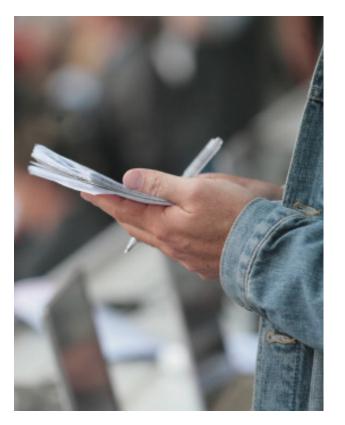
# THE UTAH 2024 REPORTERS



ALMANAC

By The Utah Investigative Journalism Project

#### **Utah SPJ Needs You!**

The Utah Headliners Chapter of the Society of Professional Journalists is looking for a few good volunteers interested in joining the board and standing up for the Fourth Estate here in the Beehive State.

The board meets monthly, where we do such work as:

- Advocating against idiotic legislation hurting the work of the press.
- Organizing training and other career development events for journalists.
- Preparing the annual SPJ award contest and deciding on special Honors Awards winners.
- Pushing back against other attempts by government agencies to block access to records and open meetings.

Think you got what it takes? Email utahspj@gmail.com or epeterson@utahinvestigative.org for more information. We'd love to have you on board!



@ The Utah Investigative Journalism Project 2024 Edition

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

Cover image by Adobe Stock

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#### Thank you for reading the 2023-24 Utah Reporters Almanac!

Once again we are thrilled to know you are reading these pages! Whether you've been reading the Almanac since we started publishing it three years ago or if this your first time — welcome!

This is a guide for the curious and the concerned citizen and local reporters alike. The mission of The Utah Investigative Journalism Project has always been to help local reporters and the public. There was a time when journalists dealt out the news to the public from on high and the exchange of information was very one-sided. Those days are long gone. Now more than ever journalists turn to citizen watchdogs for scoops and guidance on where to find stories, just as members of the public turn to reporters for the news they have uncovered.

Journalists inform the public, and the public helps and informs journalists. We are in this together, and so I salute you all! We hope this guide is valuable to everyone from seasoned reporters looking for new tips and tactics to concerned citizens worried about continued efforts to close the doors of open government.

Since our founding in 2016, we have offered dozens of free trainings to student journalists and local newsrooms. This past year, we have now started directing our training efforts more generally to the public in order to broaden our reach. In 2023, we did webinars open to everyone on how to use free databases to do DIY background checks. Attendees learned how to use court, business and other databases for simple investigations.

In January, we did a free webinar on tracking bills during the legislative session that also explored how to search state campaign finance records. That way, attendees could follow their lawmakers — and the special interests funding their campaigns.

To learn more about our free webinars, all you have to do is sign up for our email newsletter by visiting utahinvestigative.org.

You can also learn a lot in this new edition of the Almanac. Inside, you'll read about how lawmakers once again have been closing access to open government for journalists and the public. You'll learn about the first time a records requester was determined to be "vexatious" under a recently passed law and was banned from requesting records from an agency for a year. You'll also learn tips on how to request court data and learn about the backgrounds of all the members of the State Records Committee.

Thanks again for reading and believing in what we do. The poet Maya Ange-

lou said it be counting or support you reading, she we produce.

Sincerely, Eric S. Peters

lou said it best: "I do my best because I'm counting on you counting on me." We strive to do our best because of the support you provide us at every level — from donating to just reading, sharing, talking about and thinking about the work we produce.

Sincerely,
Eric S. Peterson
Executive director
The Utah Investigative Journalism Project

My name is Dan Harrie and I'm a proud member of the The Utah Investigative Journalism Project board.

The board is made up of volunteers whose uniting purpose is to support and foster deeply reported journalism. In a one-party state where partisan and cultural tribalism can supersede the common good, sometimes even common sense, it is especially important to have dogged reporters poking around in the dark corners behind the curtain. Utah is lucky to have some fine daily news organizations, but it is our belief that those hard-to-get investigative stories — the best examples of which can take weeks or even months to develop — too often are overwhelmed by coverage of the events of the day. The work is time-consuming and expensive, and produces stories that don't always draw the audience that flashier breaking stories do.

We believe that many people feel the same way we do about investigative reporting, and we are always heartened when we touch base with supporters and readers. You have helped make UIJP possible and allowed it to achieve impressive growth in the last few years.

I know I speak for the entire board when I say that the organization is led by one of the finest reporters in the state. Eric Peterson is the founder and executive director of UIJP, and you will see his byline on many of the terrific investigative pieces the organization publishes with partners around the state. He's also the driving force behind the free trainings and other support services offered by UIJP, including this annual Almanac, which has some great info and tips for reporters and/or citizen journalists.

Thanks for taking time out from your busy day to spend some time with us, we think it will be worth your while.

Sincerely, Dan Harrie

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# **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 serves on the board for the Utah Headliners Chapter of the Society of Professional Journalists, and previously served as the board's president.

Since training is brought directly to your newsroom, it can be tailored to fit the interests of participants and could blend components of multiple 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!

Defenders of Democracy, \$1,000-\$4,999: XMission, The Exoro Group, Quackenbush Legal, Jack and Sandra Crosland

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Group and The Utah Headliners Chapter of the
Society of Professional Journalists

# GRAMA and STATE RECORDS COMMITTEE DECISIONS



**SECTION I** 

# Meet the new state ombudsman

The former police records clerk is the new lifeline for GRAMA questions and mediating disputes.

By Eric S. Peterson | The Utah Investigative Journalism Project

Cundiff served as Utah's very first records ombudsman, a job where she answered questions from records clerks, journalists and average citizens about the intricacies of Utah's public records law, the Government Records Access and Management Act, or GRAMA.

Cundiff retired, and stepping in to fill her large and kindly shoes is Monica Minaya, the newest ombudsman, who is no stranger to public records requests.

For the past eight years, Minaya has worked as a records officer for law enforcement in Salt Lake County. She worked for 5 1/2 years for the Unified Police Department and then roughly three years for the Herriman Police Department before becoming the new ombudsman.

But before she began her career in law enforcement, she



Monica Minaya

had no background in GRAMA at all.

"I didn't know anything about GRAMA, honestly, until I started in law enforcement and got put on the GRAMA desk," Minaya said. "It was intriguing, so many people don't understand it or have issues interpreting it and how the law applies to certain records."

The work for Minaya became a challenging and rewarding

puzzle "to help people connect the pieces."

"It just became a passion since I got put on that desk," she said.

As the new ombudsman, Minaya will keep busy helping to provide training and advice to records officers in Utah government from major state agencies to clerks in small-town municipal and county offices. She will also field questions from reporters and members of the public about any GRAMA questions they might have.

In that role, she finds that a lot of her job is just helping translate the legalese that some government agencies are so fond of relying on in their GRAMA responses.

"Depending on the agency and the verbiage they use, it might be more lawyer speak," she said. "They just use code after code after code—so that you don't understand what they are saying. That's probably one of the biggest things I do, is explaining the statute and how it can apply and going over the response they received."

As the ombudsman, she also keeps busy mediating records disputes. When someone files a GRAMA request that gets denied and the requester appeals it all the way up to the State Records Committee, it's Minaya's job to try and set up a mediation to see if both parties can come to some agreement that would allow them to avoid going to the records committee.

Minaya says if both parties come in with the right mindset and a willingness to listen, mediation can be a great tool to avoid having to go to the committee. It's a much faster option as well since the committee is so backlogged that it generally takes months for hearings to get scheduled.

Mediation usually offers two parties at loggerheads a chance to hash things out in person.

"If they've only emailed each other and never had time to talk face-to-face with each other, it allows them to have a different method of communication, and sometimes that's all it takes," Minaya said.

For Minaya, working with citizens and the government equally is no problem because she recognizes GRAMA serves everyone from the government to the public.

"When I first learned about GRAMA, I thought 'This is

great! It gives people a way to access their records," she said. "It's hard sometimes to understand what you're paying your taxes for and where it's going. [GRAMA] helps build transparency with government agencies, and transparency is one of the biggest things that everyone is always reaching for."

# **Takeaways:**Should you mediate—Yes

"If people come in willing to see the other side, mediation is a great tool," Minaya said.

### How to file requests

Minaya argues that being specific is the best route to go. Linking records to specific locations and addresses just makes things a lot easier for the records clerk on the receiving end of your GRAMA.

"For example, if it's police records, then you need to be specific as possible as to what you're seeking like reports, bodycam, photos," she said.

Being specific can be tricky, however, if a requester might be trying to gather records to look at a possible trend. For example, seeking records on domestic violence police calls in the city. In that case, obvious-

ly the requester doesn't know about specific instances but is trying to cast a net to understand a big-picture issue. In that case, Minaya said you need to be both general and specific: Use general terms in your request but provide specific details that can help hone in on the desired data, such as geographic areas or time frames.

"Time frames are going to be one of the biggest things for records officers for broader searches or statistical searches," she said.

Minaya also said requesters should be open to having a conversation with the records officer to clarify the request. Records clerks want to help and would appreciate the chance for a dialogue if something isn't clear in the GRAMA itself.

"You could always put, 'Please contact me if you have any clarifying questions.' That helps records officers. If requesters are putting on the GRAMA that they are open for contact or a quick call about the request, that always helps."

# Got GRAMA questions? Email Monica at mminaya@ utah.gov

# Who sits on the State Records Committee?

Committee members bring a variety of different experiences to the panel.

By Eric S. Peterson | The Utah Investigative Journalism Project

tah is one of only a handful of states with a special body to help settle records request disputes. In many states, if a government agency denies your request, your only recourse is to lawyer up and take your fight to court. In Utah, however, you can take your fight to the committee and stand before a neutral body and make your case without a lawyer.

So who exactly are you making your case to?

The committee is led by Ken Williamson as the director of the state Division of Archives and Records Services. Other members are appointed and come and go. The Utah League of Cities and Towns selects a representative, while the governor's office selects the other representatives. That includes a member of the media, two citizen representatives, a pri-

vate-sector records manager and an electronics record expert.

We gathered resumes and other information to provide some biographical information on the current members.

# Chief Ed Biehler-Electronic Records Expert

Ed Biehler is the committee's electronic records expert but is also chief of the Boun-



**Ed Biehler** 

tiful City police department with over 25 years spent in law enforcement. Documents received from the governor's office show that state archives had reached out to local technology associations for nominations to the seat but received none. The governor's office then advanced Biehler as a nominee.

In a letter Biehler submitted to archives for the position, he described his experience.

"I have worked with police records databases and dispatch databases since 2010. Over the last 11 years as a Lieutenant, Assistant Chief and now Chief of Police. I have worked as a supervisor over the Bountiful Police Records Division and the Bountiful Dispatch Center. I have been involved in numerous discussions regarding our records management systems and helping to develop policy and best practices for maintaining information in these databases."

Biehler also described working closely in the implementation of different records management systems at the department as well as managing video databases for mobile car and body-worn cameras. His resume also notes having "led the Investigations Division, Records Division and Emergency 911 Communications Center."

He also explained his role as chief in handling "out of the norm" record requests, stating he typically consults with city attorneys and other law enforcement professionals.

"I believe there is a balance between the need for privacy and a need for public transparency with government records," Biehler wrote.

## Linda Petersen-Media Representative

Linda Petersen has been a local journalist for more



**Linda Petersen** 

than 30 years. She's currently a writer and photographer for the Intermountain Catholic, a weekly newspaper of the Diocese of Salt Lake City. She's also a freelancer, covering city council meetings remotely for outlets such as The Sanpete Messenger, The Crossroads Journal and the Beaver County Journal.

Prior to that, she spent a decade at the Valley Journals and City Journals as a writer, editor and managing editor.

She's a former president of the Utah Headliners Chapter of the Society of Professional Journalists and helped rally opposition to 2011's House Bill 477, which sought to gut the state's open-records law. After the bill's demise, she served as a member of the task force convened by the Legislature. She also was president of the now-defunct Utah Foundation for Open Government and was a former chair of the National Freedom of Information Committee

# Nancy Dean-Political Subdivisions

Nancy Dean has worked

over 20 years for Clearfield City, where she currently works as the recorder. In that role, she maintains the city records management system, responds to records requests, trains other records staff, and chairs the city's Records Management Committee.

While at the city, she spearheaded special projects including creating the city's policy for GRAMA requests, digitizing city records and implementing a new records management software system for the city.

Besides graduating from Brigham Young University, she also has multiple degrees from the International Institute for Municipal Clerks.



**Nancy Dean** 



**Mark Buchanan** 

# Mark Buchanan-Private Sector Records

Mark Buchanan is the representative of the private sector, having worked since 2012 as the head of Records Management for The Church of Jesus Christ of Latter-day Saints.

According to his resume in that position, he has led "initiatives to help thousands of employees organize, manage, and preserve records." As part of that, he works with each church department and IT professionals to develop and maintain databases.

The role also has him interfacing with the church team "that oversees all library functions."

"Proven leader with 17 years of experience in an academically-oriented library, blended with a high-performing world class enterprise," the introduction of his resume reads. "Passionate about Church history, servant leadership, effective communication and counseling, and maintaining positive relationships."

# Marie Cornwall-Citizen Representative

Neither State Archives nor the governor's office could find records of Marie Cornwall's resume or a nominating letter to describe her experience.

» See next page



**Marie Cornwall** 

An author page at Brigham Young University states Cornwall was a former director of BYU's Women's Research Institute, and a former editor of the Journal for the Scientific Study of Religion. Before joining BYU, she was a researcher for the LDS Church's Correlation Department. Her professional page shows she retired as a sociology professor in 2012 but since then has been president of Resources for the Study of Social Engagement, an organization studying "effective social engagement among people of diverse experiences, perspectives, and backgrounds."

# Nova Dubovik-Citizen Representative

Nova Dubovik is no stranger to the committee, having previously worked as the secretary for the committee from 2014 to 2018. As secretary, she coordinated committee hearings, responded to appeals and scheduled



**Nova Dubovik** 

hearings. She also served as the project manager for the first-ever Open Government "Sunshine Week" in 2018.

In recent years, she has also worked as a technical writer for Utah State University's Space Dynamics Laboratory. According to her resume, in that role she manages and classifies records and also "creates engineering documents in support of satellite services for the Department of Defense, science and industry communities." •

Photos taken from Archives. utah.gov



Cover design by Derek Carlisle

# **Observe & report**

Records committee rules POST has to release police certification data.

By Eric S. Peterson | The Utah Investigative Journalism Project

n 1999, a Utah County woman woke up with a shock to find Lehi police officer Wade Butterfield sitting on the edge of her bed. The woman later told a Deseret News reporter that when she asked him how he got in he responded: "I'm a cop. They teach us how to do that. I can get in anywhere."

Butterfield was charged with criminal trespass, a misdemeanor that was

later knocked down to an infraction. As a sworn officer, though, his conduct was serious enough that his certification was suspended by Utah's Peace Officer Standards and Training Council. POST, as the agency is commonly known, trains all officers in the state and keeps track of where officers work, what their certification status is and what

their history of discipline is.

While POST keeps tabs on their officers' history of bad behavior and where they end up working, it's not information the agency shares widely.

Butterfield would wind up as police chief of Myton, a small town in Duchesne County, where he would be charged with stalking after a woman alleged that he drove her around in his patrol car for two hours talking with her about sex. That woman testified that he told her, "My car is like Vegas. What happens here, stays here." While Butterfield was acquitted of that charge in 2015, even his own attorney admitted his conduct was immoral and unprofessional, just not a crime.

Thousands of police officers work every day in Utah without crossing legal or ethical lines that might betray the public trust. But the agency that keeps track of all the officers — and if they've crossed those lines — for months refused to release any such information to The Utah Investigative Journalism Project. The request was



(Courtesy Parr, Brown, Gee and Loveless) **David Reymann** 

part of a major nationwide accountability project, meant to provide transparency to the public about officers like Butterfield who cross lines and who also quietly move from one town to the next after they've faced discipline for misconduct.

POST denied release of those records in January 2023, but when the matter finally came before the Utah State Records Committee in August of that year, the committee ruled against POST.

Attorney David Reymann represented The Utah Investigative Journalism Project at

the hearing and talked about the lack of transparency by POST.

"This agency tracks nearly 10,000 police officers in a database, and they have refused to release any information," Reymann said. "Even basic stuff like names and whether they've been certified or not. That is stunning and it should stun this committee."

## Wandering officers

The Utah Investigative Journalism Project joined up with Big Local News, a reporting initiative out of Stanford University, along with over a dozen other reporting partners across the country, to build a database of what's often referred to as "wandering officers." The term refers to the phenomenon of law enforcement officials who may move from one city to another, or from state to state, avoiding bad press for misconduct. In 2020, law professors Ben Grunwald and John Rappaport published research on the problem in Florida and found "wandering officers" were more likely to be fired for a

"moral character violation."
Those authors concluded that "wandering officers may pose serious risks, given how difficult it is to fire a police officer."

As part of Big Local News' effort, newsrooms across the country requested police certification data, and in over 30 states, the records were provided without pushback from police training organizations. But Utah was one of only 15 states that fought the release of such records.

At the hearing, POST argued against release of the documents based on a number of considerations. David Mooers-Putzer, the assistant attorney general representing POST, argued officer safety was the No. 1 consideration—especially for undercover officers who could potentially be exposed if their name was released publicly.

"It's not really within POST's ability to determine who is undercover or who may become undercover in the near future," Mooers-Putzer said. He argued that to gather records effectively,

someone seeking records would have to make requests of every law enforcement agency in the state, since they would be best equipped to know who was undercover and who was not, among their officers.

He also argued that the database used by POST was shared with multiple agencies, complicating the question of whether or not it is POST's responsibility to gather the requested records.

"If agencies use the database for other purposes, it doesn't make sense for POST to be the entity determining whether it provides those records," he said.

Reymann, however, countered that the issue of the names of undercover officers was a "red herring" and that those records were never sought. What matters, he argued, was the question of whose job it is to control the records and who has the burden of redacting sensitive nonpublic information.

He noted the Utah Supreme Court has issued multiple rulings that "it is squarely the agency's burden to segregate and redact nonpublic information that's not the public's job."

He also noted that shared databases may make it unclear who prepared a document, but that doesn't change who has authority over it.

"As you know, GRAMA doesn't base its obligations to disclose records on who prepared the document," Reymann said, citing Utah Code 63G-2-103(22)(a), which defines records as those "prepared, owned, received or retained" by the government.

"There's no denying that POST here at least receives and retains the information because it has to, to do its job, it has access to the entire database," Reymann said. "So it has the records in its possession, it just doesn't want to produce them."

Reymann noted that other states have already addressed the issue of protecting undercover officers in similar situations. He noted that California's state law enforcement agency sends notices to agencies to update them about officer status

when they have similar records requests come in, and that that system has operated without issue for years.

POST also contended that the unique query could be very expensive to pull the requested information from the database. However, when the committee asked the cost, it was determined that POST had not made a specific inquiry to provide even a general estimated expense.

The committee went back and forth over the issue, with all recognizing the importance of officer safety. But not all agreed the agency was acting reasonably.

Linda Petersen, the media representative on the committee, stated that law enforcement rarely seems to cooperate with records requests.

"Thirty years as a journalist, and time and time again, big agencies, small agencies, medium agencies—they always say 'no' first," Petersen said. "Until sometimes you get a 'yes' and that's because that agency has learned the hard way, but somebody has rapped their knuckles."

Ultimately the committee decided that it was POST's responsibility to release the information with appropriate redactions and left it to the agency to determine how to best do that, and voted to grant the appeal.

# **Takeaways:**Shared databases:

It's not critical who "prepared" a record. If an agency has also "received" or "retained" the record, you can request it from them.

# Government's burden to redact:

Two Utah Supreme Court cases have affirmed that the burden is on the government to redact and segregate sensitive information from records. For reference, see the 2008 Deseret News v. Salt Lake County and the 2015 Schroeder v. Utah Attorney General's Office cases.

#### Ask about costs:

When costs are presented for fulfilling records requests, it's always good to ask an agency how they came up with that number. Ask them to justify it. •

# **GRAMA** contest winner

Investigating some spooky conflicts of interest

Nonprofit uses correspondence GRAMA to find
withheld records.

By Eric S. Peterson | The Utah Investigative Journalism Project

hat do UFOs, skinwalkers, Bigfoot and a questionable government conflict of interest all have in common? Well only one of them is definitely real, but they all play a part in PhenomeCon -- a taxpayer-funded conference on the paranormal put on by Uintah County.

Our GRAMA contest winner this year goes to Expanding Frontiers Research, a new nonprofit that started digging into the conference with a series of GRAMAs going back to 2022. Besides bragging rights they also received \$100 for their industrious records gathering from 2023.

According to Jack Brewer, a writer with Expanding Frontiers Research, the first revelation from their research came earlier when they found out that the PhenomeCon conference was not put on by a private entity but instead

that Uintah County was "in the UFO carnival business."

Through its research the nonprofit found out public money paid for the conference, which draws on the local attraction of the Skinwalker Ranch in the Uinta Basin, known for UFO sightings and other supernatural lore. It's also the location for a popular History channel docuseries "The Secret of Skinwalker Ranch." The show played a key role as well in the conference as the Expanding Frontiers Research (EFR) researchers discovered that one cast member from the show also participated on an organizing committee that was responsible for finding and paying for speakers at the conference and that he himself was a recipient of county funds for the conference.

The nonprofit was able to show that the county spent



(Jack Brewer)
The entrance to Skinwalker Ranch.

over \$133,000 on the 2022 conference while raising roughly \$124,000 in revenue. The first PhenomeCon in 2021 was also in the red costing \$74,000 while collecting only \$59,000 in revenue. EFR also found numerous payouts to individuals and companies closely connected to the TV show on top of other interesting line items, like spending nearly \$900 on "candy for speakers."

"We discovered that tens of thousands of dollars are paid to speakers who come there and say pretty sensational things and it's done under the guise of tourism," Brewer said.

EFR's findings were picked up in 2023 in a story on Fox 13. In the news story, county officials pushed back, saying that there were economic benefits to the local community that outweighed the costs.

Erica Lukes, the founder of Expanding Frontiers Research, worried that the conference could spread misinformation. She's long been interested in fringe beliefs and worried presenters at the conference could do harm

through misleading information, citing a speaker who talked of people essentially being infected by "paranormal parasites" that could kill them just by driving near the ranch.

"It's ridiculous to begin with but it can have negative effects on people who don't understand this type of information," Lukes said. "It's the same thing you see around conspiracy theories, they can lead to dangerous paths for specific people."

Brewer said hiring supposed scientific experts to peddle misinformation is what makes this different from other publicly-funded tourism efforts.

"That's what makes this different from a Strawberry festival." he said.

While EFR's research turned up a lot of information in late 2022, staffers still felt like there was more reporting to be done. While the non-profit nailed down the big picture about the costs of putting on the conferences, it still questions how certain decisions were made.

"I got interested in questions like 'How do you decide

who gets offered \$5,000 and who has to pay you to have a table at the conference?"

Brewer said.

The truth was out there— EFR just needed to file more GRAMAs.

In 2023 it tried to get more information on the conference and received a paltry handful of documents, with county officials saying those were the only responsive records they had.

Luckily one GRAMA request provided the clues to find the missing financial records.

Brewer filed a request for emails that used his and Lukes' names as well as the name of the nonprofit as search parameters.

This GRAMA uncovered emails sent between the county clerk/auditors office and the travel and tourism office discussing the GRAMA requests. In the emails, Brewer learned that instead of both agencies providing the records they had, the two offices decided to just have travel and tourism respond to the request.

Brewer said he immediately saw the problem with agencies picking who would respond and with what, which is not what GRAMA intended. He used that email to appeal the denial of records.

"I shared a copy of that email in my first appeal and pointed out that it's not a matter of what a government employee would rather or rather not disclose," Brewer said. "It's only a matter of what is subject to release under GRAMA or not."

That email was the key to turning a handful of records into 140 pages of documents released in 2023. For Brewer and Lukes it was a win, but they say they still have a ways to go. A large number of the vendor contracts they received were completely blacked out and so they are currently appealing those denials to the State Records Committee.

Lukes and Brewer both have a strong interest in myths and misinformation surrounding fringe topics, but as they've become better acquainted with GRAMA they say they are expanding their horizons and plan on investigating many other topics involving government activities and the criminal justice

system.

"It's a very empowering process," Lukes said of GRAMA.
"Over the years I've learned more about the process and how it's so important for citizens to understand how to use. A lot of times things can happen and slip through the cracks and people aren't held accountable. That's a very important issue for all of us."

# **Takeaways:** You can GRAMA yourself:

You should always be as specific as possible when filing GRAMAs for email, text and other communications between public officials. As long as the communications are about public business you should generally be able to request them. And if public officials happen to be discussing your GRAMA or questions you've asked about public matters then you can GRAMA those discussions as well. Just remember to use specific terms and time frame. Also keep in mind you can only play this card so many times with an agency before it catches on and decides to keep some communications out of its emails. •

# **Vexed or vexatious?**

State Records Committee bans citizen from using GRAMA in first-ever vexatious-requester hearing.

By Eric S. Peterson | The Utah Investigative Journalism Project

or years, some government agencies have felt harassed by "vexatious requesters," individuals who don't file records requests so much as bombard government agencies with them. Sometimes these individuals submit dozens at a time in barrages of GRAMAs that can overwhelm clerks who already have other duties to attend to. The 2023 Legislature finally passed a bill to allow consequences for these types of requesters. When the State Records Committee adopted rules on how to implement the law in the fall of 2023. one agency immediately sought to label a notorious requester as "vexatious" in a November 2023 hearing before the State Records Committee. Under the new law. the hearing was held to determine if Brady Eames' behavior was indeed "vexatious" and, if so, to ban him from filing GRAMA requests with the state treasurer's office for up to a year.

Eames is a citizen watchdog

who was motivated to do his own investigation into the treasurer's office based on a 2015 audit that warned the agency about potential problems in mingling of public monies in different investment funds. He's been filing of dozens of requests yearly since then to scrutinize the office and its overseeing of public funds.

Eames told the committee that it should not be considering banning him but needed to protect his constitutional rights as an "inquisitive, tenacious, zealous, committed and perpetual government watchdog."

He challenged the committee not to strip him of his powers to investigate and to also air and protest his grievances with state government, especially in regards to the question of how public money is managed and how the state treasurer oversees it.

"There's no article or section of the Utah Constitution that



(Courtesy photo)

#### A view of the former State Records Committee meeting room.

requires me to be an elected or appointed official or a journalist in order to exercise my constitutional right every day, week, month and year—I can simply be Brady Eames, Utah resident and resident of Cache County and Logan City," he said.

Assistant Attorney General Christopher Pieper, representing the state treasurer's office, however, told the committee the agency was not seeking a ban for frivolous reasons.

"My client does not file this petition lightly, it's really a civil remedy of last resort," Pieper said. "But it's a remedy that exists for a reason and Mr. Eames is Exhibit A for this particular remedy."

Pieper noted that, over the past few years, Eames had filed over 100 formal GRAMA requests and still had over 20 pending. He had also sent hundreds of emails to staff about the GRAMA requests, with Pieper alone receiving 257 emails since February of 2023.

He noted the emails often insulted staff and accused them of fraud. Pieper said Eames would "weaponize" information they provided him by twisting it and including it in other harassing emails.

On multiple occasions, Pieper said the agency would prepare for appeal fights before the records committee only to see Eames withdraw them at the last minute. The frequency and nature of the requests significantly interfered with the workings of the office, he added.

"He seems to believe he

can access records under GRAMA similar to accessing Google search results," Pieper said. "Typing whatever is of interest to him on a particular day and expecting a response to come back immediately."

Pieper said the agency doesn't work like Google and there were real costs associated with his responses, which were hurting the office and the work it does for Utah citizens.

"If taxpayers knew what was happening, I think they would be outraged," Pieper said.

While the treasurer's office has been the main target of Eames' requests, they note that he's filed similar GRAMAs with dozens of other local entities.

Under the new law, the committee had to consider a number of factors to determine if Eames was vexatious. These include the number of requests he had filed, the "scope, nature, content, language and subject matter" of the requests, as well as communication to the agency about the requests.

The committee could also consider if there was a "pattern of conduct" that would demonstrate the requests were "an abuse of the right of access to information" or "substantial"

interference with the operations of the governmental entity."

The committee deliberated for over an hour in what was a fraught and sometimes anxious discussion. One member of the committee at times put her head in her hands in exasperation.

Committee member Nancy Dean challenged the agency on how Eames "weaponized" communications and noted the agency didn't provide emails to back up those specific claims.

Other committee members, however, focused on the frequency of the requests and their scope. The committee noted that one request was in a 10-part email addressed to "all concerned" without specific language in it and for records going back eight years.

Committee chair Ken Williams noted that flooding an agency with requests not only hurts the agency but could actually limit access to the agency by other citizens filing requests.

"He's depriving other citizens of the opportunity," Williams said.

Linda Petersen, the media representative on the committee noted that "watchdogs" are important.

"It is of the nature of watchdogs that they are not appreciated by government agencies that they are watching," Petersen said. "And in many cases, when they uncover wrongdoing, it takes a lot of digging in the minutia."

Yet she also noted that Eames has been filing requests for "55 months" and has not seemed to change his aggressive tactics no matter how unsuccessful they've been.

"I am worried that you have become a lazy citizen," Petersen said. "That with this 55 months of knowledge, you could do the work to significantly tailor and trim your request and get the knowledge that you need, but you think it's government's responsibility to do it for you."

Ultimately, the committee voted unanimously to grant the treasurer's petition but did not impose a full year ban as allowed under the new law, opting instead to restrict him from filing GRAMAs with the agency for the next seven months. Committee member Dean felt that she might have been inclined to go further if the agency provided more evidence to show how his emails were harassing in communications about the GRAMAs.

Eames left the committee yelling to those in the audience to "fight for their rights."

Under the new law, Eames still has the opportunity to appeal the decision in court, and if he prevails in court, he could recover attorney fees.

#### Takeaways: Committee is reluctant:

The committee deliberated extensively over the hearing and argued the new law inside and out. These hearings will not be taken lightly, and you can expect the committee to thoroughly engage with the evidence it's given.

## It's about the pattern:

The committee can weigh if you are using harassing or abusive language in communicating about GRAMAs. But as in Eames' case, they can also make a vexatious-requester determination just based on the number of GRAMAs and the scope of them and if they are disrupting an agency in a significant and provable manner.

Be polite, be specific: The committee noted Eames filed requests to dozens of agencies that were vague, broad and aggressive. Clear and concise records will not only make sure an agency doesn't try to ban you from filing GRAMAs—they are also much more likely to get you the records you want.

# **LEGAL**



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# Inmate challenges state law he says was meant as retaliation against whistleblowers

A 2017 law blocking prisoner requests passed after an inmate uncovered fraud.

By Eric S. Peterson | The Utah Investigative Journalism Project

The following story was first published in The Salt Lake Tribune on January 23, 2023.

tah law SB242, passed in 2017, put a stop to the work of Reginald Williams. Williams, an inmate in the Utah State Prison, was known for filing dozens of Government Records Access and Management Act requests, or GRAMAs, every year. The behind-the-bars gadfly often sought information not about his own case but about the inner workings of the Utah Department of Corrections.

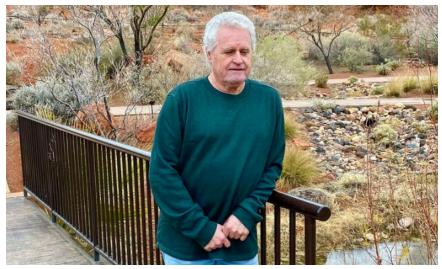
In the late 2000s, Williams used GRAMAs to find evidence that Corrections, the Utah Attorney General's Office and other state agencies had misused funding from the American Reinvestment Act, passed during the Obama administration, to help states deal with the fallout of the 2009 recession. Through

private counsel in 2015, he filed a whistleblower lawsuit against the state over the misuse of stimulus funding.

That suit was working through the legal system when Utah curbed inmates' ability to file GRAMAs that were not about their own records and limited them to five requests a year.

Williams' whistleblower lawsuit, however, kept moving along, triggering a federal investigation into the fraud allegations and leading the state of Utah to settle with the federal government for \$1.5 million in 2022. Williams could collect a reward based on a percentage of the money recovered by the federal government.

William Sherratt, another inmate who is a "frequent filer," has sued the state over the GRAMA law as being unconstitutional. When Sherratt



(Mark Eddington)

#### William Sheratt

tried to research decisions issued by the Utah Board of Pardons and Parole, he was blocked by SB242.

Sherratt just finished over two decades in prison for a conviction for rape and has maintained his innocence throughout his incarceration and feels the state has worked against him that entire time, especially with the GRAMA law blocking inmates.

"That's how I feel when I read this stuff," Sherratt said of his years of filings, letters to the Governor's Office, GRAMA requests and GRAMA denials. "Someone's digging a knife in and hitting the same wound over and over again."

#### 'Frequent filers'

In the committee hearing on SB242, Amanda Montague, an assistant attorney general representing Corrections, told the committee how an internal audit found that 95% of inmates who filed GRAMAs filed only a few a year while "we have 10 offenders who will request 20 or hundreds even in a year."

The bill, sponsored by Sen. Curtis Bramble, R-Provo, would "not substantially impact 95% of our inmates — it will only try to stop these really abusive requests," Montague said.

Then-Deputy Director of Corrections Mike Haddon echoed the point, saying the agency was fielding over 5,000 GRAMA

requests a year and the department needed to halt abuse of the process by the "frequent filers."

The offices of Corrections and the attorney general's office were included in Williams' lawsuit for defrauding taxpayers through abuse of the Obamaera stimulus funding. Haddon would be a named defendant in the government's lawsuit brought against the state several years later.

Williams' suit was initially pushed by private counsel in 2015 before the federal government eventually took over and filed an amended complaint against Utah on Sept. 24, 2021, based on Williams' GRAMA research. The complaint stated how recipients of the federal grants, like Corrections and the Commission on Criminal and Juvenile Justice, were not allowed to use the federal stimulus funds to "supplant" their existing budgets. The funds were meant to bring on new employees and add new value to the state criminal justice programs.

"The Office of the Attorney General moved existing employees into grant-funded positions but did not immediately fill the vacated positions with new hires; or it used grant funds to pay existing employee salaries while misrepresenting that the employees' positions would be, or were, eliminated by budget cuts," the complaint states.

While the state has agreed to settle with the federal government for \$1.5 million, a separate payment to Williams as the whistleblower has not yet been decided.

Williams' jailhouse discovery of the misuse of federal funds will likely never happen again because inmates are now strictly forbidden from making GRAMA requests unrelated to their cases.

In the February 2017 committee hearing, when asked about the genesis of the bill, Bramble said the bill needed to pass or the Legislature needed to fund more records officers at taxpayer expense.

"This was brought forward by the attorney general's office," Bramble told the committee. "It was either we do this bill or we request additional [full-time employees] just to deal with GRAMA."

But data doesn't indicate a significant reduction in GRAMA requests since the bill's pas-

sage. In 2016, Corrections fielded 3,554 requests. In 2022, it had nearly doubled to 6,640. At the committee hearing, Haddon said his agency had taken in 22,600 requests between 2011 and 2016, an average of 3,767 a year, but from 2017 to 2022, the average per year had gone up to 5,158.

In a statement, attorney general spokesperson Rich Piatt said the office could not comment on the ongoing lawsuit over the constitutionality of SB242. But he did state the office did not need to hire new employees to deal with added GRAMA requests since 2017.

#### 'Those willing to lie ...'

As an inmate serving time for rape, Sherratt knew a key to getting paroled would be the successful completion of Correction's Sex Offender Treatment Program. There was just one problem, he said. The Board of Pardons and Parole would not recommend his entry into the program until he admitted guilt for his crime, something he refused to do.

Sherratt used GRAMA to start requesting information about the sentencing matrix, or official guidelines for determining the release of inmates. He claims his research, letters he wrote and advocacy he undertook helped lead to a 2016 audit that found the Board's sentencing decisions were vague and had, over the past decade, led to a 28% increase in the length of prison stays while not being aware if the long prison stays "positively affected public safety, reduced recidivism, or simply cost taxpayers more money."

Sherratt began challenging Corrections again after a California court decision found that the state could not force inmates to admit guilt to be accepted into sex offender programs necessary for their qualification for parole.

For years, he wrote the state about the matter. In January 2020, he wrote to the Governor's Office explaining the problem, noting that the restriction didn't help as offenders would simply lie to admit guilt and that the requirement, along with a lack of treatment programs, was unnecessarily keeping him and others behind bars.

He noted how he was told he would initially be incarcerated for 5 1/2 years.

"I have been here 19 and a half years because you refuse to allow me completion of your program, not because I won't take it, but because you won't give it," his letter stated. This, he said, was all because he would not admit guilt or at the least, fake a confession.

"Those willing to lie get [treatment] routinely," he stated.

In a Jan. 29, 2020, response, Corrections administrator David Loden explained some of the reasoning behind Sherratt's inability to get into treatment and said the treatment was limited and Corrections relied on the Board of Pardons' recommendations to prioritize treatment. But there was a consolation.

"As of 2019, we changed our practice of requiring an individual to admit guilt. New research suggests if an individual denies their sex crime, their risk to reoffend doesn't increase. With this new knowledge, we changed our practices."

Sherratt soon got into his treatment, completed it and in late 2022, was finally paroled. But in 2019, he requested data from the Board of Pardons on how often it might still be requiring other inmates to admit guilt in order to enter treatment in violation of Corrections' new policies. He was denied any

data based on the 2017 law since the GRAMA was not about himself.

Then, in 2022, he sued, challenging the law's constitutionality.

#### Moot

Patrick Sullivan, an Iowa native recently released from the Central Utah Correctional Facility, is familiar with GRAMA restrictions. In 2022, he was denied records related to his own case, a charge of identity fraud he said he was coerced into pleading guilty to. When he requested emails from five different employees of the Sanpete County prosecutor's office, the office picked five random emails and then considered each one a separate request so that he could not make any other GRAMA requests that year, he said.

Now out of prison, he is volunteering with multiple prison reform groups and filing GRAMAs like a free man.

Sullivan said some inmates do abuse GRAMA. But he questioned why policymakers didn't change the fees for inmates instead of blocking them completely. Most inmates are

granted GRAMAs for free because they don't have any money, so, he asked, wouldn't it be better to charge a standard fee after their fifth request instead of just denying them the ability to file any more GRAMAs?

Not only can GRAMA be used to uncover corruption, but he said most people would admit that some inmates have been wrongly convicted and need GRAMA to help make their case.

"GRAMA is probably the most helpful tool an incarcerated individual has to uncover things that could help prove his or her innocence," Sullivan said.

The law change did allow that an inmate's attorney would not be restricted in filing GRAMAs, but Sullivan said that's a worthless concession.

"The little loophole that your attorney isn't limited? That's cool, but do you know how overwhelmed the public defender system is? Does the Legislature understand that a lot of attorneys — even paid attorneys — don't have time to file GRAMA requests, file appeals and go to hearings in front of the State Records Committee all to uncover something that might help their client?" he

said.

Sherratt's legal argument is based on the value of the public's right to know. His case filed in 2019 was delayed for years, and it wasn't until April 2022 the Attorney General's Office filed a motion to dismiss his claim. as improper. On June 13, 2022. 3rd District Judge Matthew Bates denied the state's motion. allowing the case to proceed. The state has argued that Sherratt lacks standing to sue over the law because he has been released from prison and is therefore no longer affected by the law.

Sherratt is hopeful the challenge will continue. He argues that the state law is based on the federal Freedom of Information Act, which is bolstered by case law that holds the only restriction on record requests should truly relate to whether or not the request is in the public's interest.

"It doesn't matter what the request is for or who it's against," Sherratt said in a recent interview. If the records show corruption or wrongdoing by public agencies, then they should not be restricted, he said.

"Is that not in the public interest?" he asked. •

## **Records? What records?**

Court decision challenges Utah Tech University's claim it has no records on the school's name change.

By Eric S. Peterson | The Utah Investigative Journalism Project

n the wake of the murder of George Floyd and the Black Lives Matter protests across the country in 2020, the leadership of what was formerly known as Dixie State University decided it was time for some soul-searching. Was the name bringing up hurtful associations with the Confederacy and the country's history of slavery? Was it harmful to students? What did students and the community think about a possible name change?

These questions required not just contemplation but an intensive community outreach process that involved spending over \$100,000 with Cicero, a third-party vendor, to research the topic. Cicero held focus groups, one-on-one interviews and sent out over 3,000 surveys to residents in St. George and Washington County. All that engagement and research led ultimately to university leadership recommending a change

that the Legislature approved, leading to Dixie becoming Utah Tech University in 2022.

George Staheli, a local resident, decided after the change that he was interested in all the research and filed a GRAMA request with the university to access it. Utah Tech University denied the request with an unusual argument.

"Utah Tech didn't say the records were private or protected, they said 'Hey, we don't have those records?'" said Michael Judd, who would later represent Staheli in fighting the dispute in district court.

"All that underlying data and they said, 'We never had it," he added. But the university did provide him with one very important record—a professional services agreement between Cicero and Utah Tech University that provided the key to convince a judge to order the release of the records more



(Courtesy Utah Tech University)

#### **Utah Tech University**

than a year later in September 2023.

#### The 'wink wink' end run

The university's name change was a big deal in southern Utah, and for residents it was a historic one. Judd said his client Staheli's interest in the matter was that of an "amateur historian."

"He believed that all of the responses to that survey were a useful historical artifact and it captured the sentiments of the community on both sides of the issue," Judd said.

That the university could put so much effort into engaging the community about their feelings about the name-change and not have any records to show for it seemed suspicious to Staheli. But luckily, he did receive the "professional services agreement" between the university and Cicero, which crucially noted that all copyrightable work created by Cicero for the university would be owned by the university.

Here was proof that the university owned the work product of the company's outreach and survey efforts, even if they claimed the work product was not in their possession.

The university argued that they did not have the records requested as defined under Utah Code 63G-2-103(25). But that section of the code

defines a record as "documentary material" that is "prepared, owned, received or retained by a governmental entity."

Judd argued that even if the school did whatever it could not to receive or hold onto the records, by its own agreement with Cicero, the university still owned it.

"We always suspected a collusion, that they had a 'wink wink' understanding that if Cicero did not give any records to Utah Tech University, that Utah Tech could make the argument that they did not have material to release," Judd said.

Staheli appealed the denial to the State Records Committee and lost the decision. Judd said it was unusual that the committee did not weigh the importance of the agreement between Utah Tech and Cicero. But when Staheli appealed the matter to a district court judge, the agreement was pivotal in the judge's later ruling.

Through discovery, he was able to obtain evidence including emails where university staff members talked about how they "received" draft reports from Cicero and that they were having meetings in the university president's office to

go over the results.

"That sure doesn't sound like they didn't receive the material," Judd said.

Judd said one interesting defense that was brought up was about records shown by Cicero to Utah Tech University administrators over Zoom meetings. They argued that if Cicero shared their screen to show documents, that did not count as the university having them.

Interesting as that issue was, Judd said it was never directly addressed by the judge who instead focused on the ownership as outlined by the professional services agreement.

This called for a unique decision from 5th District Judge Michael Westfall. Since the contract dealt with copyrightable work product he decided that if Cicero put work into info from residents, they would have to turn it over. But if Washington County residents had simply submitted comments through an online form, those responses would be withheld. Still, this meant most of the records needed to be turned over to Staheli.

The other interesting part of the ruling was that Cicero

was not a named party in the records dispute, so the judge could not order the company to turn over its records.

"He said, 'I can't compel Cicero to turn it over, but I am telling Utah Tech, whether you received it or not, you have to get it and turn it over," Judd said.

While it was a win, Judd said it still was an unusual ruling, and he and his client are working to make sure the order gets enforced by the court.

Although that battle is ongoing, he remained hopeful that the judge's decision helps prevent other agencies from hiding records with third-party contractors.

"I think that makes good policy," he said.

# **Takeaways:**Start with a contract:

If you are curious about a similar topic about what kind of work is shared between a government agency and a third-party contractor, start your search by filing a GRAMA for the contract or professional services agreement between the parties. That's very likely to let you know if the agency has ownership of the documents and, if it does own them, you

can request them.

But don't quit if there's no contract: Judd said even if there isn't a contract, you could still likely make the same argument.

"I think you could argue that payment of money to the vendor implies some sort of ownership," Judd said. "That's public money and yet you are using public money to do this work but denying public access to that info? But it's a lot easier argument to make if you can just get the contract."

Cite this case and another one for support: If you are denied a similar request, you can now refer to the judge's ruling in this case, George Staheli vs. Utah State Records Committee et al.

Judd referenced a state records committee decision that you can also cite: Utah Rivers Council v. Washington County Water Conservation District, Case No. 16-19. The committee in that hearing heard a similar dispute and in its ruling noted that since a third party compiled records on behalf of the government agency, "therefore, the governmental entity owns and can obtain a copy of the records."

## Judge blasts the office of Attorney General Sean Reyes for 'haphazard' record-keeping

By Eric S. Peterson | The Utah Investigative Journalism Project

The following story was first published in The Salt Lake Tribune on January 23, 2023.

As controversy engulfed his predecessor, who was accused of doing favors for wealthy supporters and friends and receiving improper gifts, Utah Attorney General Sean Reyes was swept into office.

Reyes now faces his own audit — for his relationship with Operation Underground Railroad founder Tim Ballard. In another case, his office has been lambasted by a judge for failing to carry out reforms Reyes promised to make in the wake of John Swallow's resignation.

With no officewide system for tracking documents, in 2015, state auditors found the attorney general's office was missing legal deadlines, dropping cases and wasting time looking for paperwork



(AttorneyGeneral.utah.gov)
Attorney General
Sean Reyes

 including in response to requests for public records.
 Reyes agreed in his official response, saying tracking cases and records was one of his top priorities as he worked to rebuild trust in the office.

But in a scathing ruling in January, 3rd District Court Judge Randall Skanchy said the way Reyes' office

stores and searches for records remains "haphazard" — leaving him with "no expectation that a 'reasonable search' could ever be conducted in any" request for records.

In one highlight, Skanchy said, a thumb drive that held thousands of documents and downloaded emails sought in a records request was "presumed lost."

The judge had continued to press the office to search, and the thumb drive was "discovered" in 2022, he wrote, five years after the records should have been produced. It was found in "a 'junk drawer' in a side credenza" in the IT director's office.

The records were requested in 2016 by Paul Amann, a former assistant attorney general who was terminated and is suing the office in a federal whistleblower retaliation lawsuit. He contends the lack of a records management system gives the office an excuse to withhold documents, especially if the requester can't afford to litigate the case.

"The average citizen that

has a legitimate concern and files a request," Amann said, "they're just going to get shut down and stonewalled."

Skanchy ordered the document be turned over and the attorney general's office appealed to the Utah Supreme Court, asking it to overrule the decision. Reyes' office delayed filing briefs on that appeal for months until November when it withdrew its appeal. In a statement, the office has said that it conducts records searches diligently and with transparency.

"The Office takes all GRAMA requests seriously, abides by GRAMA reasonable search requirements and provides access to responsive documents that have been located as required under GRAMA," the statement reads.

# From 'Child Advocate of the Year' to office pariah

As the attorney general's office was being shaken by corruption allegations against former Attorneys General Mark Shurtleff and John Swallow, Amann's career was on an upward trajectory. In 2013, the orga-

nization Prevent Child Abuse Utah named him "Child Advocate of the Year," after he had served as the lead prosecutor for the attorney general's Internet Crimes Against Children task force.

According to Amann's whistleblower lawsuit, the troubles began that year before Swallow resigned in November — when Amann began alleging the office was committing "violations of state and federal law and misuse of government funds." He challenged the decision to hire a paralegal to work on Internet Crimes Against Children Task Force cases even though she had a criminal record and had served time in prison for various offenses, "including assaulting a law enforcement officer."

Her new position would be funded by a federal grant that forbade hiring a person with a criminal record, according to Amann. He said he reported the alleged "misuse" of federal grant funding to the office's civil chief, Kirk Torgensen.

Then, Amann said, he received leaked documents

that alleged his own supervisor was having an inappropriate relationship with the paralegal, and he passed those documents to the FBI. After the allegation was reported by reporter Lynn Packer, the office conducted an internal investigation into "leaked emails and hiring standards," but not into the inappropriate relationship, Amann alleges.

By this time, Swallow had resigned; he would later be cleared of wrongdoing. Then-Gov. Gary Herbert appointed Reyes to take his place. "I tried to report it to Sean Reyes but he turned a deaf ear to me," Amann said.

He soon found himself moved to a new division with a pay cut, he said. While Amann said that Reyes would not meet with him about the complaint, he learned separately that an investigation had begun by the state's Department of Human Resource Management (DHRM) and so he reached out to provide them information. According to the DHRM report, the investigation was called for by the attorney

general's office, but Amann believes that's because they were trying to control the investigation.

The agency investigation determined the relationship didn't violate agency policy. But it did note that the relationship "exposed the Office of the Attorney General to potential liability based on a charge of unlawful sexual harassment or a claim of paramour favoritism by third parties."

In 2015, Amann would provide information to legislative auditors about his allegations of "corruption" at the office and would then soon be suspended, placed on administrative leave and escorted out of the office by constables in front of his colleagues, he said. In 2017 he said he was terminated for the "bullying" of the former paralegal who still worked there.

He was barred from getting personal belongings from his office and for years could not access records he had there and needed for his litigation, according to his whistleblower lawsuit. He said he was not allowed to collect per-

sonal items left in his office until this past summer, including a medal from running the Boston Marathon.

The attorney general's office said in a statement that it stands by the termination of Amann for harassing the employee and has moved to have the federal whistleblower suit dismissed.

Amann had filed a request under the Government Records Access and Management Act, or GRAMA, for records related to his termination and was denied. That kicked off the 2017 litigation. After the initial denial, Amann filed multiple more specific requests and received thousands of pages of documents — but still felt he wasn't getting everything.

# Looking for records 'hat in hand'

In the records dispute, the attorney general's office eventually hired outside counsel from Ray, Quinney & Nebeker to help the A.G.'s office search for relevant records. In April 2022, those attorneys found something unusual — a thumb drive in a desk at the agency. The drive

contained 2,699 documents and over 53,000 emails between the former paralegal and Amann's supervisor and other individuals related to Amann's termination.

In 2022, Amann tried to get access to the files on the drive.

The lawyer representing the attorney general's office noted that Amann was provided nearly 5,000 pages of documents, just not the thumb drive.

"It's not fair to say that the A.G.'s office just said 'go pound sand, we're not giving you anything,'" Beth Ranschau said. "He issued 56 requests and he received as an initial response, 4,691 pages."

She also defended with-holding the documents because Amann never requested files specifically from a "thumb drive." She also said that a staffer looked at approximately 100 emails out of 53,000 on the drive and determined they were not relevant to Amann's request.

Judge Skanchy, however, noted that having a staffer who is not an attorney determine they were not relevant was "absurd." Months later, Skanchy expanded his ruling to order that the thumb drive be provided to Amann "in its entirety un-redacted" and that other searches be conducted.

"The haphazard way records are stored and are serendipitously located is the subject of much concern, not only by this Court, but by Legislative Auditors," Skanchy said, referring to the 2015 legislative audit. It had "highlighted the lack of a document management system for record retention," the judge pointed out, "for which the Legislature thereafter provided the AGO with funding in order to rectify the problem, evidently with little success."

Sen. Todd Weiler, R-Woods Cross, remembers the controversies that followed the departure of the previous attorney general. He is disappointed to hear that the office did not create a document management system, as the office had told legislative auditors they would back in 2015.

"It wouldn't surprise me that we funded it and they used it for something else," Weiler said. "That happens more often than we'd like."

Weiler, who also signed onto the request for the current audit, hopes that legislative auditors renew their scrutiny of the records-keeping process, or lack thereof at the attorney general's office.

"I think if anything I would want the attorney general's office to be an example and leader in that field rather than a laggard," he said.

In a statement, the office defended its record-keeping system and noted the office "has a dedicated attorney and paralegal to respond to GRAMA requests and continuously improves how records searches are documented." The statement also said that after the 2015 audit, the office purchased a document management system called Legal Files.

"This system specializes in case management and may not pick up documents unrelated to ongoing cases," the statement reads. "Thus, we continue to use additional systems for GRAMA searches. The Office will

continue to be vigilant in our reasonable search requirements and maintain modern systems and software in our efforts to maintain the highest levels of transparency."

Media law attorney Jeff Hunt calls the case "concerning" since citizens requesting records largely have to trust the word of the agency they seek records from.

"It's really the honor system and we have no ability as citizens to check that," Hunt said, adding that most agencies do take their legal obligations seriously.

"Seems like this was a situation where it was set up for failure because they didn't have a system for managing their records such that you could even determine that they conducted a reasonable search or not."

While Amann said he still has more litigating to do, he feels vindicated that more scrutiny is coming to Reyes and the office. "Sean Reyes came into office campaigning on transparency and how he was going to clean up the office," Amann said. "Based on my experience, it has been the exact opposite." •

# **SECTION III**

### **LEGISLATURE 2024**



# The 2024 legislative recap

Another election year means another assault on media and open government.

By Eric S. Peterson | The Utah Investigative Journalism Project

t was another session right before an election, which meant many Utah law-makers took out their frustration on one of their favorite targets — the media. In the process of trying to push back against nosy journalists, though, they hurt the public by dimming the lights on open government.

One of several significant bills against transparency was SB240, turning the calendars of public officials into private records. In speaking in favor of the bill, Rep. Kiera Birkeland, R-Morgan, said supporting the bill would encourage "connectedness" with constituents before then raging against reporters.

"The media want to exploit us," Birkeland said. "We do not have an honest journalist system, with a few exceptions in this state."

Critics saw the move as a familiar one, closing down

transparency and blaming it on the media. It was not the only bill of concern, and fortunately there were at least a couple of bills in favor of open government that did advance.

#### SB240 Government Records Access and Management Act Amendments—Passed

Bill sponsor Sen. Curtis Bramble, R-Provo, argued



Sen. Curtis Bramble, R-Provo

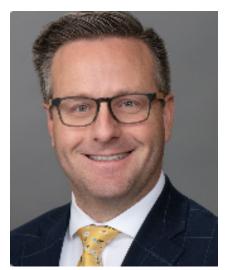
that it was the longstanding practice in the law that all calendars for public officials were not to be considered public records. Even those calendar entries about meeting with individuals in discussion of public business.

"This is clarifying what the longstanding interpretation and practice of the law has been," Bramble told a Senate committee.

The bill was proposed, though, after the State Records Committee had determined that the calendar of embattled Attorney General Sean Reyes was a public record, and just days before a judge would also confirm that decision.

Multiple lawmakers indignantly argued that calendars recorded personal information alongside official meetings, without addressing the reality that personal calendar notes could easily be redacted so that only notes about meetings of public importance could be released.

In a House floor debate, Rep. Brian King, D-Salt Lake City, said the bill would increase the suspicion with which constituents view their



Rep. Brady Brammer, R-Pleasant Grove

elected officials and pointed to legislation such as this as the reason why.

"Does anyone in this chamber wonder why they're suspicious?" King asked.
"Let's be openhanded with the people we serve."

Rep. Brady Brammer, R-Pleasant Grove, the House sponsor, argued the bill clarified existing law and said it was also a matter of security. He argued someone could potentially request a calendar of where an official would be at a future date and then ambush them there at that time. "That's a pretty big security concern," he said.

The day after the bill was passed, it was quickly signed into law by the governor and went into immediate effect.

# HB40 Division of Consumer Protection Amendments—Passed

HB40, sponsored by Rep. Cory Malloy, R-Lehi, helps bring new transparency to consumer protection complaints. Previously, the Utah Division of Consumer Protection has kept confidential individual complaints filed against shady, sneaky or outright fraudulent businesses in hopes of being able to resolve issues without smearing the reputation of honest companies that may have made a simple mistake.

"We do prefer to keep our communications private because businesses can be tarnished when they are accused of bad actions early on, so we like to work with the business and the consumer," said Katie Hass, director of the Utah Division of Consumer Protection, who spoke in support of the bill at a committee hearing.

This legislation would set a standard for more seri-

ous offenders and allow for complaints to be released publicly when 10 or more complaints are filed against a company in a 12-month period.

"We typically tend to see that when we get 10 or more complaints about the same company or affiliated company that there is a bigger problem and a bigger issue afoot," Hass said.

The bill was passed in both houses and was also amended so that the division would still be able to exercise the ability to publicize complaints against a company with fewer than 10 complaints if there was a significant public interest.

#### SB91 Local Government Officers Compensation Amendments—Passed

This legislation proposed by Sen. Chris Wilson, R-Logan, would add some transparency into pay raises for local government officials.

The language of SB91 would require cities and counties that are proposing pay bumps for certain officials like city or county managers, police and fire



Sen. Chris Wilson, R-Logan

chiefs and other department heads to schedule a separate public hearing on the pay raises. Those meetings would also have to be given at least seven days notice so the public is aware of them and can hear the proposals and give feedback.

"I think mistrust of public officials might be at an all-time high right now, and I just want to address that," Wilson said at a Senate committee meeting.

The bill was passed favorably out of both houses.

# HB539 State Legal Dispute Amendments—Passed

Rep. Brammer also passed

legislation this session so certain legal communications would be secret forever.

Previous law had already provided that records about anticipated or current lawsuits the state was involved in would be private at least until the matter was final-Iv over. At which point if a member of the public wanted communications to know why the state settled a case for a certain amount or what prosecutors would tell legislators about how unconstitutional a proposed bill would be, they could receive those records.

Brammer's bill, however, takes them out of public view forever.

In a House committee,
Brammer argued that matter
was one of convenience.
He spoke about how staff of
the attorney general's office
would not send him or other
lawmakers written communications about lawsuits or
legal liabilities for proposed
laws because the communications would become
public record at some time
in the future. Instead, he said
they would only give verbal

updates.

"There are times when we allocate money on lawsuits for the state to challenge a federal law or something like that, and we ask for a status update, and we can't receive anything related to that lawsuit other than a verbal status update," Brammer said.

The bill was opposed by
The Utah Media Coalition for
secreting away huge amounts
of records forever and categorically. The bill would make
these communications to not
be considered as government
records — meaning they could
not even be released by order
of the State Records Committee or by a court decision.

They also apply to communications about "anticipated" litigation. That means there might not even be a lawsuit on the horizon — or even any lawsuit at all — for communications between government agencies to be considered off limits.

# SB211—Generational Water Infrastructure Amendments

Passed by Senate President Stuart Adams, a Republican from Layton and major real estate developer, this bill creates a powerful entity to help plan future water projects for the state. The Water District Water Development Council would be a commission that would plan major water projects in coordination with the four largest water conservancy districts in the state. The bill would also create a water agent who might work on water deals and projects with different states in the region.

Adams testified in a House committee that the goal of the legislation was to create a "100 year vision" much like that of the first pioneers of the territory did to look out for future generations.

He stressed that the council would not be able to collect or spend taxes, and council members would not be able to own or operate water infrastructure.

But under the law, they also would be able to operate almost entirely out of public view. The council meetings would not be open to the public and the council's business would not be subject to open records laws under GRAMA. The water agent also would be largely exempt from

#### GRAMA.

The bill would also give powers to the governor in the selection and work of the water agent. It also gives those same powers over the water agent to the president of the Senate and the speaker of the House.

The bill was sponsored by the Senate president and sponsored in the House by Speaker Mike Schultz, R-Hooper, and easily passed both chambers.

#### HB202 Student Athlete Amendments—Passed

As controversy has swirled around how student athletes can receive endorsement deals for their "Name, Image and Likeness" or NILs, Utah lawmakers sought to hide details about these transactions from the public.

A student's contract for these deals would be closely watched over by universities but they would also watch over and keep secret the details of the contracts and communications about them.

"It's been the wild, wild West since 2021 in trying to figure out what the rules are," said Rep. Jordan Teuscher, R-South Jordan, about how to regulate NILs while presenting his bill at a House committee. Ultimately, he said, after watching how other states have gotten involved in the issue, he argued Utah's universities decided it was time for a limited role in regulating these agreements.

The bill would give student athletes a lot of latitude in the NIL deals and endorsements they receive so long as they aligned with their universities' policies and didn't also mean endorsing certain products like tobacco or adult entertainment.

Teuscher also argued that having these contract deals be kept secret would be in line with laws in other states.

"There isn't another state to allow this to be considered a public record, and Utah would be an outlier from any other state," Teuscher said. "The universities agree that If these agreements were subject to GRAMA, it would put them at a competitive disadvantage compared with all other universities across the country."

The bill passed easily out of both houses. •

Photos taken from Le.utah.gov.

# **SECTION IV**

### **DATA & DATABASES**



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## How to request court data

There are a million stories in court data, but it's not exactly like filing a GRAMA.

By Eric S. Peterson | The Utah Investigative Journalism Project

In the Utah courts' past fiscal year, clerks were busy with a mountain of court fillings. From July 1, 2022, to June 30, 2023, clerks processed 41,652 criminal fillings covering everything from serious felonies like homicides and assaults to misdemeanor DUIs. In that same time period, 64,145 civil case fillings flooded the courts, ranging from contract disputes to stalking injunctions.

Every filing is not just a stack of paperwork landing on a court clerk's desk. Each one involves prosecutors, defense attorneys, judges, cops and, of course, tens of thousands of Utah citizens and tens of thousands of stories.

For reporters, covering courts is sometimes about individual cases. But how do you find those cases? And is there a story that isn't just about one case but maybe is about lots of cases? Do you know

how many evictions were filed last month? Or have you ever wondered how many protective orders were filed in your county in the last six months?

The answer to these questions and more is just a court data request away. But you should know it's not exactly like filing a GRAMA request.

Tucker Samuelsen is the director of data and research for the Utah courts, and he says there's real power in using data to understand the state's criminal justice system.

"It may be a little naïve to think of this in our modern political world, but I really do think that having good, accurate data can act as a neutral guide," Samuelsen said. "It's really what informs policy and processes, I really do believe in that power."

Samuelsen came to the court data position at the start of 2023 but had spent the previous five years as a data analyst

for the Salt Lake County Criminal Justice Advisory Council, and had worked for the state courts before that.

Samuelsen says it's useful to think of data searches as a better way to access records.

"We're not providing data that you can't already get through something like Xchange," he said, referring to the state court's online database. "But we are making it much more useable."

Instead of pulling case info one search at a time from the database, a data request could put potentially thousands of lines of case info into a spreadsheet for you.

"We can help guide that process and get you a list of cases you're looking for, cut down on the legwork and help from there," he said.

But there are limits. You can't, for example, request data services search for key words that might appear only in court documents.

"If you wanted a list of every case an attorney filed where a document contains the word 'purple' — I don't know why you're looking for that but if you were, I would have no way of looking something like that up,"

Samuelsen said.

Unfortunately, the state does not have every word scanned for digital searching. But all the information in court dockets is copied into a court database.

"That's the rule of thumb, if it's in a docket we can probably find it," he said.

There are other limits. For example, you can't request data on every case by a particular judge. But you can search all the cases a particular attorney appeared on.

Some other information will be withheld if it might threaten to invade an individual's privacy.

"It's a little bit more stripped down than just totally public court records in terms of what we can send to you," Samuelsen said.

Searches run \$45 an hour, but data services will provide an estimate based on your request. There are some exemptions such as for academic research.

Like a GRAMA request, it is useful to be specific in terms you are searching for and other data points you want Samuelsen and his staff to gather.

Unlike a GRAMA request, you might also need to be more patient. A request doesn't have

to be responded to within 10 business days. Normally, you will get a request filled in a few days, but the court also has busy seasons that could delay your request by weeks or even months. During the legislative session, for example, lawmakers and legislative analysts often keep the court staff busy with data requests.

Still, Samuelsen said staff work hard to respond promptly.

"We do think of this as a public service," he said.

**Data request basics:** Check dockets for your data points: But also use your imagination! In the past, The Utah Investigative Journalism Project

has searched eviction cases. by specific attorneys. We've also searched court cases by a defendant's alias. You can also search specific types of cases based on whether they were dismissed or not.

Requests will cost \$45 an hour: Staff will give you an estimate on your request, and most requests will not likely exceed a couple of hours. •

If you are a journalist, email your request to courts communications director Tania Mashburn at taniam@utcourts.gov. Members of the public should reach out to the data team. directly at courtdatarequests@ utcourts.gov.

