

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

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MARK CHRISTOPHER TRACY, dba  
EMIGRATION CANYON HOME  
OWNERS' ASSOCIATION,

Petitioners,

vs.

SIMPLIFI COMPANY, a Utah  
Corporation, ERIC HAWKES, an  
Individual, and JEN NIFER HAWKES,  
an Individual,

Respondents.

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MEMORANDUM DECISION  
AND ORDER

Case No. 200905123

Honorable Robert P. Faust

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The above-entitled matter comes before the Court pursuant to Respondents Simplifi Company's ("Simplifi"), Eric Hawkes' ("Mr. Hawkes") and Jennifer Hawkes' ("Mrs. Hawkes") (collectively "Respondents") Motion to Dismiss. The matter was submitted for decision on September 14, 2020. Although oral argument was requested, the Court is not persuaded a hearing would be of assistance in the instant. Accordingly, the ruling with respect to the Motion will be addressed in the following Memorandum Decision and Order:

The basis for this action is that the Emigration Improvement District ("EID"), which is subject to the Utah Government Records Access and Management Act ("GRAMA"), failed to adequately respond to a request of Petitioner for public records of EID related to lead testing results for EID's public drinking water system. Based upon the allegation, EID is a necessary party and Petitioner has failed to cite any case law to support the position that Respondents are proper or necessary parties to this action. Indeed, GRAMA applies to "governmental entities." *See* Utah Code Ann. 63G-2-103(11). Simplifi and Mr. Hawkes are not governmental entities.



The reason the records are public records is because they are records of EID (a governmental entity) and produced on behalf of EID. 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.

EID has legal authority and control over its documents, and in fact, responded to the GRAMA request and provided documents to Petitioner that EID believed were responsive to his request. In its initial response, EID indicated to Petitioner that Petitioner could likely acquire the requested documents more quickly through the Utah Division of Drinking Water; and it appears that Petitioner was provided, or had access to, all of the documents he was requesting prior to filing this action.

In sum, there is no evidence to suggest that EID has ever taken the position that the documents were not public records of EID and not controlled by EID, or that Petitioner had any reason to believe it was necessary to sue Respondents to obtain EID's records. Accordingly, Respondents' Motion to Dismiss is granted.

Additionally, Petitioner's Objection is an improper sur-reply that is not permitted under URCP Rule 7 and is, therefore, stricken. Petitioner's Objection to Motion to Strike Petitioner's Objection to Reply Memorandum is overruled.

This Memorandum Decision and Order constitutes the Order regarding the matters addressed herein. No further order is required.

**DATED** this 16th day of September 2020

**BY THE COURT:**

  
ROBERT P. FAUST  
DISTRICT COURT JUDGE





CERTIFICATE OF SERVICE

I hereby certify that I mailed/mailed a true and correct copy of the foregoing Memorandum Decision and Order, to the following, this 16th day of September 2020:

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