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BEFORE THE STATE RECORDS COMMITTEE OF THE

STATE OF UTAH

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MARK ALLEN,

Petitioner,

v.

UTAH COUNTY COMMISSION.

Respondent.

**DECISION AND ORDER**

Case No. 16-24

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By this appeal, Petitioner, Mark Allen, seeks access to records held by Respondent, the Utah County Commission.

**FACTS**

In December 2015, Utah County held an "Employee Year-End Recognition Party" ("Party") at the Utah Valley Convention Center. Among the invitees to the Party were public employees of Utah County. On February 17, 2016, Karen McCoy made a records request to the Utah County Commission ("Respondent"), pursuant to the Government Records Access and Management Act ("GRAMA"), requesting the following information concerning the Party:

1. Christmas attendance list of county employees.
2. Provide the email that was sent out to invite all employees to the county Christmas party. Including the email addresses of who was invited.
3. Provide a list of all 800+ who attended. [It's] our understanding that a record was made of all who attended.
4. Provide a copy/list of all county employees who attended the County Christmas

party and the email that was sent out inviting all county employees to the Christmas party by Lisa Nielsen.

5. Provide a copy of the Punchbowl Invitation used to invite participation.
6. Provide a copy of the check list of those who attended.

In response to Ms. McCoy's request, the records officer responded by granting the invitation list and RSVP list; however the RSVP list included only the first names of the county employees "county employee electronic user name" classified private information under Utah Code 63G-2-302(2)(a) and 63G-2-302(2)(d) and are not provided in response to the request.

On March 4, 2016, Mr. Allen filed an appeal of the records officer's decision with the Board of the Utah County Commissioners ("Board"), specifically requesting "the email addresses of all County Employees who were invited to the county party be provided." The Board heard arguments from the parties on March 22, 2016, and with a vote of 2-1, the Board upheld the decision of the records officer. In a letter dated March 28, 2016, Larry A. Ellertson, Board Chair, stated that pursuant to Utah Code §§ 63G-2-302(2)(a), -301(2)(b), and -301(1)(b), a governmental entity is only required to provide a single email address "for the public to contact an employee or officer of the governmental agency." Mr. Ellertson stated that "Utah County had designated [utahcnty@utahcounty.gov](mailto:utahcnty@utahcounty.gov) as the business email address for County employees" and that this email address could be found on Utah County's website. Mr. Ellertson further stated that "County email addresses are private records" under GRAMA, and that "[n]either Ms. McCoy nor Mr. Allen have established that they are entitled to access to private records." The letter concluded that the "redaction of County employee usernames from the RSVP list was

appropriate as an employee's username is effectively that employee's individual County email address."

The Board's decision to uphold the records officer's decision was accompanied by a Dissenting Opinion by Board member William C. Lee. In a letter to Mr. Allen dated March 28, 2016, Mr. Lee stated that he disagreed with the Board's decision based upon the following:

First, there is no expectation of privacy in an email address when a person chooses to work for the government and government provides that individual with a government email address. The purpose of a government employee is to serve the public; that is why government employment is referred to as "the public sector." Second, many Utah County employees have business cards that contain their email addresses, work phone numbers, and, in some cases, their personal cell phone numbers. Third, if the county's GRAMA appeals officers were correct in deeming county employees' email address as private, then it makes no sense for Utah County to use a pattern in creating those employee email addresses that can be easily ascertained by outside parties. Lastly, the state of Utah and several municipalities, including Provo City, freely share their employees' email addresses on their respective websites.

On April 7, 2016, Mr. Allen filed an appeal with the State Records Committee ("Committee"). The Committee, having reviewed the arguments submitted by the parties, and having heard oral argument and testimony, on July 14, 2016, now issues the following Decision and Order.

#### **STATEMENT OF REASONS FOR DECISION**

1. GRAMA specifies that "all records are public unless otherwise expressly provided by statute." Utah Code § 63G-2-201(2). Records that are not public are designated as either "private," "protected," or "controlled." See, Utah Code §§ 63G-2-302, -303, -304 and -

305.

2. Records concerning a current or former employee of, or applicant for employment with a governmental entity, are private records if properly classified by a governmental entity. Utah Code § 63G-2-302(2)(a). However, private records under -302(2)(a) do not include records that are designated public under Utah Code §§ 63G-2-301(2)(b) or -301(3)(o).
3. Unless access is restricted pursuant to court rule, another state statute, federal statute, or federal regulation, the following records are public: “[T]he name, gender, gross compensation, job title, job description, business address, business email address, business telephone number...of a current or former employee or officer of the governmental entity.” Utah Code § 63G-2-301(2)(b). Undercover law enforcement personnel and investigative personnel “if disclosure could reasonably be expected to impair the effectiveness of investigations or endanger any individual’s safety” are excluded from this definition of public records. Utah Code § 63G-2-301(2)(b)(i) & (ii).
4. As used in Utah Code § 63G-2-301, “Business email address” is defined as a “single email address of a governmental agency designated for the public to contact an employee or officer of the governmental agency.” Utah Code § 63G-2-301(1)(b).
5. Counsel for Respondent argued that the definition of “business email address” provided in Utah Code § 63G-2-301(1)(b) authorizes Respondent to provide only one single email address for the public to contact employees or officers of Utah County, and allows Respondent to designate all other Utah County employees’ email address as private

records pursuant to Utah Code § 63G-2-302(2)(b).

6. After hearing the arguments of the parties, reviewing the written arguments, and applicable statutes, the Committee finds Respondent's arguments unpersuasive. The evidence presented instead shows that Respondent's actual practice is to allow email addresses of Utah County employees to be used publically. For example, Board member William C. Lee noted in his dissent that business cards for Utah County employees "contain their email addresses, work phone numbers, and, in some cases, their personal cell phone numbers." Counsel for respondent confirmed that county employees use their email account for internal communication, but also to communicate with members of the public. A Committee member noted that if the email addresses are private they could not be used to communicate with the public.
7. Accordingly, the Committee finds that Respondent's actual practice and classification of Utah County employees' email addresses is "public," and that Respondent's classification of all Utah County employees' email addresses as "private" was an attempt to withhold public information from Ms. McCoy and Mr. Allen. Therefore, Respondent's blanket classification of Utah County employees' email addresses is found to be unsupported by the evidence before the Committee and GRAMA. The Committee determined that employees' county email addresses are public with the exception of any email addresses subject to the restrictions found in Utah Code § 63G-2-301(2)(b)(i) & (ii). Respondent is therefore ordered to grant the present records request.

### **ORDER**

THEREFORE, IT IS ORDERED THAT the appeal of Petitioner is **GRANTED**.

### **RIGHT TO APPEAL**

A party to a proceeding before the Committee may seek judicial review in District Court of a Committee's Order by filing a petition for review of the Committee Order as provided in Utah Code § 63G-2-404. Utah Code § 63G-2-403(14). A petition for judicial review of a Committee Order "shall be filed no later than 30 days" after the date of the Committee Order. Utah Code § 63G-2-404(1)(a). The petition for judicial review must be a complaint which is governed by the Utah Rules of Civil Procedure, and include the Committee as a necessary party and contain the required information listed in Subsection -404(2). Utah Code § 63G-2-404(1) & (2). The court shall make its decision *de novo*, but shall allow introduction of evidence presented to the Committee, determine all questions of fact and law without a jury, and decide the issue at the earliest practical opportunity. Utah Code § 63G-2-404(6). In order to protect its rights on appeal, a party may wish to seek advice from an attorney.<sup>1</sup>

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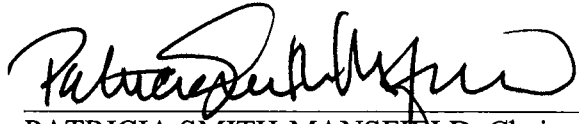
<sup>1</sup>This notice is required by Utah Code § 63G-2-403(12)(d).

### **PENALTY NOTICE**

Pursuant to Utah Code § 63G-2-403(15)(c), if the Committee orders the governmental entity to produce a record and no appeal is filed, the government entity herein shall comply with the order of the Committee and shall: (1) Produce the record; and (2) File a notice of compliance with the Committee. If the governmental entity ordered to produce a record fails to file a notice of compliance or a notice of intent to appeal, the Committee may do either or both of the following: (1) Impose a civil penalty of up to \$500 for each day of continuing noncompliance; or (2) Send written notice of the entity's noncompliance to the Governor for executive branch entities, to the Legislative Management Committee for legislative branch entities, and to the Judicial Council for judicial branch agencies' entities. Utah Code § 63G-2-403(15)(d)(i). In imposing a civil penalty, the Committee shall consider the gravity and circumstances of the violation, including whether the failure to comply was due to neglect or was willful or intentional. Utah Code § 63G-2-403(15)(d)(ii).

Entered this 26th day of July 2016.

BY THE STATE RECORDS COMMITTEE



PATRICIA SMITH-MANSFIELD, Chairperson  
State Records Committee

**CERTIFICATE OF SERVICE**

I hereby certify that I mailed a true and correct copy of the foregoing Decision and Order,  
U.S. mail postage prepaid, this 26th day of July 2016, to the following:

MARK ALLEN  
P.O. Box 1928  
Orem, Utah 84059  
*Petitioner*

PAUL JONES  
100 East Center, Suite 2400  
Provo, Utah 84606  
*Counsel for Respondent,  
Utah County Commission*



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Nova Dubovik  
Executive Secretary