

The Order of Court is stated below:

Dated: August 21, 2013
02:30:57 PM

/s/ L. A. Dever
District Court Judge



IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE DEPARTMENT, STATE OF UTAH

JEFFREY B. LAWRENCE,

Petitioner,

v.

UTAH DEPARTMENT OF PUBLIC
SAFETY and UTAH STATE RECORDS
COMMITTEE,

Respondents.

JUDGMENT

Case No. 120907748

Judge L.A. Dever

The above-entitled matter came before the Court on the cross-motions for summary judgment filed by Petitioner Jeffrey B. Lawrence and Respondent Utah Department of Public Safety ("DPS"). Petitioner was represented by Gregory W. Stevens, Esquire, Respondent DPS was represented by Lana Taylor, Esquire, and Respondent Utah State Records Committee was represented by Amanda Jackson, Esquire. Having granted Petitioner's motion for summary judgment and denied Respondent DPS's motion for summary judgment by way of a Ruling entered by the Court on June 7, 2013, and the review of the Objection filed by the Respondent and the Reply of the Petitioner, the Court hereby orders, adjudges and decrees as follows:

1. Under a proper application of pertinent provisions of Government Records Access and Management Act ("GRAMA"), Utah Code Ann. §§ 63G-2-101, *et seq.*, the Internal Affairs ("IA") investigative records requested by Petitioner from DPS concerning the IA investigation of his complaints against Trooper Shawn Alton of the Utah Highway Patrol

("UHP") are presumptively public under Section 63G-2-201(2), and shall remain public and subject to disclosure to Petitioner. Under Section 63G-2-201(2), "[a] record is public unless otherwise expressly provided by statute." Although GRAMA contains a lengthy roster of particular records that are presumptively public, *id.* § 63G-2-301, the statute specifically cautions that "[t]he list of public records in this section is not exhaustive and should not be used to limit access to records," *id.* § 63-2G-301(4). As more fully set forth below, a proper application of pertinent provisions of GRAMA shows that the requested records do not qualify as "private" under GRAMA as DPS contends and that, even if they did, that the public interest is best served by releasing the requested records.

2. DPS has failed to establish that the IA investigative records should be classified as "records concerning" an employee that would render them "private" records under Utah Code Ann. § 63G-2-302(2)(a). Investigative records addressing alleged violations of the public trust fall outside of this Section because they are not the same kind, class, character or nature as the specifically enumerated categories of sensitive personal information identified as "performance evaluations and personal status information such as race, religion, or disabilities." *See, e.g., Salt Lake City Corp. v. Jordan River Restoration Network*, 2012 UT 84, ¶ 38, 2012 UT 84; *Whitney v. Div. of Juvenile Justice Servs.*, 2012 UT 12, ¶ 14, 274 P.3d 906; *T-Mobile USA, Inc. v. Utah State Tax Comm'n*, 2011 UT 28, ¶ 26, 254 P.3d 752. This interpretation of Section 63G-2-302(2)(a) is consistent both with the purpose of GRAMA to promote transparency and with the Utah Supreme Court's interpretation of GRAMA in *Deseret News Publishing Company v. Salt Lake County*, 2008 UT 26, ¶ 8, 182 P.3d 372 ("DNPC"), while the interpretation pressed by DPS would run counter to both the purpose of

GRAMA and the Court's prior interpretation of GRAMA in *DNPC*.

3. The basis of Petitioner's request goes to the essential purpose of GRAMA, that is, the transparency of governmental actions. DPS has failed to show that release of the investigative records would result in an unwarranted invasion of privacy that would render them "private" records under Utah Code Ann. § 63G-2-302(2)(d). Under the principles set forth by the Utah Supreme Court in *DNPC*, the response of the UHP investigators reflected in the investigative records primarily pertain to the performance of their official duties and would not subject anyone to the requisite unwarranted invasion of privacy. *DNPC*, 2008 UT 26, ¶¶ 37-38, 182 P.3d 372. Under the principles enunciated in *DNPC*, there is no such unwarranted invasion of privacy in the circumstances presented here because the records will reveal whether public officials properly discharged their public responsibility to investigate and address allegations that law enforcement personnel violated a citizen's constitutional rights. *DNPC*, 2008 UT 26, ¶ 31, 182 P.3d 372.
4. The investigative records pertain to actions taken by Trooper Alton that allegedly violated the Fourth Amendment to the United States Constitution. Assuming for the sake of argument that the investigative records should be classified as "private," there is no merit to DPS's argument that the interests favoring secrecy are not substantially outweighed by the public policies and interest favoring public disclosure. The Court finds that, in the situation presented here, the public's right to know the response of public officials charged with the responsibility of investigating alleged constitutional violations substantially exceeds any individual interests of those public officials or the interest of a Trooper charged with the responsibility protecting the safety and rights of the State's citizens.

5. DPS has also failed to offer any support for its request for a protective order that would preclude further disclosure of the requested IA investigative records beyond Petitioner or his counsel. Such an order would defeat the very purpose for which Petitioner is seeking disclosure as well as the substantial public interest in knowing how the UHP and DPS respond to complaints of violation so of constitutional rights by Troopers employed by the UHP. *See, e.g., The Billings Gazette v. City of Billings*, 362 Mont. 522, 529-30, 267 P.3d 11, 22-24 (2011). The fact that Captain Bruce L Riches and Major Mike Rapich of the UHP informed Petitioner in response to his complaint, respectively, that an “appropriate personnel action” and “appropriate action” had been taken, appears to be contrary to the representations of DPS in this review action that no personnel action had been taken. This apparent conflict confirms that unrestricted public disclosure of the IA investigative records will properly serve the public’s compelling interest.

WHEREFORE, the Court hereby further orders, adjudges and decrees as follows:

- (1) Judgment is hereby entered in favor of Petitioner and against Respondents on Counts I and II of Petitioner’s Amended Petition for Review; and, accordingly, the Court hereby declares and orders that the IA investigative records requested by Petitioner from DPS concerning the IA investigation of his complaints against UHP Trooper Alton constitute a public record under GRAMA, Petitioner or his counsel have a right to inspect and obtain copies of them;
- (2) Judgment having been granted, the Petitioner's request for an injunction is moot and therefore Petitioner's Count III is denied;
- (3) The residential address of Trooper Alton is to be redacted from any document produced;
- (4) Pursuant to Utah Code Ann. § 63G-2-802(2), Petitioner is hereby awarded his costs and

attorney's fees incurred in connection with this his pursuit of the District Court Petition. Counsel for Petitioner is directed to submit a claim for fees and costs, with appropriate supporting documentation, within fifteen business days of the date of entry of this Judgment on the Court's docket.

THIS CONSTITUTES THE FINAL ORDER OF THE COURT, NO FURTHER ACTION IS NECESSARY.

Dated this 21st day of August, 2013.

BY THE COURT:

L.A. DEVER
DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that, this 21st day of August 2013, I served a copy of the foregoing proposed Judgment, via the Court's ECF system, on the following counsel:

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/s/
Deputy Court Clerk