

Jeremy R. Cook (10325)
COHNE KINGHORN, P.C.
111 E. Broadway, Suite 1100
Salt Lake City, UT 84111
Telephone: (801) 363-4300
Facsimile: (801) 363-4378
Email: jcook@ck.law

Attorneys for Emigration Improvement District

**IN THE THIRD DISTRICT COURT
IN AND FOR THE STATE OF UTAH**

EMIGRATION IMPROVEMENT DISTRICT,

Petitioner,

vs.

STATE RECORDS COMMITTEE and
MARK CHRISTOPHER TRACY, DBA
EMIGRATION CANYON HOME OWNERS
ASSOCIATION

Respondents.

**PETITION FOR JUDICIAL REVIEW OF
DECISION AND ORDER OF STATE
RECORDS COMMITTEE**

Case No. 210905044

Judge: Laura Scott

Petitioner Emigration Improvement District (“**EID**”) hereby petitions for judicial review of the Decision and Order of the State Records Committee for the State of Utah (the “**SRC**”) in Case No. 21-45 (the “**SRC Decision**”). In accordance with Utah Code Ann. § 63G-2-404, the following information is provided:

I. PETITIONER’S NAME AND MAILING ADDRESS

1. Emigration Improvement District, PO Box 58945, Salt Lake City, UT 84158.

II. A COPY OF THE STATE RECORDS COMMITTEE ORDER FROM WHICH THE APPEAL IS TAKEN

2. A copy of the SRC Decision is attached hereto as Exhibit A.

III. THE NAME AND MAILING ADDRESS OF THE GOVERNMENTAL ENTITY THAT ISSUED THE INITIAL DETERMINATION WITH A COPY OF THAT DETERMINATION

3. Emigration Improvement District, PO Box 58945, Salt Lake City, UT 84158. A copy of the initial determination and related documents are attached hereto as Exhibit B.

IV. A REQUEST FOR RELIEF SPECIFYING THE TYPE AND EXTENT OF RELIEF REQUESTED

4. Petitioner requests a de novo review of the SRC Decision and for the Court to set aside the SRC Decision and find that EID was not required to provide documents in response to the GRAMA request because Mark Christopher Tracy (“**Mr. Tracy**”) violated the decision and order of Judge Kouris.

5. In the alternative, the Court should find the Mr. Tracy is required to pay the judgment due and owing for his previous frivolous and vexatious GRAMA request appeals prior to EID responding the GRAMA request at issue in this matter.

V. A STATEMENT OF THE REASONS WHY THE PETITIONER IS ENTITLED TO RELIEF

6. This matter involves a GRAMA request for fire flow test results for EID’s water system. EID is a small local district that has authority to provide water and sewer service to residents within Emigration Canyon.

7. EID has a three-member board of trustees who are elected at-large from residents in Emigration Canyon.

8. EID contracts with Mr. Hawkes to perform management and accounting services for EID through Mr. Hawkes' company, Simplifi.

9. Mr. Tracy is not a resident in Emigration Canyon and not a customer of EID. Nevertheless, Mr. Tracy, either individually or through the ECHO Association, has filed six lawsuits against EID or people associated with EID, and has served numerous GRAMA requests on EID.

10. EID has responded to multiple GRAMA requests that were properly submitted to EID, but EID has refused to respond to GRAMA requests that unnecessarily include Mrs. Hawkes or Simplifi Company.

11. On or about July 31, 2020, Mr. Tracy filed two separate actions against Mr. Hawkes, Mrs. Hawkes and Simplifi based on EID's purported denial of a GRAMA request (the "**GRAMA Cases**"). *See* Case No. 200905074 (Judge Kouris Case) and Case No. 200905123 (Judge Faust Case).

12. On September 16, 2020, Judge Faust issued that certain *Memorandum Decision and Order* granting defendants' motion to dismiss (the "**Faust Ruling**"). In the Faust Ruling, Judge Faust found "Petitioner does not cite to any provision or language in GRAMA supporting the position that it can sue an individual or private company based on a governmental entity's alleged failure to respond to a GRAMA request"; and Petitioner "failed to cite any case law to support the position that Respondents are proper or necessary parties to this action."

13. Notwithstanding the Faust Ruling, Mr. Tracy continued to prosecute an almost identical case before Judge Kouris. On February 24, 2021, Judge Kouris entered that certain

Memorandum Decision and Order granting respondents' motion to dismiss (the "**Kouris Order**"). See Exhibit C.

14. In the Kouris Order, Judge Kouris found: "[T]he majority of the allegations in the Petition have nothing to do with a purported appeal of the denial of a GRAMA request for telemetry data. In fact Mr. Tracy does not reference the actual GRAMA request until paragraph 49 of the Petition, and the GRAMA form that is the purported basis of the appeal is Exhibit AA of the Petition. The vast majority of the allegations and exhibits relate to other complaints and issues that Mr. Tracy has with EID or Respondents, and are not necessary or proper for this action." See Exhibit C.

15. Judge Kouris also awarded Mr. Hawkes, Mrs. Hawkes and Simplifi Company \$5,758.50 in attorney fees against Mr. Tracy.

16. On February 11, 2021, the State Records Committee held a hearing on Mr. Tracy's first appeal of EID's denial of his GRAMA request for the fire flow records. See *Decision and Order*, Case No. 21-09 (the "**First SRC Decision**"). A copy of the First SRC Decision is attached as Exhibit D.

17. In the First SRC Decision, the SRC found that the GRAMA request had been improperly submitted. On the same day, Mr. Tracy served a new GRAMA request for the fire flow records that included Mrs. Hawkes and Simplifi Company, which is the request at issue in this appeal (the "**GRAMA Request**").

18. In response to the GRAMA Request, EID's counsel sent an email to Mr. Tracy informing him that if he wanted to continue to take the position that it was proper to submit a GRAMA request to EID c/o Simplifi Company or include Mrs. Hawkes in the GRAMA request,

that Mr. Tracy would be required to pay the attorney fees awarded to in the Judge Kouris case (“**GRAMA Denial**”). *See* Exhibit B.

19. In response to the GRAMA Denial, Mr. Tracy filed a Motion to Vacate the Kouris Order.

20. However, instead of vacating his previous order, Judge Kouris recognized that the GRAMA Request was just another frivolous and bad faith attempt to harass EID and Mr. and Mrs. Hawkes; and on April 15, 2021, Judge Kouris entered that certain *Decision and Order Denying Motion to Vacate, Awarding Attorney Fees, and Finding Petitioner Mark Christopher Tracy to Be a Vexatious Litigant and Subject to Rule 83 of the Utah Rules of Civil Procedure* (the “**Vexatious Litigant Order**”). *See* Exhibit E.

21. In the Vexatious Litigant Order, Judge Kouris found:

Mr. Tracy was informed at least six times by this Court, Judge Faust, the State Records Committee or EID’s attorney that GRAMA requests should be made only to the public entity, Emigration Improvement District. At the hearing, Mr. Tracy was not able to provide any plausible explanation for disregarding the decision of this Court and continuing to include Simplifi Company or Mrs. Hawkes in the New GRAMA Request, which leads this Court to conclude that Mr. Tracy’s reason for continuing to include Simplifi Company and Mrs. Hawkes was to continue to harass Respondents. Simply put, Mr. Tracy could have easily avoided any issues by following the decision and order of this Court, but inexplicably chose to disregard the Court’s decision and continue to harass Respondents by including them in GRAMA requests that Mr. Tracy knew should be served only on EID.

(emphasis added).

22. Accordingly, because Judge Kouris has already determined that the GRAMA Request was improper, the Court should find that EID’s denial of the GRAMA request was proper.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays for relief as follows:

A. for entry of decision finding that Petitioner's denial of the GRAMA Request was proper, as prayed above; and

B. for such other and further relief as the Court deems proper.

DATED this 20th day of September 2021.

COHNE KINGHORN, P.C.

/s/ Jeremy Cook

Jeremy Cook