of a coverup of a crime. That is certainly a valid concern for any interested party. But Reymann said the argument is likely to be more effective if instead of insinuating wrongdoing it puts the focus on understanding the process of the investigation rather than the outcome.

"A lot of times the story is we're trying to uncover corruption, and one of the ways we try and argue this that I think is more effective, is to say it doesn't matter whether an investigation found wrongdoing or exonerated the person," Reymann said. "The public is equally interested in both outcomes, and a decision not to prosecute is as important as a decision to prosecute."

Don't give up on a long battle:

Reymann acknowledged it's frustrating that sometimes a records dispute extends months or years beyond the request, seemingly well past the expiration date of a news story. He stressed that the firm can provide background guidance in a records dispute through its hotline and may at times offer to step in with representation if it's obvious an agency is using the courts to bully or abuse the public or journalists in the courts. Fighting a good appeal can also make it easier for you and other requesters in the future by letting agencies know you won't be intimidated.

"Even if in fighting the story becomes less newsworthy, it might be easier the next time around if they know you're going to fight for it, and that's what Cathy did — she was relentless," Reymann said. •

Standing up for open meetings

How journalists helped fight against closed public meetings in southern Utah.

By Eric S. Peterson | The Utah Investigative Journalism Project

When public officials discuss public business, Utah law says these meetings should be public. Makes sense, right? Well, not according to a district court judge who not only dismissed Southern Utah Wilderness Alliance's complaint about then-Secretary of the Interior Ryan Zinke's secret meeting with county officials, but then went even further and ordered SUWA to pay opposing counsel's legal bills for a supposedly "bad faith" lawsuit.

In May of 2017, Zinke met in a private huddle with county commissioners for Garfield, Kane and San Juan counties, presumably to discuss having the Trump administration shrink Bears Ears National Monument as well as potentially the boundaries of the Grand Staircase National Monument.

Several months later, SUWA filed a complaint that the commissioners had violated Utah's open meetings law by not providing notice of the meeting, opening them to the public or providing written minutes of what transpired. They even sought a decree from the court to file an injunction to compel the different county

Courtesy photo

First Amendment attorney Ed Carter filed amicus briefs with the Utah Supreme Court on behalf of several news organizations after Ryan Zinke held a secret meeting with county officials, in violation of Utah law.

commissions to comply with the provisions of the law.

The judge dismissed the claim and granted a request from the counties' attorneys to have the environmental group pick up their bill: $52,583.

When SUWA appealed is when First Amendment attorney Ed Carter stepped in, filing amicus briefs — "friend of the court" — briefs with the Utah Supreme Court opposing the decision on behalf of FOX 13, the Deseret News and The Utah Headliners Chapter of the Society of Professional Journalists.

"We were able to show that this is not just about SUWA's concerns, that this affects journalistic organizations and the public because if government bodies are holding meetings without letting anybody know about them, then democracy is not being served," Carter said.

Carter said that having the state high court accept the amicus briefs itself was a win for public transparency.

"I've actually had cases in the past where appellate courts haven't even allowed journalistic organizations to file friend of the court briefs," Carter said, noting other judges have not agreed that such groups would have "standing" in that their specific interests would be impacted. The state high court recognized that right, however, and Carter said recognition of standing was significant.

"If SUWA couldn't challenge it, then news organizations wouldn't have standing, then members of the public wouldn't have standing either," Carter said. "It would allow this zone where public bodies could do whatever they want."

The state Supreme Court went further than just allowing journalists to have their voices be heard. They also reversed the lower court's ruling overall. That also means they reversed the court's extreme decision to force SUWA to pay opposing counsel's attorney fees.

In the San Juan case, the state high court even noticed that the judge in the case based their decision to award fees on evidence that wasn't even presented in courts by the counties' attorney.

» See next page

That is, the court apparently looked at posts from SUWA's website.

"But these blog posts were not presented to the court by either party," reads a footnote in the state Supreme Court decision against San Juan County. "Courts should refrain from this type of independent factual investigation."

Carter says the lower court's major error was in confusing the merits of SUWA's claim with their standing to file a complaint in the first place. And while the merits of the case remain to be hashed out in the lower court, the Utah Supreme Court was clear that SUWA had a right to challenge the violation of the Open Meetings Act.

By reversing that decision and slapping down the rationale behind the fees, the court struck a strong blow against the government trying to intimidate individuals worried about a lack of transparency.

"We might not win every lawsuit, but we don't want to be chilled," Carter said. The county and the lower court's decision — if unchallenged — would have sent a clear message of "don't even file a lawsuit because if you do and you get sanctioned, you're on the hook for a lot of money. That would put news organizations in a position of being scared off."

Takeaways

Speak up if you think the closing of meeting is improper:

Carter notes that journalists or members of the public may often find themselves in meetings where a government board decides to close the meeting to the public. There are allowances under the law for such circumstances, like when a board needs to discuss personnel matters or impending litigation, or a few other instances under **Utah code §52-4-201**, **-204** and **-205**.

But if the body doesn't clearly state those reasons, and you think closing the meeting might violate the Utah Open & Public Meetings Act, then Carter says you should respectfully ask to address the board and put your objection on the record.

"That can be beneficial later on if it ends up in litigation," Carter said. "Then they would

be aware or should have been aware that what they were doing was improper because they were told that."

You can challenge an access denial, even when you don't know what you're being denied:

In the meetings case, it's worth underscoring that if you're blocked access from a meeting, you can still challenge it as improper even if you don't necessarily know what was being discussed behind closed doors.

Carter recommends that when agencies push back against requests by saying that nothing improper happened behind closed doors or with records that might be withheld, that it's good to argue that the process is important and beneficial not only to reporters and the public but to the government agency as well.

"If they are going to do things secretly and the public doesn't know about it, that doesn't serve the government entity," Carter said. "Even though it's a long process and more difficult to do things transparently, ultimately its better for governmental entities because the public trust is built up." •

Noteworthy cases from 2021

By Attorney Mike O'Brien

Salt Lake Tribune v. West Jordan

In early 2021, Sam Stecklow, a Salt Lake Tribune reporter, asked West Jordan for records related to police shootings. West Jordan identified and then withheld two statements given by police officers after a 2018 shooting. The State Records Committee eventually found that those statements — called Garrity statements — were not entitled to any protection under GRAMA, and that even if they were, the public's interest in accessing those statements equaled or exceeded any interest in keeping them secret. West Jordan appealed that decision, and the parties filed cross-motions for summary judgment. That briefing was complete in early 2022. In the meantime, the Utah

» See next page

Legislature passed HB399, which allows Garrity statements to be classified as protected. But because that law is not retroactive, the litigation regarding these particular Garrity statements continues forward.

Salt Lake Tribune v. Washington County

In response to a records request similar to West Jordan's, Washington County withheld internal affairs reports related to several police shootings. Washington County argued that those internal affairs reports are employment records and thus entitled to protection under GRAMA. The State Records Committee agreed that those reports may be entitled to some measure of protection, but concluded that (as with the West Jordan records) the public's interest in accessing the Washington County internal affairs reports exceeded any interest in secrecy. Washington County appealed, and that case, like the West Jordan case, has reached the summary-judgment stage and is awaiting a decision from the court.

Rasmussen v. Utah Department of Health

In early 2021, Suzette Rasmussen served the Utah Department of Health with a series of records requests related to the state's response to the COVID pandemic, including its testing program and its contracts with third-party vendors. The Department of Health responded that it was under unusual stress, both because of the pandemic and because of the unusual number of GRAMA requests it was receiving. When the department's delays in responding stretched for months, Rasmussen filed an action that asked a district court to determine whether the department had appropriately invoked GRAMA's provision related to "extraordinary circumstances," and, even if it did, whether the department's monthslong delays satisfied GRAMA's requirement that even under extraordinary circumstances, a governmental entity must act on records requests "as soon as reasonably possible." The court has heard argument on Ms. Rasmussen's motion for summary judgment in that case, and the parties expect a ruling soon. •

LEGISLATURE 2022

Eric S. Peterson | UIJP

SECTION III

Legislative recap of laws affecting journalists and open access to government

Lawmakers block access to police records, House and Senate floors, and more.

By Eric S. Peterson | The Utah Investigative Journalism Project

It's an election year, and that meant lawmakers in the recent legislative session weren't just making policy but also trying to score ideological points. Many felt the media would be a good target for grandstanding to conservative constituents. Legislation this year sought to block access to key police reports known as "Garrity statements" and journalists were restricted from easy access to the House and Senate floors. As bad as they were, these bills could have been worse.

Senate Resolution 1 & House Resolution 2: Blocking journalist access to chamber floors and committees

A pair of resolutions passed this session would force journalists to essentially have a chaperone to come onto the House and Senate floors to ask lawmakers questions. They also would require advance permission for photographers and camera operators to stand behind the dais in committee hearings.

The legislation took the form of resolutions unique to each chamber. The first one passed was SR1, sponsored by Sen. Mike McKell, R-Spanish Fork. The resolution restricts journalists from coming onto the Senate floor, into halls, and into the senators lounge area without permission. Journalists have long used this freedom to catch busy lawmakers between votes and hearings to ask important clarifying questions. Now, the resolution requires a journalist to get permission first to come and ask a question on the floor, after which the media member must leave the floor.

A public hearing on the plan was tense, with lawmakers using committee time to criticize the media in general. Sen. Dan McCay, R-Riverton, bristled at the idea that journalists represent the interest of the public in the work done in the Capitol.

"I thought I was the voice of the people," McCay asserted, before lecturing KUTV's news director Mike Friedrich, who spoke against the resolution.

"More and more journalism is taking a position on issues and less and less reporting. What's going on?" McCay asked.

Friedrich countered that was not the way his newsroom operates.

"We report what's going on in our communities, and that is our goal, that is our objective every day," Friedrich said.

Sen. Curtis Bramble, R-Provo, stated that he only knew of two instances in over two decades on the hill where media crossed the line but then stated adamantly that "we regularly legislate to the exception."

Both Bramble and McCay used their remarks to make allegations that weren't even addressed by the legislation, such as suggesting that journalists wanted to enter lawmakers' offices or follow them into the restrooms.

Numerous journalists spoke against the resolution, stressing how it would complicate the jobs of journalists and lawmakers.

"You can't make good policy without a healthy, free flow of information," testified Katie McKeller, a politics reporter and assistant editor at the Deseret News.

In the House, similar legislation was passed by Rep. Jim Dunnigan, R-Taylorsville. House Resolution 2 also requires journalists to get permission to access the chamber floor, halls and conference rooms. But whereas the Senate resolution requires a journalist to get permission from the "Senate media designee," the House resolution requires that journalists get permission from the speaker of the House or "the speaker's designee."

The first draft of the resolution actually required journalists to get the permission of the House speaker even to access committee rooms that are already open to the public, but Dunnigan took that language out after consulting with the media.

» See next page

The House resolution, like the Senate version, requires permission from a committee chair to stand behind the committee dais to shoot video or take photographs.

House Bill 96: 'Vexatious requesters'

City and county clerks for several years have complained about prolific public records seekers who have earned the dubious title of "vexatious requesters." The requests are often broad, frequent and have in the past been motivated by dissatisfaction with city and county zoning policies or other decisions.

The legislation passed by Rep. Dan Johnson, R-Logan, was championing the bill on behalf of a records clerk for Cache County, who testified that nearly half of the county's GRAMA requests came from a single person.

The bill was designed to curb "vexatious" requests by not allowing these requesters to receive a discount on GRAMA fees baked into the law for individual requests.

Previously, the law waived a fee for the first 15 minutes of work a records officer would put into filling a GRAMA request. The legislation passed would allow officers to charge for the 15 minutes if the requester already submitted a GRAMA request in the preceding 10 days and is not a "Utah media representative."

While the legislation will likely not impact most Utah journalists, it could potentially mean more charges for citizens and nontraditional media. According to the bill language, a media representative is defined as one who requests information "for a story or report for publication or broadcast to the general public." But the language goes on to say the definition "does not include a person who requests a record to obtain information for a blog, podcast, social media account, or other means of mass communication generally available to a member of the public."

House Bill 399: Blocking access to 'Garrity statements' of police use of force

The obscure legal term "Garrity statement" was bandied about a lot on the hill this session, as a bill was passed making these little-known records "private" under GRAMA. The records can provide critical

information in understanding police uses of force, as "Garrity statements" often refer to statements that police officers are required to provide about a use-of-force incident as part of an internal investigation.

While police are compelled to provide this information, the 1967 U.S. Supreme Court decision Garrity v. New Jersey stated that information in the statements could not be used in criminal prosecutions. Edward J. Garrity and a group of fellow officers convicted of conspiracy based on their admissions of ticket fixing had their cases thrown out.

Previously, journalists could file GRAMA requests for Garrity statements that would shed light on police shootings and other use of force that would help the public understand these controversial and often tragic encounters between police and citizens. While the records would allow the public the power to hold departments accountable for potentially bad policies and inadequate training, they nevertheless could not be used in court against the officers that provided the statements.

In the Legislature, however, bill sponsor Rep. Ryan Wilcox, R-Ogden, cast the issue as protecting officers from sharing sensitive information that would be used "to sell papers."

"If people are not afraid of being attacked and are assured of safety, they are most likely to cooperate and can share their concerns openly," Wilcox said. "[That] is obviously compromised by the ever-present threat of public shaming for profit that some would have you believe should be the price to be paid by those who choose to be a public employee."

Wilcox, who is the chair of the House Law Enforcement and Criminal Justice Committee, moved the bill to the end of the public hearing agenda. By the time the panel got to the bill, time was short, so the committee severely restricted the number of individuals allowed to speak for or against the bill. Only a few media representatives were allowed to challenge the bill, despite many having shown up to do just that.

Sheryl Worsley, vice president of podcasting at KSL, argued that shielding these records would cause further distrust with police.

» See next page

"Police departments across the country and here in Utah have seen a rise in mistrust. The answer to a lack of trust is more transparency, not less," Worsley testified.

Sam Stecklow filed dozens of GRAMA requests for Garrity statements for reporting done in The Salt Lake Tribune, and the "Shots Fired" documentary the paper did in partnership with Frontline. He noted the importance of these documents in investigating police misconduct.

"In Chicago, I reported on the then-police chief who oversaw a brutal tactical unit that killed three people and resulted in a wildly disproportionate amount of complaints filed and lawsuits paid to the tune of millions of dollars," Stecklow testified. "This [reporting] would not have been possible without access to Garrity statements."

The 'balancing test' workaround

There is, however, a fail-safe for reporters that still want to request the Garrity records by utilizing GRAMA's "balancing test."

Under GRAMA, records that are considered private can still be made public as long as the requester successfully argues on appeal that the public's right to know outweighs the government's secrecy interests.

According to 63G-2-406, such records may be released if the requester "has established, by a preponderance of the evidence, that the public interest favoring access is equal to or greater than the interest favoring restriction of access."

Creation of a Capitol press corps

Journalists pushed hard for the Legislature to consider the creation of a fairer and more dynamic way of addressing issues on the hill by creating a Capitol press corps. The model would be to allow members of the media to work with Capitol Hill staff to set rules and regulate any media members that might break the rules.

Lawmakers, such as Dunnigan, have signaled interest in exploring the idea, but nothing substantive was pushed in the 2022 session. The Utah Media Coalition and the Utah Headliners Chapter of the Society of Professional Journalists have committed to working with legislators in the interim to advance the creation of the press corps. •