



## ATTACHMENT #5

addresses, San Juan County has been consistent in the public's requests and appeals and has not released private addresses.

I also reviewed your request to release addresses from a safety standpoint. U.C.A. 63G-2-305(11) allows governments to control these records in which the "disclosure of which would jeopardize the life or safety of an individual". In this specific situation, regarding the ordinances for Spanish Valley, intentions of another individual has indicated in email to County staff that they want the addresses of those who signed the petition for the Spanish Valley Land Use Codes because "We want to work with the people who signed in Spanish Valley on their concerns." Knowing that this has been a volatile issue in both public and non-public settings, controlling these private addresses from distribution to the public would in fact maintain the safety of an individual(s). Having non-governmental individuals approach residents who signed the referendum in Spanish Valley, after we provide them with their addresses without notifying signees that we released their address to the public, in my mind will only create an unsafe environment which could be seen as bullying, antagonizing and has the potential for violence.

I also considered the Lieutenant Governor's Office's email dated February 28, 2020 which discusses street addresses being used to verify signatures and the process of verification if the address space were blank. They too reference the verification process in code but provide no guidance as to controlling private information in protecting the safety of the public. Their analysis is concerning in the fact that if the petition includes a date of birth, the last 4 of a Social Security Number, an email, which the County could use on the form, their statement that "Someone could submit a GRAMA request for the petition document and the elections official would have to produce those documents" is incorrect according to what is Private and Protected information from the public.

Therefore, due to the aforementioned, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or nondisclosure, 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.

You have the right to appeal this decision, as provided in U.C.A. Section 63G-2-402, to the State Records Committee or District Court. If you appeal to the State Records Committee, you do not lose or waive the right to seek judicial review of the decision of the State Records Committee.

According to U.C.A. Section 63G-2-403:

(1)(a) A records committee appellant appeals to the State Records Committee by filing a notice of appeal with the executive secretary of the State Records Committee no later than 30 days after the date of issuance of the decision being appealed.

(b) notwithstanding Subsection (1)(a), a requester may file a notice of appeal with the executive secretary of the State Records Committee no later than 45 days after the day on which the record request is made if:

- (i) the circumstances described in Subsection 63G-2-401(1)(b) occur; and
- (ii) the chief administrative officer fails to make a decision under Section 63G-2-401.

(2) The notice of appeal shall:

- (a) contain the name, mailing address, and daytime telephone number of the records committee appellant;
- (b) be accompanied by a copy of the decision being appealed; and





## SAN JUAN COUNTY COMMISSION

Kenneth Maryboy	Chairman
Willie Grayeyes	Vice Chair
Bruce Adams	Commissioner
Mack McDonald	Administrator

March 12, 2020

Ms. Sheila Canavan



RE: Appeal of GRAMA Decision for the Request dated February 27, 2020

Dear Ms. Canavan

I have reviewed your appeal regarding the GRAMA request submitted on February 27, 2020 received by the San Juan County Clerk/Auditor regarding your request for an image of a signature packet or signature removal statement with Date of Births redacted, or document or electronic list containing the name and other information other than the Dates of Birth.

The San Juan County Clerk/Auditor responded to your GRAMA request made on February 14, 2020 in which you had requested the images of the signature packet which were provided but those areas containing the addresses and Dates of birth were not included.

In your appeal dated March 2, 2020 you have ascertained that the decision to redact the address information is not in accordance with Utah Code and referenced U.C.A. 20A-70-605(6) which is the section of code related specifically to **Obtaining Signature—Verification—Removal of Signatures**. Your reference of subsection (6) which states that "(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)" in review, the County Clerk provided you with an image of the signature packets with the signature removed, the addresses removed along with the dates of birth redacted according to the County Clerk/Auditor meeting this portion and requirement of U.C.A. 20A-70-605(6)(a)(ii) as requested.

In your appeal, you feel that because this section was "enacted 9-years after the GRAMA statute" that this section of U.C.A. is "controlling" or negates the section of U.C.A. that defines "what is (and what is not) a public vs. a private or protected record" regarding your GRAMA request for additional information from those signature images. U.C.A. Section 20A-70 does not demonstrate what is public, private or protected records regarding GRAMA as you indicated. State Code does not have sections of code that become irrelevant due to passage of new codes in other sections of

From: Elections GV <elections@utah.gov>  
Subject: Re: Lt Governor Contact - Elections  
Date: February 28, 2020 at 3:57 PM  
To: Sheila Canavan <[REDACTED]>

Hi Sheila,

Thank you for your message and for your interest in the 2020 election process. I will be happy to help you with any questions you may have.

Best,

Allyson Johnson, Esq.  
Elections

Phone: 801-538-1047

1. What is the purpose of the election?

The purpose of the election is to elect the Governor and Lieutenant Governor of the State of Utah. The election is held every four years, and the next election will be held in November 2020.

2. What are the qualifications for the candidates?

The candidates must be at least 30 years old and a resident of the State of Utah.

3. What is the process for filing for the election?

The candidates must file a statement of intent to run for the election with the Secretary of State.

4. What is the deadline for filing for the election?

The deadline for filing for the election is 180 days before the election.

5. What is the process for campaigning for the election?

The candidates may campaign for the election by holding public meetings, giving speeches, and other activities.

6. What is the process for voting in the election?

The voters may vote in person at a polling station, by mail, or by electronic means.

7. What is the process for counting the votes?

The votes are counted by the Secretary of State.

8. What is the process for certifying the results?

The results are certified by the Secretary of State.

9. What is the process for the inauguration?

The inauguration is held on January 13, 2021.

10. What is the process for the oath-taking?

The candidates take the oath of office on January 13, 2021.

11. What is the process for the inaugural ceremony?

The inaugural ceremony is held on January 13, 2021.

12. What is the process for the inaugural address?

The candidates give the inaugural address on January 13, 2021.

13. What is the process for the inaugural reception?

The inaugural reception is held on January 13, 2021.

14. What is the process for the inaugural dinner?

The inaugural dinner is held on January 13, 2021.

15. What is the process for the inaugural ball?

The inaugural ball is held on January 13, 2021.



## APPEAL OF GRAMA DECISION OF FEBRUARY 27, 2020

San Juan County Administrator Mack McDonald  
PO Box 9  
Monticello, UT 84535

Dear Mr. McDonald:

I hereby appeal the County Clerk's decision to redact the GRAMA response as not in accord with the law.

There is a specific statute enacted 9 years after the GRAMA statute UCA 20A-7-605(6) that is controlling regarding what is (and what is not) a public vs. a private or protected record regarding this GRAMA request. As Mr. Laws should, and I am certain, will advise you: when there is a specific statute on point, that statute controls the GRAMA request production. Furthermore, the statute uses the word "shall" not "may" and that makes the County Clerk's obligation under this statute *mandatory*. The only redaction allowed pursuant to the express language of the statute is the date of birth. *The signatures and the street addresses must be provided*. For your convenience, I have provided the language of the statute below:

- (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).

Furthermore, although it may be true that a signatory is required to provide the redacted information in order to comply with the local initiatives law, it is not accurate to classify the information as a record for which the signatory has a reasonable expectation that this information will be kept confidential. For example, these records are not medical records or social security numbers; the records are akin to voter registration records and are a record made *as a result of action taken by a citizen as a registered voter* in San Juan County. As you may know, voter registration records are public records (unless previously otherwise classified by the State or County at the express request of the individual signatory). In other words, even if UCA 20A-7-605(6) did not exist, redaction as a protected record is not allowed even under the statute the County Clerk cited for authority to redact. I have provided the language the County Clerk cited below for your convenience:

- (51) unless otherwise classified as public under Section 6-901(2)(a) and except as



Clerk/Auditor

John David Nielson

[jdn Nielson@sanjuancounty.org](mailto:jdn Nielson@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 GRA MA appeal officer.

Mack McDonald  
PO Box 9  
Monticello, UT 84535  
[mmcdonald@sanjuancounty.org](mailto:mmcdonald@sanjuancounty.org)

Best,  
[REDACTED]

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



# 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):

PER UCA 20A-7-605 (6) AN IMAGE OF A SIGNATURE PACKET OR  
SIGNATURE REMOVAL STATEMENT WITH DOB REDACTED; OR DOCUMENT OR  
ELECTRONIC LIST CONTAINING THE NAME AND OTHER INFORMATION  
OTHER THAN DOB

- ☒ 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: 2/14/20

Signature: [REDACTED]



County Clerk, and County Administrator to become GRAMA certified<sup>3</sup>; retroactively requiring a review of GRAMA requests dating back to January 1, 2018; requiring the County to produce records from former requesting parties, regardless of whether they appealed or not.

As the Records Committee is aware, the only remedy available is to order a record produced, if such production is supported by the law. Failure to comply or appeal the decision of the Records Committee may subject the Government Entity to further sanctions but that issue is not currently before the Committee.

### CONCLUSION

The State Records Committee should *affirm* the San Juan County classification of these records as private in accordance with §63G-2-305 (11), (51), and (76). These records are expressly protected and should remain so to protect privacy, public safety, and to prevent a chilling effect on participation in the political process.

DATED this 4th day of June, 2020



Kendall G. Laws  
San Juan County Attorney

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<sup>3</sup> Already required by §63G-2-108. Additionally, the County is in compliance with this requirement.

reasonably rely on all of the required information being kept from the public *except* their name and their voter identification number. Hence there is absolutely a reasonable expectation of privacy, as required in 63G-2-305(51), in their home address.

San Juan County's classification decision is further supported by the statements of others seeking the same records as Petitioner wherein they state that they want the home addresses in order to contact them, presumably at their home, to discuss a very polarizing topic. Not only was the county's classification intended to protect the privacy of those who signed the referendum, but it is also reasonable to believe that the classification also protected the safety of those seeking to contact citizens at their home to discuss the issue unsolicited. *See* §63G-2-305(11).

## **II. The Records are Excluded from Public Disclosure under Utah Code Ann. §63G-2-305.5**

Utah Code Ann. §63G-2-305(76) classifies the *signature* of an individual on a political petition, or on a request to withdraw a signature from a political petition as a protected record except as provided in §63G-2-305.5.<sup>1</sup> §305.5 allow the records custodian to provide a list of names of the individuals who signed the petition or request and *review but not copy* the signatures associated with the names listed. A review of the legislative history from the 2020 legislative session shows that the intent behind this provision was to protect the signatures from being distributed and potentially being used in identity theft activities. However, the absence of information in this section is more important than the information included.

The state legislature enacted §305.5 at the most recent general session of the legislature. They were aware of the requirements placed on those signing petitions and referenda to disclose personal information (signature, date of birth, physical address, etc.) but they chose to only carve out a special exception to the protected records listed in §305 for the signatures. Had they wanted an exception for §305(51) they could have very well done so at the same time. They chose not to.

§305.5 is an exclusive list. A requesting person can see name, voter identification number, and can *view but not copy* the signature. Noticeably different from this list is the address, date of birth, etc.

<sup>1</sup> 305(76) specifically lists title 20A, Election Code, as one of the sections it addresses. That is also the Title that contains the referendum process at issue in this appeal.



- 2020, the signatures packets were provided with dates of birth and home addresses redacted from the records. (Attachment 2)
6. On February 27, 2020, the Petitioner appealed the redaction of the records to the County Administrator, Mack McDonald. (Attachment 3) On March 12, 2020, Mr. McDonald agreed with the County Clerk's redaction of dates of birth and home addresses. (Attachment 4). The Petitioner's appeal to the State Records Committee followed.
  7. Also, on February 10, 2020 the County Clerk received an email from another citizen stating that they wanted to home addresses of those who signed the referendum so that he and "others" could contact the people who signed the petition. (Attachment 5).
  8. SB 47 was passed and signed by the Governor on March 30, 2020.

### **REASONS AND LEGAL AUTHORITY SUPPORTING SAN JUAN COUNTY'S POSITION**

San Juan County provided, at the Petitioner's request, the signature packets produced by referendum sponsors and submitted to the San Juan County Clerk in accordance with Utah Code Ann. §20A-7-605. This appeal followed because some of the information in those packets was redacted and properly classified as Protected under Utah Code Ann. §63G-2-305(51). The State Record's Committee should uphold the San Juan County decision to redact these records and deny Petitioner's prayer for relief for the reasons set forth below.

#### **I. The Redacted Records are Protected Under Utah Code Ann. §63G-2-305(51)**

When classifying a record in response to a GRAMA request, government entities always begin with the assumption that the record is public. Utah Code Ann. §63G-2-201(2) states that "[a] record is public unless otherwise expressly provided by statute." If the government entity receives a request for access to records that contains both information that the requester is entitled to and information that the requester is not entitled to inspect, the entity shall provide access to the information the requester is entitled to, subject to exceptions, and may deny access to the information in that record that the requester is not entitled to inspect. Utah Code Ann. §63G-2-308.

While not controlling, §20A-7 requires an address to be provided to participate in the referendum process. For that reason, it is central to a 305(51) classification of the records in



- response to this appeal; and prepare a report on its findings for the State Archives and State Records Committee;
5. An order requiring the County to produce all improperly redacted records to the GRAMA requestor without regard to whether time for appeal expired;
  6. Petitioner further requests that the State Records Committee determine whether discipline is merited and should be imposed.

Petitioner believes that merely reversing the County Administrator's Denial of Appeal and ordering production of the signature packets redacting only the DOB would be insufficient to address San Juan County's GRAMA response history over the last several years. They have admitted to a pattern and practice that indicates that, at a minimum, all County officials connected to records classification and responding to GRAMA requests and appeals require significant training or retraining regarding GRAMA. The County Administrator states in an email to Petitioner that **"Typically items that were redacted would have been redacted under the consent and advise of the County Attorney's Office, the concern about legality would have to be directed towards him."** See *Exhibit F*. But the problem may go deeper than a lack of training and indicate an intentional disregard of the Legislature's intent in GRAMA and a pattern of unlawful conduct.

Respectfully submitted,

Sheila Canavan



The County Administrator may not apply this exemption *categorically* to any County record that contains a residential address or to signature packets containing 850 signatures and residential addresses. The County Administrator must, at a minimum, establish that the release of the signatures and residential addresses on a signature sheet *will be reasonably likely* to jeopardize the life or safety of the signatories.

The County Administrator made no affirmative showing and cites no authority whatsoever in support of such a breathtakingly broad application of the exemption. He may not substitute lame assertions such as citizens receiving the addresses might approach people who signed the local referendum petition and *"that in his mind"* the approach might be seen as "bullying, antagonizing" and potentially violent. *See Denial of Appeal, p. 3, ¶1.* One need only look at the County Administrator's February 14<sup>th</sup> email to Petitioner wherein he absurdly states that even using the address to contact a signatory to praise them for signing the petition is unacceptable to him. *See Exhibit B, p.2, ¶1.*

To allow a government official to avoid making an affirmative showing of an actual potential threat, and instead substitute fanciful notions of what is "in his mind", would make a mockery of the public policy in favor of disclosure. The County Administrator is prohibited from construing a statute in a way that is inconsistent with the manifest intent of the Legislature or is repugnant to the context of the statute and will lead to an absurd result. *See U.C.A. §63-12(1).*

10. The County Administrator claims he does not have to consider the analysis of the Elections Officer of the State of Utah

The Elections Officer of the State of Utah provided an email opinion to Petitioner on whether the residential address of a referendum petition signatory was a public record. *See Exhibit E.*

In an absurd attempt to evade the opinion of the Elections Officer, the County Administrator starts with the incorrect and unsupportable presumption that the County has properly classified residential addresses as private. He then postulates that the Elections Officer's opinion holds no weight because it did not refer to the DOB, when, in fact, it did not reference DOB because the Petitioner's question referred only to the residential address. Finally, he concludes that the opinion holds no weight because the Elections Officer failed to consider other items that the County could have included on the signature sheet including the last four digits of a Social Security number. Again, the Elections Office was not asked this question and did not answer it.



63G-2-303, 63G-2-304, or 63G-2-305 or other state or federal statute or court order. Signatures and residential addresses on a local referendum sheet are not so classified. See U.C.A. § 63G-2-201(4).

The County Administrator chose to ignore the redaction by the County Clerk of the signatures themselves; he failed to address that issue.

The County Administrator ignores entirely the fact that the Legislature expressly classified voter registration records in U.C.A. §63G-2-301 as public records *that must always be disclosed* unless a voter makes a written request to classify his record as private. If a voter's registration record must always be disclosed, there is no rational basis from which to conclude that the Legislature intended a different rule to apply to a record created by the voluntary act of a registered voter and a record it had already classified as public in U.C.A. §20A7-605(6). Yet the County Administrator leapt to that conclusion.

And worse, the County Administrator absurdly claims that because the Legislature did not list the residential addresses as public, *the Legislature intended to impose a duty on the County to obtain the written permission of an individual before disclosing their residential address.* The County is prohibited from construing a statute in a way that is inconsistent with the manifest intent of the Legislature or is repugnant to the context of the statute and lead to an absurd result. See U.C.A. §63-12(1).

7. The County Administrator admits that the County has adopted a consistent practice of classifying the portion of every County record containing a residential address as private.

The County Administrator's Appeal Denial represents an extraordinary 'house of cards' approach to GRAMA responses. The County Administrator admits that the County has adopted a policy and practice of redacting residential addresses from every single County record that contains a residential address. Taking an unlawful approach to GRAMA consistently does not somehow make it lawful.

8. The County Administrator exceeds his authority, and violates GRAMA, by asserting that he has a right and duty to weigh public policy against various interests in order to classify a public record as private, protected or controlled



The specific statute governing access to the record Petitioner requested is U.C.A. §20A-7-605(6) and Petitioner expressly cited the statute to the County in her GRAMA request. *See Exhibit A, Petitioner's GRAMA Request.* U.C.A. §20A-7-605(6) states: "The county clerk *shall* provide to an individual, upon request" the signature packets. Rules of Construction U.C.A. §68-3-12(1)(a) states "In the construction of a statute in the Utah Code . . . "Shall" means that an action is required or mandatory" and not merely authorized or permissive. U.C.A. §20A-7-605(6) further specifically delineates what must be produced and what may be redacted:

- (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). [emphasis added]

4. The San Juan County Clerk failed to apply U.C.A. §20A-7-605(6) to Petitioner's GRAMA request

San Juan County Clerk John David Nielson responded to the GRAMA request by providing a letter, an electronic copy of the signature packets containing only the names of the signatories and redacting the signatures themselves *and* the residential addresses of the signatories, in addition to the dates of birth. *See Exhibit B, The County Clerk's Response.* The letter stated that the "Signatures, Addresses, and DOB have been redacted as *protected* records from the signature packets in accordance with U.C.A. §63G-2-305(51)."

In doing so, the County Clerk failed to apply U.C.A. §20A-7-605(6) to Petitioner's GRAMA request and instead improperly applied U.C.A. §63G-2-305(51). As stated above, the County Clerk can only apply U.C.A. §20A-7-605(6) if U.C.A. §63G-2-305(51) does not conflict with U.C.A. §20A-7-605(6). In other words, the County Clerk could apply GRAMA's U.C.A. §63G-2-305(51) if both U.C.A. §20A-7-605(6) and §63G-2-305(51) required him to redact the signature and residential address, in addition to the DOB. But they do not.

Stated another way, the County Clerk could cite U.C.A. §63G-2-305(51) in order to *provide access* to the public portion of the signature



## REASONS FOR AND LEGAL AUTHORITY IN SUPPORT OF THE APPEAL

### 1. Government Records Are Presumptively Public under GRAMA

In the State of Utah, The Government Records Access and Management Act ("GRAMA") specifies, "all records are public unless otherwise expressly provided by statute." *Utah Code Ann. 63G-2-201(2); Deseret News Publishing v Salt Lake County, 2008 UT 26, 182 P.2d 372.* Moreover, although Utah Code Ann 63G-2-301(4) contains a lengthy list of records that are presumptively, public, the statute expressly states that the list is not exhaustive *and should not be used to limit access* to records. Records that are not public are designated as either "private," "protected," or "controlled." *U.C.A. §63G2-302, 303 and 304.* In sharp contrast, the Legislature required that for a record to be classified as private, public or controlled the record must be expressly listed in U.C.A. §63G2-302, 303 or 304 or other state or federal statute. If such record was not expressly so categorized by the Legislature, the record is public.

In general, a private record contains personal, medical or financial information of an individual who is the subject of a record. Such records include such things as employee performance evaluations, certain audio and video recordings taken by body cameras inside a residence or records containing data on individuals, the disclosure of which would constitute a "clearly unwarranted invasion of personal privacy."

A protected record contains information that may be kept confidential to protect interests such as a business interest where a business provided confidential information to the government and if the government allowed disclosure of the confidential information, the government might be providing an unfair advantage to a competitor. Controlled records protect medical or psychiatric records and limits release to health professionals and insurance providers. *See The Handbook for the Utah Government Records Access and Management Act prepared and revised in 2005 by the Utah Attorney General's Office.*

A record can be a combination of public, private, protected or controlled, as is the signature sheet for a local referendum. (Please note that the GRAMA request at issue in this appeal requested only the public record portion of the signature packets.) *U.C.A. § 63G-2-308*



## STATEMENT OF FACTS

The San Juan County government has been struggling to find a good governance footing for several years.

There is a financial crisis of serious proportion. The Salt Lake Tribune reported that the County spent in excess of \$2 million dollars on outside legal counsel from 2016 to 2018 and that the fees contributed significantly to the County's general fund deficit at the end of 2018. Total legal costs were \$9 million related to Recapture Canyon litigation and 2 voting rights cases. This followed the County receiving a legal bill of \$250,000 related to a lawsuit alleging that the San Juan County Commission violated due process, engaged in favoritism, administrative manipulation and conflicts of interest related to a wind farm development outside Monticello.

There have been serious allegations made against the current County Clerk in connection with the conduct of elections. In 2018, a federal judge found that County Clerk David John Nielson had falsified a document and overstepped his role as Election Commissioner in actions related to the candidacy of one of the Navajo County Commissioners. A formal investigation ensued but charges were not filed. A second separate incident occurred in 2019 and an investigation into allegations of electioneering by Mr. Nielson was conducted. A decision on whether to prosecute is pending.

There have been gusty political winds blowing through the County. A new San Juan County Commission was elected in 2018 including two Navajo Commissioners. In a short period of time, 1 County Administrator resigned and 2 successive appointments ensued. The current County Administrator Mack McDonald has extensive governmental experience but to Petitioner's knowledge has not previously served in the role of County Administrator. Initially, the Commission meetings were extremely tense but improved as time went on.

During the same time period, the County, in cooperation with SITLA, began an exhaustive multi-year planning process to develop approximately 5300 acres of SITLA land and 1100 private acres in Spanish Valley. Many citizens were initially unaware of the planning to create an entire new city in the Moab Valley and increase the Spanish Valley population to 16,000 people. SITLA and the San Juan County Commission hired a respected professional land use planning company to spearhead the process, educate the public and obtain citizen input. They held many meetings, received oral and written comment, and posted the results on a public website for all to read. People were free to ask questions and express their concerns and the process was civil and respectful. Throughout the process, citizens conducted themselves civilly and displayed respect for the opinions of their fellow citizens. To the best of Petitioner's knowledge, there have been no incidents or threats of harm to anyone.



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

From: Goble, Alex <[agoble@sanjuancounty.org](mailto: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](mailto:jdn Nielson@sanjuancounty.org)>  
Cc: Kendall Laws <[klaws@sanjuancounty.org](mailto: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](mailto: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](mailto: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](mailto:jdn Nielson@sanjuancounty.org)>  
Cc: McDonald, Mack <[mmcdonald@sanjuancounty.org](mailto:mmcdonald@sanjuancounty.org)>

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@utah.gov](mailto:justinlee@utah.gov)

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.

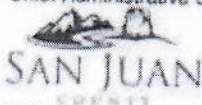


From: McDonald, Mack [mmcdonald@sanjuancounty.org](mailto:mmcdonald@sanjuancounty.org)  
Subject: Fwd: Signatures for Referendum in Spanish Valley  
Date: May 12, 2020 at 9:41 PM  
To: Sheila Canavan [REDACTED]  
Cc: Kendall Laws [klaws@sanjuancounty.org](mailto:klaws@sanjuancounty.org)

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](mailto:mmcdonald@sanjuancounty.org)

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

From: Laws, Kendall <[klaws@sanjuancounty.org](mailto: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](mailto:mmcdonald@sanjuancounty.org)>

Kendall G. Laws  
San Juan County Attorney  
[REDACTED]

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

From: Laws, Kendall <[klaws@sanjuancounty.org](mailto: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](mailto:mmcdonald@sanjuancounty.org)>

Kendall G. Laws  
San Juan County Attorney  
[REDACTED]



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):

PER UCA 20A-7-605 (6) AN IMAGE OF A SIGNATURE PACKET OR SIGNATURE REMOVAL STATEMENT WITH DOB REDACTED; OR DOCUMENT OR ELECTRONIC LIST CONTAINING THE NAME AND OTHER INFORMATION OTHER THAN DOB

- ☒ 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: 


Daytime telephone number: 


Date: 2/14/20

Signature: 

4/14/2020

San Juan County Mail - GRAMA Request

 GRAMA Request to SJC 02.14.20.pdf  
121K

 GRAMA Request to SJC 02.14.20ATTACHMENT A.doc  
28K





Clerk/Auditor  
John David Nielson  
[jdn Nielson@sanjuancounty.org](mailto:jdn Nielson@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](mailto:mmcdonald@sanjuancounty.org)

Best,

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

4/14/2020

San Juan County Mail - Fwd: Petition signatures with addresses

I am not over elections, it is the Clerk Auditor's duty, John David Neilson, who the information request would need to be through and I would recommend a GRAMA to him. There is a specific time frame to respond to on GRAMA requests in which we have to respond to with the requester. 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.

It is the law that any signature on a petition or referendum be signed by an actual registered voter of the County which is where I base my statement you quoted. I made no mention of addresses. I have yet to see the signatures collected, I just know the counts and have spoken with many property owners in the Spanish Valley area who are upset with the changes in zoning to their property.

Sincerely,

Mack McDonald  
County Administrator



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

Office: (435) 587-3225

mmcdonald@sanjuancounty.org

On Fri, Feb 14, 2020 at 11:16 AM Sheila Canavan <canavansheila@citlink.net> wrote:  
Hi Mack,

I see that you put the map on the agenda for the 18th. As you may know, Bill Love was promised a copy of signed petition but was denied the addresses - contrary to legal requirements. Please let me know today if formal GRAMA is required or if the information will be provided to Bill. Assuming representations will likely be made to the County Commissioners re "According to the number of signatures on the referendum, even though it narrowly failed, those signatures obtained supporting their overall decision represents a significant number of citizens and property owners who were affected in that area, those who support the old zoning which seems to speak otherwise for representatives of that area." We would like the opportunity to examine the data for ourselves prior to the meeting. Thank you very much, Sheila





Nielson, John David &lt;jdnelson@sanjuancounty.org&gt;

**wd: Petition signatures with addresses**

1 message

Goble, Alex &lt;agoble@sanjuancounty.org&gt;

To: John David Nielson &lt;jdnelson@sanjuancounty.org&gt;

Tue, Apr 14, 2020 at 2:58 PM

First Record

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

From: Laws, Kendall &lt;klaws@sanjuancounty.org&gt;

Date: Tue, Apr 14, 2020, 2:51 PM

Subject: Fwd: Petition signatures with addresses

To: Alex Goble &lt;agoble@sanjuancounty.org&gt;

Kendall G. Laws  
San Juan County Attorney  
[REDACTED]

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

From: Laws, Kendall &lt;klaws@sanjuancounty.org&gt;

Date: Fri, Feb 14, 2020 at 1:49 PM

Subject: Re: Petition signatures with addresses

To: McDonald, Mack &lt;mmcdonald@sanjuancounty.org&gt;

Especially considering that the Senate is considering a bill this session that would spell out the same process that we are following. That would indicate that their legislative intent last year was exactly what we thought and we are following the intent of the law.

Kendall G. Laws  
San Juan County Attorney  
[REDACTED]

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On Fri, Feb 14, 2020 at 1:38 PM McDonald, Mack <mmcdonald@sanjuancounty.org> wrote:

That is crazy. I agree with keeping the addresses private. When you sign a petition, there is no notice given that by signing this petition, you are subjecting yourself to the opposition showing up on your doorstep. The address should only be used for validating registered voter signatures.

Sincerely,

ATTENTION 302





Clerk/Auditor  
John David Nielson  
[jdnilson@sanjuancounty.org](mailto:jdnilson@sanjuancounty.org)

April 27, 2020

Sheila Canavan  
[REDACTED]  
[REDACTED]

Re: GRAMA Request

Dear Ms Canavan,

Attached with this letter is the county's response to you GRAMA request dated 4/14/2020. The request includes records related to the consent and advice sought from or received from the County Attorney's Office regarding the redaction of the local referendum land use ordinance signature packets.

If you disagree with this response you may appeal the decision to the county's GRAMA appeal officer within 30 days of this letter.

Mack McDonald  
PO Box 9  
Monticello, UT 84535  
[mmcdonald@sanjuancounty.org](mailto:mmcdonald@sanjuancounty.org)

Regards  
[REDACTED]

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



addresses, San Juan County has been consistent in the public's requests and appeals and has not released private addresses.

I also reviewed your request to release addresses from a safety standpoint. U.C.A. 63G-2-305(11) allows governments to control these records in which the "disclosure of which would jeopardize the life or safety of an individual". In this specific situation, regarding the ordinances for Spanish Valley, intentions of another individual has indicated in email to County staff that they want the addresses of those who signed the petition for the Spanish Valley Land Use Codes because "We want to work with the people who signed in Spanish Valley on their concerns." Knowing that this has been a volatile issue in both public and non-public settings, controlling these private addresses from distribution to the public would in fact maintain the safety of an individual(s). Having non-governmental individuals approach residents who signed the referendum in Spanish Valley, after we provide them with their addresses without notifying signees that we released their address to the public, in my mind will only create an unsafe environment which could be seen as bullying, antagonizing and has the potential for violence.

I also considered the Lieutenant Governor's Office's email dated February 28, 2020 which discusses street addresses being used to verify signatures and the process of verification if the address space were blank. They too reference the verification process in code but provide no guidance as to controlling private information in protecting the safety of the public. Their analysis is concerning in the fact that if the petition includes a date of birth, the last 4 of a Social Security Number, an email, which the County could use on the form, their statement that "Someone could submit a GRAMA request for the petition document and the elections official would have to produce those documents" is incorrect according to what is Private and Protected information from the public.

Therefore, due to the aforementioned, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or nondisclosure, 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.

You have the right to appeal this decision, as provided in U.C.A. Section 63G-2-402, to the State Records Committee or District Court. If you appeal to the State Records Committee, you do not lose or waive the right to seek judicial review of the decision of the State Records Committee.

According to U.C.A. Section 63G-2-403:

(1)(a) A records committee appellant appeals to the State Records Committee by filing a notice of appeal with the executive secretary of the State Records Committee no later than 30 days after the date of issuance of the decision being appealed.

(b) notwithstanding Subsection (1)(a), a requester may file a notice of appeal with the executive secretary of the State Records Committee no later than 45 days after the day on which the record request is made if:

(i) the circumstances described in Subsection 63G-2-401(1)(b) occur; and

(ii) the chief administrative officer fails to make a decision under Section 63G-2-401.

(2) The notice of appeal shall:

(a) contain the name, mailing address, and daytime telephone number of the records committee appellant;

(b) be accompanied by a copy of the decision being appealed; and





## SAN JUAN COUNTY COMMISSION

Kenneth Maryboy	Chairman
Willie Grayeyes	Vice-Chair
Bruce Adams	Commissioner
Mack McDonald	Administrator

March 12, 2020

Ms. Sheila Canavan  
[REDACTED]  
[REDACTED]  
[REDACTED]

RE: Appeal of GRAMA Decision for the Request dated February 27, 2020

Dear Ms. Canavan,

I have reviewed your appeal regarding the GRAMA request submitted on February 27, 2020 received by the San Juan County Clerk/Auditor regarding your request for an image of a signature packet or signature removal statement with Date of Births redacted; or document or electronic list containing the name and other information other than the Dates of Birth.

The San Juan County Clerk/Auditor responded to your GRAMA request made on February 14, 2020 in which you had requested the images of the signature packet which were provided but those areas containing the addresses and Dates of birth were not included.

In your appeal dated March 2, 2020 you have ascertained that the decision to redact the address information is not in accordance with Utah Code and referenced U.C.A. 20A-70-605(6) which is the section of code related specifically to **Obtaining Signature—Verification—Removal of Signatures**. Your reference of subsection (6) which states that "(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)". In review, the County Clerk provided you with an image of the signature packets with the signature removed, the addresses removed along with the dates of birth redacted according to the County Clerk/Auditor meeting this portion and requirement of U.C.A. 20A-70-605(6)(a)(i) as requested.

In your appeal, you feel that because this section was "enacted 9-years after the GRAMA statute" that this section of U.C.A. is "controlling" or negates the section of U.C.A. that defines "what is (and what is not) a public vs. a private or protected record" regarding your GRAMA request for additional information from those signature images. U.C.A. Section 20A-70 does not demonstrate what is public, private or protected records regarding GRAMA as you indicated. State Code does not have sections of code that become irrelevant due to passage of new codes in other sections of