

April 9, 2007

State Records Committee
Utah State Archives and Records Service
346 S. Rio Grande
Salt Lake City, UT 84101-106

Re: University of Utah GRAMA Appeal

To Whom It May Concern:

This is an appeal of the University of Utah's decision to deny portions of information I am seeking under the Government's Records Access and Management Act (GRAMA). I am also appealing their fee assessment.

My original request was dated November 27, 2006 and sought a copy of, or access to, the "employee roster of the Animal Resource Center (ARC) including names, titles, and salaries." On January 31, 2007, the University of Utah stated that they would provide the titles and salaries of these employees, but would not disclose their names. After an administrative appeal to the University of Utah Records Officer, Gregory C. Thompson, the denial was upheld on March 13, 2007. All correspondence between the University of Utah and myself is enclosed.

I assert the following:

1. A list simply containing the salaries and job titles of an institution is meaningless and eviscerates my request. Providing the names of government employees is absolutely critical to maintain the spirit of GRAMA and a functioning democracy.
2. By denying my request, the University is ignoring their statutory obligation under Utah Code §§63-2-301(2)(b). This statute nulls the exceptions the University relies upon for their denial. §§63-2-301(2)(b) is a very clearly expressed statute and provides exceptions only for certain law enforcement personnel. The University's argument relies on an unreasonable interpretation of the statute.
3. The University is also acting contrary to their own established internal policies outlined by the University's Department of Human Resources (see enclosure, Question 6).
4. Their determination of fees is baseless and unreasonable. The University's continued use of §§63-2-203(8) fits a pattern of restricting the public's right of access to information about their animal research programs.

I will respond to the University of Utah's claims:

The University has referenced §§63-2-301(2)(b)(ii). This statute provides the following exception:

(ii) investigative personnel if disclosure could reasonably be expected to impair the effectiveness of investigations or endanger any individual's safety;

This statute is inappropriately applied. When read with subsection (b)(i), this exemption is clearly intended for law enforcement investigative personnel rather than employees of a life sciences research institution. Subsection (b)(i) and (b)(ii) together read:

*(i) undercover law enforcement personnel; and
(ii) investigative personnel if disclosure could reasonably be expected to impair the effectiveness of investigations or endanger any individual's safety;*

Exemptions for undercover police officers and criminal investigative personnel exist for good reason. If that information were broadcast to the public, it would defeat the fundamental purpose of undercover law enforcement or could jeopardize the necessary investigations of the Department of Justice. Such is not the case for animal research personnel. An exemption for employees of animal laboratories would be capricious and contrary to the spirit of the statute.

The University has referenced §§63-2-302(2)(c) and §§63-2-304(27). These statutes provide the following identical exception:

(c) records of independent state agencies if the disclosure of those records would conflict with the fiduciary obligations of the agency;

A fiduciary obligation exists whenever one person places special trust and confidence in another person and relies upon that person, the fiduciary, to exercise discretion or expertise in acting for the client. It is not readily apparent how the information I seek interferes with any legitimate fiduciary obligations. If staff members of the ARC had the expectation that their names would be kept hidden from public view, they had an unreasonable expectation. This expectation would be contrary to both public law and the University of Utah's written Human Resources policy.

As of this writing, the University has failed to provide any legal reasoning as to why the disclosure of names of public employees would conflict with the fiduciary obligations of the agency. It is unclear whether or not the University is continuing to pursue this line of defense, as Thompson's March 13th letter did not address this claim.

The University has referenced §§63-2-302(2)(d). This statute provides the following exception:

(d) other records containing data on individuals the disclosure of which constitutes a clearly unwarranted invasion of personal privacy

Simply requesting the **names** of public employees does not constitute a clearly unwarranted invasion of personal privacy, and indeed is expressly permitted under §§63-2-301(2)(b). Access to the identities of public employees is crucial if we are to have a functioning democracy. Democracy needs accountability. These individuals are given the responsibility of abiding by federal and state laws regulating the treatment of animals in labs. It is impossible to hold an individual accountable for their role as a public employee if we are unable to identify them.

I believe that this statute was intended for other personnel files and information such as employee medical records, marital status, social security numbers, or vacation records. This information would constitute an unwarranted invasion of privacy, as these records do not contribute meaningfully to the public's ability to act as a watchdog over governmental agencies.

The University has referenced §§63-2-304(10),(11). These provide the following exceptions:

*(10) records the disclosure of which would jeopardize the life or safety of an individual;
(11) records the disclosure of which would jeopardize the security of governmental property, governmental programs, or governmental recordkeeping systems from damage, theft, or other appropriation or use contrary to law or public policy;*

I contend that this statute only applies to situations where the threat is immediate, glaring, and very likely to incite **imminent lawless action**.

I am mindful of the University's security concerns and issues with public safety. However, I believe in this case the principles of a democracy outweigh the theoretical safety issues. More information would have to be gleaned about an individual to jeopardize their safety than what is requested. And again, Utah Code §§63-2-301(2)(b) is reasonably clear on its face that this information is expressly public.

In the past, the State Records Committee has found this information to be public, even in the case of law enforcement personnel (See attachment "Matthew D. LaPlante and Matt Canham vs. Sandy City; Decision And Order No. 04-12"). It is absurd to claim that a greater security risk exists for personnel inside an animal lab than in law enforcement.

I also write to appeal the University of Utah's determination that my request will likely require greater than a \$50 fee. The University's response states that "[b]ased on prior experience with other similar requests, the University believes that the actual cost of compiling the information that you have requested will exceed \$50.00." The University has failed to explain in greater detail what constitutes a 'similar request' to mine.

I believe my request for an employee roster to require fewer than 10 pages. Their fee assessment is therefore greater than \$5/page. Their determination to charge such outlandish fees has not been substantiated with any legal or statutory reasoning.

However, I believe this to be part of a new strategy to prevent access to information about their animal research programs. The University has sent similar responses to other petitioners who have sought information related to animal research. I have enclosed some of these responses to demonstrate this pattern. Their fee assessments function to restrict the public's right to access this information, and I ask that they assess fees at a reasonable rate. I am comfortable paying \$0.25/page for these records to cover copying and basic handling costs.

Finally, the University states that they do not have the document "in the form" that I requested but they are "willing to compile some of the information [I] have requested in the form that [I] have requested." I want to make it very clear that I never requested this information in any particular form. I don't seek this information in any particular form and I am not asking the University to create a new record. Surely, the University already maintains the names, titles, and salaries of their employees in their standard personnel files. I seek the information in whatever form it currently exists. If it is less burdensome on the University, I am also willing to review the records in person as GRAMA provides rather than receiving photocopies.

My appeal is based on clear legal reasoning and prior rulings by the State Records Committee. The University's defense is based on statutory exemptions that either are misapplied or are circumvented by the clearly expressed nature of Utah Code §§63-2-301(2)(b). I ask that their denial be overturned. Should you have any questions, do not hesitate to contact me.

Sincerely,

Katie Patterson

Cc: Phyllis Vetter, Gregory C. Thompson, Deseret News, Salt Lake Tribune, Daily Utah Chronicle, Utah Primate Freedom