

From: Sheila Canavan on behalf of [REDACTED]
To: justinlee@utah.gov
Cc: [Sherrie Swensen](#)
Subject: A GRAMA Appeal to State Records Committee of a San Juan County GRAMA Record Denial
Date: Friday, June 5, 2020 10:28:21 AM
Attachments: [CountyAdministratorAppealDenial.march2020.appeal.pdf](#)
[ATT00001.htm](#)
[County Attorney's Office Advice to County Clerk re Redaction of Signature Packets.pdf](#)
[ATT00002.htm](#)
[Petition to State Records Committee.doc](#)
[ATT00003.htm](#)
[Respondent Statement of Facts.Canavan.pdf](#)
[ATT00004.htm](#)

Dear Mr. Lee,

I am reaching out to you on a matter to be heard by the State Records Committee on Thursday, June 11th at 11 a.m. at the suggestion of County Clerk Sherri Swensen. I am the Petitioner in the matter. I am reaching out because I am concerned that the decision will set a precedent on a matter that may be of interest or concern to the Election Office and thought that the Election Office might want to review the submissions and consider submitting a letter to the State Records Committee before the Hearing. Additionally, the Election Office has been expressly referenced in both the Petition and the County's response. Please note that the GRAMA denial was made before 63G-2-305 was revised (and 305.5) was enacted effective May 12, 2020, although I do not believe that the revised statute provides a lawful basis for San Juan County to classify residential addresses provided on a local referendum signature sheet as private.

I attach for your convenience the County Administrator's Denial Letter, my Petition to the State Records Committee, the County's Response to the Petition and an email exchange that references San Juan County Attorney Kendall Laws Jr., Deputy Attorney Alex Goble and yourself regarding the redaction issue.

<https://www.utah.gov/pmn/sitemap/notice/607757.html>

If your office submits a letter, please kindly copy San Juan County Attorney Kendall Laws Jr. and myself.

code. The section of code governing what is private, protected, controlled and public is found in U.C.A. 63G-2. The Section U.C.A. 20A-70 and U.C.A. 63G-2 are two independent sections of code but are part of the whole U.C.A, one section does not "control" the other.

When reviewing U.C.A. 63G-2-102, it is important to know the Legislative intent of this section; which I paraphrased in knowing that there are two constitutional rights; the public's right to access information concerning the conduct of the public's business and the right of privacy in relation to personal data gathered by governments. It notes: that governments can restrict access to certain records as specified in this section of code for the public good. Because of this, the Legislature's intent is to promote the public's right of easy and reasonable access to unrestricted public records; specify conditions under which the public interest in allowing restrictions on access to records may outweigh the public's interest in access; to prevent abuse of confidentiality by governmental entities by permitting confidential treatment of records provide guidelines for both discloser and restrictions on access to government records etc...

The Clerk Auditor provided you the section of Utah Code in which he justifies redacting the Signatures, Addresses and Dates of Birth, U.C.A. 63G-2-305(51), the section which defines what is a "Protected Record" which specifically states: "unless otherwise classified as public under Section 63G-2-301 and except as provided under Section 41-1a-116, an individual's home address, home telephone number, or personal mobile phone number, if: (a) the individual is required to provide the information in order to comply with a law, ordinance, rule, or order of a government entity; and (b) the subject of the record has a reasonable expectation that this information will be kept confidential due to: (i) the nature of the law, ordinance, rule, or order; and (ii) the individual complying with the law, ordinance, rule, or order;" which meets the legislative intent of U.C.A. 63G-2-102.

I reviewed the entire Local Referenda-Procedures found in U.C.A. 20A-7-603 to understand this section of code and the entire process of the referenda petition which was initiated by citizens to overturn the Board of San Juan County Commissioner's Land-Use decisions for the Spanish Valley area of San Juan County. In this Section, it describes what can be used in a form of referendum petition and signature sheets. Note, that the Birth Date or Age is optional and if not a part of the columns on the signature page, then the address is then used for verification as stated in Subsection (2)(i). However, in Subsection (4) "The forms prescribed in this section are not mandatory, and, if substantially followed, the referendum petitions are sufficient, notwithstanding clerical and merely technical errors." With that in mind, the County could include on a signature page columns for the last 4 digits of a Social Security Number, Driver's Licenses or email address. All of which can be used for verification purposes for U.C.A. 20A-70-605. However, similar to addresses, just because they would be used in this section as verification of the signee, these items would still remain as private and protected records as indicated in U.C.A. 63G-2-302.

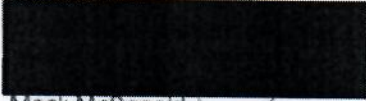

In my analysis, I also reviewed what State Code refers to as a public record; if an individual's address is defined and described in that section; if sections on voter registration allowed registered addresses to be a part of public record as described throughout U.C.A. 63G-2-301 Public Records. In that section of code, It does mention that in Subsection (2)(i) "data on individuals that would otherwise be private under this chapter if the individual who is the subject of the record has given the governmental entity written permission to make the records available to the public;". Nowhere on the signature referenda packet issued by San Juan County did we disclose that private addresses will be part of a public record waiving this permission requirement. U.C.A. 63G-2-301 Public Records specifically defines and allows for the release of business addresses but makes no mention of an individual's address as being a Public Record unless an individual gives the County written permission. In researching GRAMA requests of the past, including appeals for private

(c) state the relief sought.

The address for the Executive Secretary of the State Records Committee is:

Gina Proctor
SRC Executive Secretary
346 South Rio Grande
Salt Lake City, Utah 84101-1106
Phone: (801) 531-3834
Fax (801) 532-3867
Email: gproctor@utah.gov

Regards


Mack McDonald
County Administrator
San Juan County


UTAH GOVERNMENT RECORDS REQUEST FORM

TO: SAN JUAN COUNTY CLERK

Address of government office: 117 SOUTH MAIN P.O. Box 338
MONTICELLO UTAH 84535

Description of records sought (records must be described with reasonable specificity):

ALL DOCUMENTS RELATED TO THE CONSENT AND ADVICE
SOUGHT FROM OR RECEIVED FROM THE COUNTY ATTORNEY'S OFFICE
RE: REDACTION OF THE LOCAL REFERENDUM LAND USE
ORDINANCE SIGNATURE PACKETS **SEE EXHIBIT A**

- ☐ I would like to inspect (view) the records.
- ☒ I would like to receive a copy of the records. I understand that I may be responsible for fees associated with copying charges or research charges as permitted by UCA 63-2-203. I authorize costs of up to \$ 25.00
- ☒ UCA 63-2-203 (4) encourages agencies to fulfill a records request without charge. Based on UCA 63-2-203 (4), I am requesting a waiver of copy costs because:
- ☒ releasing the record primarily benefits the public rather than a person. Please explain:

- ☐ I am the subject of the record.
- ☐ I am the authorized representative of the subject of the record.
- ☐ My legal rights are directly affected by the record and I am impoverished.
(Please attach information supporting your request for a waiver of the fees.)

If the requested records are not public, please explain why you believe you are entitled to access.

- ☐ I am the subject of the record.
- ☐ I am the person who provided the information.
- ☐ I am authorized to have access by the subject of the record or by the person who submitted the information. Documentation required by UCA 63-2-202, is attached.
- ☐ Other. Please explain:

- ☐ I am requesting expedited response as permitted by UCA 63-2-204 (3)(b). (Please attach information that shows your status as a member of the media and a statement that the records are required for a story for broadcast or publication; or other information that demonstrates that you are entitled to expedited response.)

Requester's Name: SHEILA CANAVAN

Mailing Address: [REDACTED]

Daytime telephone number: [REDACTED]

Date: 4/14/20

Signature: [REDACTED]

EXHIBIT A TO GRAMA REQUEST April 14, 2020

(For documents related to the consent and advice sought from or received from the County Attorney's Office re: redaction of the local referendum land use ordinance signature packets)

Please note that the County Administrator asserted in writing to William Love by email dated February 10, 2020 that "After consulting with the county attorney's office, the DOB and addresses were redacted." Please further note that the County Administrator sent an email to Sheila Canavan on February 14, 2020 in which he said "Typically items that were redacted would have been redacted under the consent and advice of our County Attorney's Office."

Please note that the documents may not be withheld as protected records for purpose of U.C.A. §63G-2-305 (17) or (18). The records requested were produced in the regular course of business and were not prepared in anticipation of litigation. Supreme Court of Utah, **SOUTHERN UTAH WILDERNESS ALLIANCE**, a Utah nonprofit corporation; and the Wilderness Society, a District of Columbia nonprofit corporation, Plaintiffs and Appellants, v. The **AUTOMATED GEOGRAPHIC REFERENCE CENTER**, within the **DIVISION OF INFORMATION TECHNOLOGY**; and the Utah State Records Committee, Defendants and Appellees.

No. 20080813.

Decided: December 23, 2008

Please further note that the records are not subject to the attorney client privilege. They do not convey confidential information. And in any event, the County waived any attorney-client privilege when the County Administrator placed the advice and consent obtained from the County Attorney's Office at the heart of the redaction. *Doe v Maret et al*, Supreme Court of Utah 1999

Mack McDonald
County Administrator



P.O. Box 9
117 South Main Street #221
Monticello, Utah 84535

Office: (435) 587-3225

[REDACTED]
mmcdonald@sanjuancounty.org

On Fri, Feb 14, 2020 at 1:29 PM Laws, Kendall <klaws@sanjuancounty.org> wrote:
Mack:

You may find it interesting to know that Bill Love's latest round of emails to John David about the addresses actually states that he wants them so that he can go and "visit" with the people who signed the petition.... I will forward you an email chain between John David, Justin Lee (LG Office) and my office (email was from Alex but we drafted it together). It may shed some light on this.

Kendall G. Laws
San Juan County Attorney

[REDACTED]

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On Fri, Feb 14, 2020 at 12:04 PM McDonald, Mack <mmcdonald@sanjuancounty.org> wrote:
Just an FYI.

Sincerely,

Mack McDonald
County Administrator



P.O. Box 9
117 South Main Street #221
Monticello, Utah 84535

Office: (435) 587-3225

[REDACTED]
mmcdonald@sanjuancounty.org

----- Forwarded message -----

From: McDonald, Mack <mmcdonald@sanjuancounty.org>
Date: Fri, Feb 14, 2020 at 11:52 AM
Subject: Re: Petition signatures with addresses
To: Sheila Canavan <canavansheila@citlink.net>

I do not know if it will be on the agenda. I have not released a finalized agenda yet. What agenda are referring to seeing?



Nielson, John David <jdnielson@sanjuancounty.org>

GRAMA response

3 messages

Nielson, John David <jdnielson@sanjuancounty.org>


Wed, Feb 26, 2020 at 11:16 AM

To: Kendall Laws <klaws@sanjuancounty.org>, Alex Goble <agoble@sanjuancounty.org>

Would mind reviewing the attached GRAMA response for accuracy and anything else that I might need to correct?

Thanks

--
John David Nielson
San Juan County Clerk/Auditor
[REDACTED]

 JD-scan_20200226111350.pdf
524K

Laws, Kendall <klaws@sanjuancounty.org>

Thu, Feb 27, 2020 at 8:03 AM

To: "Nielson, John David" <jdnielson@sanjuancounty.org>

Cc: Alex Goble <agoble@sanjuancounty.org>

Looks good to me.
Kendall G. Laws
San Juan County Attorney
[REDACTED]

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[Quoted text hidden]

Goble, Alex <agoble@sanjuancounty.org>

Tue, Apr 14, 2020 at 3:02 PM

To: John David Nielson <jdnielson@sanjuancounty.org>

Third Record (likely a duplicate of your own).

[Quoted text hidden]



Nielson, John David <jdnielson@sanjuancounty.org>

GRAMA Request

3 messages

Sheila Canavan [REDACTED]

Fri, Feb 14, 2020 at 3:06 PM

To: John David Nielson <jdnielson@sanjuancounty.org>

Cc: Kendall Laws <sjattorney@sanjuancounty.org>

Dear Mr. Nielson,

Attached please find a new GRAMA request for documents per UCA 20A-7-605(6). I am also copying Kendall Laws because I know you referred Bill Love to him re address redactions. The only redactions allowed are of the date of birth and I request that the full information be provided.

2 attachments

 GRAMA Request to SJC 02.14.20.pdf
121K GRAMA Request to SJC 02.14.20 ATTACHMENT A.doc
28K

Nielson, John David <jdnielson@sanjuancounty.org>

Thu, Feb 27, 2020 at 8:15 AM

To: Sheila Canavan <canavansheila@citilink.net>

Cc: Kendall Laws <sjattorney@sanjuancounty.org>

Good Morning,

Attached is the county's response to your GRAMA request dated 02/14/2020

GRAMA - Sheila Canavan (3).pdf

[Quoted text hidden]

John David Nielson
San Juan County Clerk/Auditor
[REDACTED]

Goble, Alex <agoble@sanjuancounty.org>

Tue, Apr 14, 2020 at 3:03 PM

To: John David Nielson <jdnielson@sanjuancounty.org>

Fourth Record (likely a duplicate of your own).

----- Forwarded message -----

From: sjattorney <sjattorney@sanjuancounty.org>

Date: Fri, Feb 14, 2020, 3:21 PM

Subject: FW: GRAMA Request

To: Alex Goble <Agoble@sanjuancounty.org>

Sent from my Verizon, Samsung Galaxy smartphone
[Quoted text hidden]

2 attachments

<https://mail.google.com/mail/u/0/?ik=40f14a3f15&view=pt&search=all&permthid=thread-f%3A16585514m...>



Clerk/Auditor
John David Nielson
jdnielson@sanjuancounty.org

February 27, 2020

Sheila Canavan
[REDACTED]

Re: GRAMA request

Ms Canavan,

Attached with this letter are the documents requested in your GRAMA request submitted on 02/14/2020. The documents included are the names of the individuals who signed the signature packets for the referendum challenging SJC Ordinance 2019-02.

Signatures, Addresses, and DOB have been redacted from the signature packets in accordance with U.C.A. §63G-2-305(51).

If you do not agree with the county's decision regarding this GRAMA request you may appeal, within 30 days of this letter, to the county's GRAMA appeal officer.

Mack McDonald
PO Box 9
Monticello, UT 84535
mmcdonald@sanjuancounty.org

Best,
[REDACTED]

John David Nielson
San Juan County Clerk/Auditor
[REDACTED]

ATTACHMENT A

Records per UCA 20a-7-605(6):

- (6) (a) The county clerk shall provide to an individual, upon request:
 -) (i) an image of a signature packet or signature removal statement with the dates of birth redacted; or
 - (ii) instead of providing an image described in Subsection (6)(a)(i), a document or electronic list containing the name and other information, other than the dates of birth, that appear on an image described in this Subsection (6)(a).

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----- Forwarded message -----

From: Goble, Alex <agoble@sanjuancounty.org>
Date: Fri, Feb 14, 2020 at 1:13 PM
Subject: Re: Signatures for Referendum in Spanish Valley
To: Nielson, John David <jdn Nielson@sanjuancounty.org>
Cc: Kendall Laws <klaws@sanjuancounty.org>

John David,

You can provide Justin the following response, and inform him it is the official position of the County Attorney's office.

We continue to treat signatories' home address information as protected information that is not for disclosure. This is supported by 63G-2-305(51) as the only way a voter can participate (as is their constitutional right) under the statute is to provide that information. By providing that information voters are not agreeing to their name and home address being published by or to their angry neighbors who resent them for signing the referendum. Public shaming, especially with social media, is quickly becoming the go-to norm for political disagreements between individuals, and if we have to choose between being sued for protecting privacy versus being sued for divulging information that leads to harassment, reputation damage, or something worse then we should err on the side of protecting privacy. As we learned, because of early issues in the referendum, several employees have signed it, and their home address is deemed private under 63G-2-302(g). Also, under 20A-3-201(5) requires protection of voter's privacy, and as the referendum falls under the same title and applies to voters, the same privacy considerations must be provided for the referendum process as is provided to the voting process. Currently Senate Bill 47 is up for vote at the legislature and specifically restricts the information to be provided to be only a name and voter ID number, nothing else, which indicates that was the legislative intent for this provision. The statute doesn't have a deadline for turning over the information, unlike other statutes such as GRAMA that require responses within a specific period of time. While we worked to be responsive and comply within the GRAMA deadlines, we were under no obligation to do so. Simply put, we could have taken the position that we were going to see how SB 47 played out before supplying any of the information that we did, but that seemed to be a disservice to Mr. Love.

However, per Mr. Love's own admission he intends to make contact with the signers of the petition. As their home address is the only information he is being denied, that means he intends to go or send others to make contact at their homes. This is exactly the type of behavior that concerns us and could have an incredible chilling effect on people's participation in the democratic process. If he truly wants to have a public discussion with his neighbors, he can organize a community gathering to discuss the issues. People who signed the petition did not agree to unsolicited persons, demanding to know the reason for their vote, appearing at their home door.

On Fri, Feb 14, 2020 at 12:12 PM Nielson, John David <jdn Nielson@sanjuancounty.org> wrote:
Here is Justin Lee's email to Bill Love's request for intervention.

Here is how I had thought to reply to Justin. What do you think?

Justin,

I have discussed this matter with our county attorney's office and how I should proceed when answering these type of requests surrounding a hotly contested topic within the county. This request is not a formal GRAMA request, but we are treating it as a GRAMA request because that is how similar requests to the Lieutenant Governor's office have been treated. The GRAMA request denial is based on 63G-302(2)(d).

The purpose is not to supercede the recommendation of your office, but to attempt to protect petition signers from being harassed and bullied.

----- Forwarded message -----

From: Justin Lee <justinlee@utah.gov>
Date: Fri, Feb 14, 2020 at 10:16 AM
Subject: Re: Signatures for Referendum in Spanish Valley
To: John David Nielson <jdn Nielson@sanjuancounty.org>
Cc: McDonald, Mack <mmcdonald@sanjuancounty.org>

From: McDonald, Mack mmcdonald@sanjuancounty.org
Subject: Fwd: Signatures for Referendum in Spanish Valley
Date: May 12, 2020 at 3:41 PM
To: Sheila Canavan canavansheila@citlink.net
Cc: Kendall Laws klaws@sanjuancounty.org

I spoke with Kendall, enclosed is the email chain you are referring to in which Kendall sent to me in reference regarding an email discussion with William Love (Bill), John David Nielson, Justin Lee from Alex Goble.

Sincerely,

Mack McDonald
Chief Administrative Officer



P.O. Box 9
117 South Main Street #221
Monticello, Utah 84535

Office: (435) 587-3225

mmcdonald@sanjuancounty.org

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----- Forwarded message -----

From: Laws, Kendall <klaws@sanjuancounty.org>
Date: Tue, May 12, 2020 at 2:11 PM
Subject: Fwd: Signatures for Referendum in Spanish Valley
To: McDonald, Mack <mmcdonald@sanjuancounty.org>

Kendall G. Laws
San Juan County Attorney
([REDACTED])

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----- Forwarded message -----

From: Laws, Kendall <klaws@sanjuancounty.org>
Date: Fri, Feb 14, 2020 at 1:29 PM
Subject: Fwd: Signatures for Referendum in Spanish Valley
To: McDonald, Mack <mmcdonald@sanjuancounty.org>

Kendall G. Laws
San Juan County Attorney
([REDACTED])

Based on on 20A-7-603 I'm not sure I see where the address would not be included. Can you point me to the code that brought you to the decision to not include the addresses?

Thanks,

Justin Lee
Director of Elections
Office of the Lieutenant Governor
State of Utah
801.538.1129
justinlee@utahgov

On Sun, Feb 9, 2020 at 11:54 AM William Love [REDACTED] wrote:

The signatures you sent me of the people signing the petition for the referendum of the Land Use Codes in Spanish Valley did not contain the address. The state only requires that the birth dates be removed. Please resubmit the signatures and addresses.

Bill love

--
John David Nielson
San Juan County Clerk/Auditor
[REDACTED]

--
This email is intended for the named recipient only. This email may be protected by attorney client privilege. If you have received this email in error, please contact the sender immediately, and delete the email.

Although almost everyone had concerns of one sort or another, the Plan received overwhelming support and a new land use ordinance was enacted in September 2019.

Unfortunately, things did not settle down. The Planning and Zoning Commission, which had lain back through most of the process, came out in the final hours in vocal opposition, stirring passions among a small group of property owners in Spanish Valley. In fact, one of the Planning and Zoning Commissioners led an effort to gather enough signatures to put the land use regulation on the ballot for a vote of the citizens. According to the County Clerk, the referendum initiative accumulated 850 signatures but 1168 were required and the initiative failed. 38 property owners in Spanish Valley wrote letters claiming that their commercial properties had been rezoned.

Several citizens made both oral and written requests to receive copies of the signature packets for the failed land use referendum and for copies of the 38 letters. The citizens goal is to identify neighbors, who have questions or concerns about the impact of the new land use ordinance, build bridges and work together to a solution. Much false information has been spread, before and during the initiative campaign, including a claim that the land use ordinance itself was the reason that San Juan Citizens received notices of significant property tax increases.

At some point, in concert with the County Attorney, the County adopted a policy and practice of redacting residential addresses from any County record that was the subject of a GRAMA request. To the best of Petitioner's knowledge, the County failed to consult with the State Archives Office and did not notify them of this policy.

Petitioner filed a formal GRAMA request on February 14, 2020 for the local referendum petition signature packets. *See Exhibit A.* The packets were produced but, in addition to the DOB, both the residential address *and even the signature* of the signatory were redacted. *See Exhibit B.* Petitioner appealed the decision to the County Administrator who denied it on March 12th. *See Exhibits C and D.* The appeal denial is the subject of this petition to the State Records Committee.

Prior to filing this GRAMA request, Petitioner had expressed her concern, in writing, to both the City Attorney and the County Administrator regarding the County's responses to GRAMA requests. Petitioner urged both the County Administrator and the County Attorney solicit training/retraining of all County employees charged with reviewing and responding to GRAMA requests.

Petitioner submits that the events referenced above are substantial and significant events in the life of any County and citizens are rightfully concerned, particularly about the GRAMA process.

2. Classification of records is critical to a proper and lawful response to a GRAMA request

In classifying a record for purposes of GRAMA, the Supreme Court of Utah held that government officials must read the law carefully, examine each record individually, may not rely on its advance categorical classification to deny access and must not expansively interpret the Legislature's restricted classifications as private or protected. *Deseret News Publishing v Salt Lake County*, 2008 UT 26, 182 P.2d 372; *Before the State Records Committee of the State of Utah, Salt Lake Tribune, Petitioner vs. Utah Board of Pardons and Parole, Respondent, Decision and Order Case No. 10-22*.

"It would be incompatible with a governmental entity's responsibilities under GRAMA to apply to a record request a review methodology which presumes that a requested record has been properly classified and then to proceed to canvass GRAMA for statutory language that confirms its designation. ...[A] County [is] required to conduct a conscientious and neutral evaluation of [a record's] GRAMA status without regard to existing designations or classifications. This obligation continues throughout the appeal process." *Before the State Records Committee of the State of Utah, Salt Lake Tribune, Petitioner vs. Utah Board of Pardons and Parole, Respondent, Decision and Order Case No. 10-22; Deseret News Publishing v Salt Lake County*, 2008 UT 26, 182 P.2d 372, ¶24.

The record, with regard to Petitioner's GRAMA request, makes very clear that the County Administrator engaged in a single-minded quest to find a way to justify denying access to a public record that it had improperly classified as private. Petitioner notes that, in so doing, the County Administrator ignored his duty to honor the intent and purpose of GRAMA and at the same time placed an unfair burden on Petitioner. As the Supreme Court has noted, a citizen should not have to engage in adversarial combat with a governmental entity over a GRAMA request. *Deseret News Publishing v Salt Lake County*, 2008 UT 26, 182 P.2d 372, ¶25.

3. If a specific statute controls access to a record, a government official responding to a GRAMA request must apply that statute

If a specific statute, regulation or court ruling controls access to a government record, a government official in responding to a GRAMA request must follow that specific statute and may only apply GRAMA *instead of the specific statute*, if GRAMA does not conflict with the specific statute. See *The Handbook for the Utah Government Records*

sheets *but not to deny access*. Instead, the County Clerk cited GRAMA to deny access. Petitioner appealed the County Clerk's redactions to the County Administrator. *See Exhibit C*.

5. The County cannot rely on §63G-2-305(51) to deny access to the signature and residential address on local referenda signature sheets.

The County may not classify a record as protected from disclosure pursuant to U.C.A. §63G-2-305(51) without meeting the requirements of the statute. It is not enough to make a finding that a signatory was required to provide his signature and address indirectly to the County through the signature sheet. The County must also establish (1) that a signatory is the subject of the signature packets, the governmental record at issue; and that the signatory has a reasonable expectation of privacy in his signature and residential address based on the nature of the local referendum petition law, U.C.A. §20A-7-605.

A signatory is *not* the subject of the signature packets and a signatory cannot have an expectation of privacy in information that is classified as public. In enacting U.C.A. §20A-7-605(6), the Legislature made plain that the DOB was the portion of the signature sheet that is private and expressly directed redaction of the DOB.

If, as the County Administrator posits, the County required a signatory to provide his driver's license or identification card number, social security number, or last four digits of his social security number or email address, the County may likely lawfully redact that information based on the authority provided in U.C.A. §63-2-302(j) because the signatory, as a registered voter, is a subject of U.C.A. §63-2-302 and has a reasonable expectation of privacy because the statute classifies the portion of the voter registration containing that information private. *See Exhibit E, The County Administrator's Denial of Appeal, p.3 ¶2.*

6. The County Administrator improperly denied the appeal because he claims that the Legislature intended residential addresses to be private under the GRAMA statute.

U.C.A. §63G-2-301 contains a list of records that *must always be disclosed*. *See Records Access Essentials for Government Employees (2017), p. 24.* The County Administrator incorrectly claims that because U.C.A. §63G-2-301 does not expressly list residential addresses, as public then residential addresses are necessarily private. *See Exhibit D, p. 2 ¶4.* As stated above, U.C.A. §63G-2-301 expressly states that the statute does not contain a complete list of records that are public. Furthermore, the County may only classify a record as private or protected if the record is expressly so classified in U.C.A. §63G-2-302,

The Appeal Denial states "Therefore, due to the aforementioned, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure [sic] or non-disclosure, order that the information properly classified as private and protected under Subsection 63G-2-(302) and (305) remain such and therefore I provide appellate affirmation denial that the private addresses remain as protected records due to the fact that *interests favoring access to this information have not been demonstrated in your appeal* nor do I find justification that is as greater than or equal to the interests and protections favoring restriction of access to this protected information." [emphasis added]

The County Administrator has the right to weigh interests *regarding a properly classified* private, protected or controlled record, in order to allow access to such a record. U.C.A. § 63G-2-201(5)(B) and (C). But he does not have a right to weigh interests regarding the disclosure of a public record. The signature packets are public records. The GRAMA Code imposes no duty on a citizen to provide a good reason to access public record; instead it poses a duty on the County to allow access to that record.

9. The County Administrator improperly claims that the County can classify the residential address on a signature sheet as "controlled" because its disclosure would jeopardize the life or safety of an individual.

U.C.A. §63G-2-305(11) expressly states that for an exemption to apply to records enumerated therein, a government official must properly classify the record. "Records that could jeopardize the life or safety of an individual" is an exemption that must be narrowly construed in order to serve GRAMA's public policy of disclosure. The exemption has been applied in the context of records maintained by the Department of Corrections, the Utah Attorney General's Office such as personal information related to state investigators and correctional inmates, and in the criminal context to protect a witness's identity or a rape or domestic violence victim. The County Administrator is required to make an affirmative showing that disclosure entails a potential threat to the life or safety of an individual. *See e.g. Before the State Records Committee of the State of Utah, Lynn Kenneth Packer, Petitioner vs. Office of the Attorney General of the State of Utah, Respondent, Decision and Order, Case No. 14-05; Before the State Records Committee of the State of Utah Richard J. Garcia, Petitioner v Utah Department of Corrections, Respondent, Decision and Order Case No. 15-13; Before the State Records Committee of the State of Utah Reginald Williams, Petitioner v Utah Department of Corrections, Respondent, Decision and Order Case No. 13-07 Sargent v. Seattle Police Department (2013).*

11. The County has adopted a policy and practice that abridges the free speech rights of citizens and the press protected by both the Utah and United States Constitutions.

The house of cards rationalizations make it clear that County officials do not want citizens to speak with one another about matters of considerable importance in their County. The County has gone to extreme lengths to put obstacles in the citizens' way.

In an email to Petitioner from the County Administrator dated February 14th, 2020, the County Administrator asserts that if the County provided the addresses to a GRAMA requestor "would then allow those against any referendum/petition to then harass or go out and praise those individuals who have signed it or vice versa." The statement constitutes clear and convincing evidence that the County intended to prevent citizens from speaking with one another and intended to abridge free speech.

Freedom of expression is the foundation for all our other freedoms and without it our democracy is compromised. The County is essentially requiring citizens to obtain their permission before speaking with one another. Through this possible and their abuse of the Elections Code and the GRAMA process, the County is abridging both a citizen's right to speak and their fellow citizen's right to hear them. Both the Utah and United States Constitutions prohibit such an abridgement.

Furthermore, the County's policy restrains speech without any legitimate governmental interest. The policy and practice violates the First Amendment because it invests the County Clerk with sweeping discretion to suppress speech without putting any procedural safeguards in place to avoid the dangers of a censorship system.

REMEDY REQUESTED

1. An order directing the County Clerk to provide Petitioner the electronic record of signature packets redacting only the DOB.
2. An order directing the County to provide/require GRAMA training as soon as possible to each and every employee charged with reviewing, responding to, and/or providing advice to the County on GRAMA;
3. An order requiring the County Clerk, County Administrator to become GRAMA certified;
4. An order requiring the County Clerk, County Administrator and County Attorney to review each and every GRAMA Request received by the County between January 1, 2018 and the date of

BEFORE THE STATE RECORDS COMMITTEE OF THE
STATE OF UTAH

SHEILA CANAVAN,

Petitioner,

vs.

SAN JUAN COUNTY,

Respondent.

**STATEMENT OF FACTS, REASONS, AND
LEGAL AUTHORITY IN SUPPORT OF
SAN JUAN COUNTY'S POSITION**

Case No. 2020-32

San Juan County hereby submits this Statement of Facts, Reasons, and Legal Authority in Support of San Juan County's Position, in accordance with Utah Code §63G-2-403(5).

STATEMENT OF FACTS

1. On November 22, 2019 a group of citizens submitted a petition for a referendum on San Juan County Ordinance 2019-02. The referendum sponsors were authorized to begin signature following a December 3, 2019 County Commission meeting.
2. In order to verify the name and signature as coming from a registered voter, the County Clerk required the address of the registered voter and (optionally) the date of birth of the registered voter to be included with the signature packet.
3. The referendum was closely followed by groups in support of the referendum and groups opposed to the referendum, and the County Clerk responded to multiple records requests and inquiries regarding its status.
4. In January the County Clerk determined that insufficient signatures had been gathered, and the matter would not go to the voters on the ballot.
5. On February 14, 2020, Sheila Canavan (petitioner) submitted a request on the San Juan County's Government Records Request Form. (Attachment 1). Although the request referenced a different section of the Utah Code (20A-7-605) it was treated as a regular Government Records request. The petitioner requested copies of the signature packet pages from the referendum including names and other information. On February 27,

dispute and is therefore instructive. Under §20A-7-605 the "county clerk shall provide to an individual, upon request, a document or electronic list containing the **name** and **voter identification number** of each individual who signed the initiative packet." This is an exclusive list. Therefore, even in the referendum sections of the code, it is only anticipated that the name and voter ID number would be made available to the public. This is especially informative in light of the County's denial to provide home addresses, signatures, and dates of birth in response to the Petitioner's GRAMA request. San Juan County relied on Utah Code Ann. §63G-2-305(51) to redact (segregate) the home addresses from the requested records prior to disclosure. §63G-2-305(51) provides that an individual's home address... [is protected] if: (a) the individual is required to provide the information in order to comply with a law, ordinance, rule, or order of a government entity; and (b) the subject of the record has a reasonable expectation that this information will be kept confidential due to (i) the nature of the law, ordinance, rule, or order; and (ii) the individual complying with the law, ordinance, rule, or order.

The records in question before the Record's Committee are referendum signature packets gathered by referendum sponsors and submitted to the San Juan County Clerk for verification and counting under Utah Code Ann. §20A-7-605. As part of the verification process, the Clerk must determine whether those individuals who sign referendum signature packets are 18 years old and meet certain residency requirements and are registered voters in the county. Utah Code Ann. §20A-7-605. Therefore, it is essential that the individuals who sign the referendum signature packets also provide certain information necessary for determining age, residency, and voter registration. This includes date of birth and physical address. If information sufficient for verification is not present, it does not count towards the requisite signature requirements for pushing the referendum onto the ballot. The sole reason for providing the address is to comply with §20A-7 by providing information necessary for verification of residency, registration, and age. Without that information, an individual would be prohibited from participating in the referendum process under the law.

Here you have citizens who are engaging in the referendum process and are required to provide their name, signature, date of birth, and home address in order to ensure that their name is verifiable under the law. The law requires such information to be provided in order to ensure that signers are over 18 years of age and that they meet the residency requirement of the law, and are registered voters. Furthermore, a citizen who familiarizes themselves with §20A-7-605 could

III. Classification is Determined by the Record's Custodian, San Juan County, and Not Any Other Government Agency

Utah Code Ann. §63G-2-306 and 307 spell out the process for classification of records and further explain that it is the government entity who possesses the record that has the responsibility to classify the record. Disagreements about the classification of documents are then handled through the appellate process set forth in §63G-2-4 *et seq.*

Therefore, with all due respect to the Elections Office of the Lieutenant Governor's Office and their erroneous understanding of GRAMA, San Juan County is not obligated to consider their opinion on the classification of a record. That office should be provided no more, or less, deference in San Juan County's classification of records than any other sister county's opinion on the classification. The only entities cloaked with the authority to determine classification of a record different from the County's classification is the State Record's Committee and the State Courts.

IV. Petitioner's Other Requested Remedies are Outside the State Record's Committee Authority, and Not Support by Facts

Most of the remedies sought by Petitioner are entirely outside the State Record's Committee's Authority and are therefore not before the Committee on this appeal. §63G-2-8 *et seq.* Offers a variety of remedies available when a government entity fails to comply with GRAMA. Those remedies include criminal penalties, penalties for intentional mutilation of records, and injunctive relief. However, all of the remedies allowed in Part 8 are either for the District Court or the Government Entity, not the State Records Committee.

§63G-2-403 sets forth the appellate procedures under GRAMA and also spells out remedies available to the State Records Committee. These remedies do not include directing the County to provide/require GRAMA training as soon as possible to each and every employee charged with reviewing, responding to, and/or providing advice to the County on GRAMA²; requiring the

² San Juan County Clerk is up to date on the required training from the Division of Archives and Records Services and as recently as 2019 the County hosted GRAMA training presentations to county employees as well as local municipal employees and the general public from both the Utah Attorney General's Office as well as a training organized between the County Attorney and Rosmary Cundiff of the Division of Archives and Records Services. Petitioner would be hard pressed to find a rural government entity that has had as much training on GRAMA as San Juan County.

ATTACHMENT 1

ATTACHMENT 2

ATTACHMENT 3

ATTACHMENT 3 - 10/10/2020

THE FOLLOWING INFORMATION WAS RECEIVED:

10/10/2020

10/10/2020

10/10/2020

10/10/2020

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provided under Section 43-1a-1(b), an individual's home address, home telephone number, or personal mobile phone number, if

- (a) the individual is required to provide the information in order to comply with a law, ordinance, rule, or order of a government entity; and
- (b) the subject of the record has a reasonable expectation that this information will be kept confidential due to:
 - (i) the nature of the law, ordinance, rule, or order; and
 - (ii) the individual complying with the law, ordinance, rule, or order.

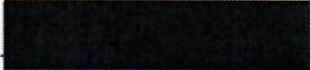
Please refer back to a comment you made in a February 14th email to me that reads as follows:

"Typically items that were redacted would have been redacted under the consent and advise of our County Attorney's Office, the concern about legality would have to be directed towards him. The interpretation of the code is that addresses can be redacted. This makes sense especially knowing that for some, having those addresses, would then allow those against any referendum/petition to then harass or go out and praise those individuals who have signed it or vice versa."

Since this may likely be the actual reason for redaction, I feel obligated to state that I respectfully disagree with you and feel that there is zero basis for anticipating harassment.

Finally, if you have any doubt, please kindly refer to the attached email provided to me by our State's Election Office. The email states quite clearly that ***the information that an individual places on a petition document is public record***. The County must provide the information redacting only DOB if DOBs are included on the petition.

Respectfully submitted,


Sheila Canavan

ATTACHMENT #4

code. The section of code governing what is private, protected, controlled and public is found in U.C.A. 63G-2. The Section U.C.A. 20A-70 and U.C.A. 63G-2 are two independent sections of code but are part of the whole U.C.A, one section does not "control" the other.

When reviewing U.C.A. 63G-2-102, it is important to know the Legislative intent of this section; which I paraphrased in knowing that there are two constitutional rights; the public's right to access information concerning the conduct of the public's business and the right of privacy in relation to personal data gathered by governments. It notes: that governments can restrict access to certain records as specified in this section of code for the public good. Because of this, the Legislature's intent is to promote the public's right of easy and reasonable access to unrestricted public records; specify conditions under which the public interest in allowing restrictions on access to records may outweigh the public's interest in access; to prevent abuse of confidentiality by governmental entities by permitting confidential treatment of records provide guidelines for both disclosure and restrictions on access to government records etc...

The Clerk Auditor provided you the section of Utah Code in which he justifies redacting the Signatures, Addresses and Dates of Birth, U.C.A. 63G-2-305(51), the section which defines what is a "Protected Record" which specifically states: "unless otherwise classified as public under Section 63G-2-301 and except as provided under Section 41-1a-116, an individual's home address, home telephone number, or personal mobile phone number, if: (a) the individual is required to provide the information in order to comply with a law, ordinance, rule, or order of a government entity; and (b) the subject of the record has a reasonable expectation that this information will be kept confidential due to: (i) the nature of the law, ordinance, rule, or order; and (ii) the individual complying with the law, ordinance, rule, or order;" which meets the legislative intent of U.C.A. 63G-2-102.

I reviewed the entire Local Referenda-Procedures found in U.C.A. 20A-7-603 to understand this section of code and the entire process of the referenda petition which was initiated by citizens to overturn the Board of San Juan County Commissioner's Land-Use decisions for the Spanish Valley area of San Juan County. In this Section, it describes what can be used in a form of referendum petition and signature sheets. Note, that the Birth Date or Age is optional and if not a part of the columns on the signature page, then the address is then used for verification as stated in Subsection (2)(i). However, in Subsection (4) "The forms prescribed in this section are not mandatory, and, if substantially followed, the referendum petitions are sufficient, notwithstanding clerical and merely technical errors." With that in mind, the County could include on a signature page columns for the last 4 digits of a Social Security Number, Driver's Licenses or email address. All of which can be used for verification purposes for U.C.A. 20A-70-605. However, similar to addresses, just because they would be used in this section as verification of the signee, these items would still remain as private and protected records as indicated in U.C.A. 63G-2-302.


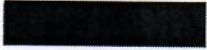
In my analysis, I also reviewed what State Code refers to as a public record; if an individual's address is defined and described in that section; if sections on voter registration allowed registered addresses to be a part of public record as described throughout U.C.A. 63G-2-301 Public Records. In that section of code, It does mention that in Subsection (2)(i) "data on individuals that would otherwise be private under this chapter if the individual who is the subject of the record has given the governmental entity written permission to make the records available to the public;". Nowhere on the signature referenda packet issued by San Juan County did we disclose that private addresses will be part of a public record waiving this permission requirement. U.C.A. 63G-2-301 Public Records specifically defines and allows for the release of business addresses but makes no mention of an individual's address as being a Public Record unless an individual gives the County written permission. In researching GRAMA requests of the past, including appeals for private

(c) state the relief sought.

The address for the Executive Secretary of the State Records Committee is:

Gina Proctor
SRC Executive Secretary
346 South Rio Grande
Salt Lake City, Utah 84101-1106
Phone: (801) 531-3834
Fax (801) 532-3867
Email: gproctor@utah.gov

Regards,


Mack McDonald
County Administrator
San Juan County




Nielson, John David <jdnielson@sanjuancounty.org>

Signatures for Referendum in Spanish Valley

15 messages

William Love <[REDACTED]>

To: John David Nielson <jdnielson@sanjuancounty.org>

Cc: Justin Lee <justinlee@utah.gov>, "McDonald, Mack" <mmcdonald@sanjuancounty.org>

Sun, Feb 9, 2020 at 11:54 AM

The signatures you sent me of the people signing the petition for the referendum of the Land Use Codes in Spanish Valley did not contain the address. The state only requires that the birth dates be removed. Please resubmit the signatures and addresses.

Bill love

Nielson, John David <jdnielson@sanjuancounty.org>

To: William Love <[REDACTED]>

Mon, Feb 10, 2020 at 9:33 AM

The county has received similar requests for the signature sheets prior to your request. After consulting with the county attorney's office, the DOB and addresses were redacted. Your request was treated consistently with the prior requests. I am curious though why you would still like the addresses since the number of valid signatures required to continue the referendum process were insufficient.

[Quoted text hidden]

John David Nielson
San Juan County Clerk/Auditor
435.587.3223

William Love <[REDACTED]>

To: "Nielson, John David" <jdnielson@sanjuancounty.org>, Justin Lee <justinlee@utah.gov>

Mon, Feb 10, 2020 at 9:49 AM

Cc: Trent Schafer <tschafer@hotmail.com>, Danny Flannery <scoot@jonesanddemille.com>, Lloyd Wilson <ccconstruction@rocketmail.com>, Cole Cloward <cole.cloward@gmail.com>, Melvin Nelson <melvinnelson@hotmail.com>, Steve Deeter <slowpoke32@hotmail.com>, Leann Shrank <leahcalia@icloud.com>, Walter Bird <walterbird@sanjuancounty.org>, Mack McDonald <mmcdonald@sanjuancounty.org>, Scott Burton <sburton@sanjuancounty.org>

Answer to question why we want address of petitioners. Please send as according to state code.

I and others would contact the people who signed the petition in Spanish Valley and try to come to an agreement to cooperate in developing the valley. The time has come to work together in the Valley. We are concerned why people not effected by the Land use codes are against Spanish Valley residents. There is too much misinformation about the land use code that is pushed by outsiders that needs to be addressed.

Bill Love

[Quoted text hidden]

Nielson, John David <jdnielson@sanjuancounty.org>

To: William Love <[REDACTED]>

Mon, Feb 10, 2020 at 10:16 AM

I am not going to go back and forth on what state code says and its interpretation. If you would like clarification on the county's reading of the code and why certain information has been redacted, you may contact the county attorney's office.

[Quoted text hidden]

William Love <[REDACTED]>

To: Justin Lee <justinlee@utah.gov>

Mon, Feb 10, 2020 at 10:44 AM

Cc: John David Nielson <jdnielson@sanjuancounty.org>, sjattorney@sanjuancounty.org