

Mark Christopher Tracy dba Emigration
Canyon Home Owners Association

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I am the ☒ Respondent and Appellant

☐ Attorney for the Appellant and my Utah Bar number is _____

In the Utah Court of Appeals

450 South State Street, Salt Lake City, UT 84111

EMIGRATION IMPROVEMENT DISTRICT

Petitioner and Appellee,

v.

UTAH STATE RECORDS COMMITTEE and
MARK CHRISTOPHER TRACY d/b/a
EMIGRATION CANYON HOME OWNERS
ASSOCIATION

Respondents and Appellants.

**Docketing Statement – Civil Case
(URAP 9(e))**

20210227-CA

Appellate Court Case Number

210905044

Trial Court Case Number

(3) **Nature of the appeal.** This appeal is from the:

☐ final judgment after a trial

☐ final order

☐ default judgment

☒ judgment after order granting summary judgment

☐ an order granting a motion to dismiss

(2) **Important dates.**

- When was the final judgment of the trial court entered? **May 4, 2022**
- When was the Notice of Appeal filed in the trial court? **June 3, 2022**
- Did you receive an extension of time under Appellate Rule 4(e) to file the Notice of Appeal?

[] Yes [X] No

If yes, when was the Motion for an Extension of Time granted?

- Did you file any of the following motions?

[] Yes [X] No

Motion filed under:	Date motion filed:	Date of orders ruling on the motion:
URCP 50(b)		
URCP 52(b)		
URCP 59		
URAP 4(g)		

- Are you an inmate confined in an institution?

[] Yes [X] No

If yes, when was the Notice of Appeal deposited in the institution's internal mail system? _____

(3) **Claims or parties remaining before the trial court.** Is this appeal taken from an order certified as final under Utah Rule of Civil Procedure 54(b)?

[] Yes [X] No

If yes, what claims and parties remain before the trial court?

- (4) **Issues on appeal.** Separately describe the issue(s) that you plan to argue in your appeal.
- 1) Does the Utah district court have jurisdiction to vacate a decision and order of the Utah State Records Committee (“**SRC**”) when the governmental entity failed to file a mandatory Notice of Intent to Appeal per Utah Code section 63G-2-403(15)(a)?
 - 2) May the district court grant a motion for summary judgement if the governmental entity failed to serve the SRC a copy of the motion pursuant to Utah R. Civ. P. 5(a)(1)(E) as a necessary party per Utah Code section 63G-2-404(1)(b)?
 - 3) Does the Utah district court have authority to issue an injunction prohibiting transmission of a request for disclose of governmental records and identifying the designated public records office on the GRAMA request form?
 - 4) Did the district court disregard the prior ruling of this Court that a GRAMA request must identify the designated public records office of a governmental entity on the GRAMA request form and be transmitted to the sole controlling shareholders?
 - 5) May a governmental entity disregard a lawful request for disclosure of public records if the GRAMA request form identified the designated public records office and was transmitted via email to the sole controlling shareholders?
- (6) **Summary of what happened in the trial court.** Briefly describe the facts relating to the issue(s) described above.

Sometime in 2013, Emigration Improvement District (“**EID**”) a Utah special service water district providing culinary drinking water to less than half of Emigration Canyon residents, awarded a no-bid contract to the Simplifi Company (“**Simplifi**”) to retain public records related to the operation of water system UT18143 compensated with an annual remuneration of \$118,000.00 of taxpayer funds for the current calendar year consistent with Utah Code section 63G-2-103(11)(b).

EID designated the private residence of Simplifi’s sole shareholders Emigration Canyon Deputy Mayor Jennifer Hawkes (“**Deputy Mayor Hawkes**”) and her spouse Eric Hawkes (“**Mr. Hawkes**”) as both the physical location of EID as well as the “EID public records office” whereby Mr. Hawkes of Simplifi is registered with the Utah State Ombudsman as the “EID certified public records officer.”

As EID has neither physical presence nor employees, all government records are in the sole physical custody of Deputy Mayor Hawkes and Mr. Hawkes as “independent contractors.”

In September 2020, Mr. Tracy requested access to fire flow test results and identified Simplifi, Deputy Mayor Hawks and Mr. Hawkes on the GRAMA request form.

On February 22, 2021, the SRC denied Mr. Tracy’s subsequent appeal because Mr. Tracy had not identified “Emigration Improvement District c/o Simplifi Company” on the GRAMA form in the rubric entitled “Government agency or office.”

The same day, Mr. Tracy emailed a revised request to Mr. Hawkes and provided a courtesy copy to Deputy Major Hawkes consistent with the SRC decision and order.

On September 14, 2021, in parallel proceedings related to disclosure of lead contamination test results retained by Deputy Mayor Hawkes and Mr. Hawkes, this Court ruled that a GRAMA request must be “directed” to Simplifi, Deputy Mayor Hawkes and Mr. Hawkes in order to commence legal action seeking injunctive relief per Utah Code section 63G-2-802(1). See *Tracy v. Simplifi Company et al.* Case No. 20200705-CA (UT App)(cert. denied).

Consistent with the decision and orders of both the SRC and this Court, Mr. Tracy had identified “Emigration Improvement District c/o Simplifi Company” on the revised GRAMA request and had transmitted a copy to both Deputy Mayor Hawkes and Mr. Hawkes as the designated “EID Public Records Office.”

Following the de facto denial, on August 23, 2021, the SRC granted Mr. Tracy’s second appeal and ordered EID to disclose all fire flow test results and submit either “Notice of Intent to Appeal” or “Certificate of Compliance” to the SRC within 30 days.

EID filed de novo judicial review with the district court but failed to file a mandatory Notice of Intent to Appeal per Utah Code section 63G-2-403(15)(a).

EID filed a motion for summary judgement arguing that a governmental entity may refuse access to public records if the GRAMA request form identifies Simplifi and/or is transmitted to Deputy Major Hawkes but then failed to serve the SRC as a necessary party to the proceedings.

The district ruled that an amended judgment issued prior this Court's ruling had prohibited Mr. Tracy from transmitting a GRAMA request to Deputy Major Hawkes and/or identifying Simplifi on the GRAMA request form and vacated the SRC order.

This appeal followed.

7. Have there been any appeals in this matter before this appeal? Are there any other appeals related to this appeal?

☒ Yes ☐ No

If yes to either question, provide the appellate court case numbers. If the earlier or related appeal resulted in a written decision, provide the decision citation, if available.

Case Number	Citation (For example, 2015 UT 36 or 2015 UT App 103)
20200705-CA	<i>Tracy v. Simplifi Company et al.</i>

June 27, 2022

Date

Sign here ► /s/ Mark Christopher Tracy

Typed or Printed Name Mark Christopher Tracy

Certificate of Service

I certify that on June 27, 2022, a copy of this Docketing Statement was served on all parties listed here by the method indicated below:

Mailed	Emailed	Hand-delivered	Name	Mailing or Email Address
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Jeremy R. Cook	jcook@ck.law
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Paul H. Tonks	phtonks@agutah.gov
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		

June 27, 2022 Sign here ► /s/ Mark Christopher Tracy

Date Typed or Printed Name Mark Christopher Tracy