

Mark Christopher Tracy  
dba Emigration Canyon Home Owners Association  
1160 E. Buchnell Dr.  
Sandy, Utah 84094  
Telephone: (929) 208-6010  
Email: [m.tracy@echo-association.com](mailto:m.tracy@echo-association.com)  
*Pro se Petitioner*

---

**BEFORE THE UTAH STATE RECORDS COMMITTEE**

MARK CHRISTOPHER TRACY, dba EMIGRATION CANYON HOME OWNERS ASSOCIATION,  Petitioner,  vs.  EMIGRATION IMPROVEMENT DISTRICT,  Respondent.	<b>REQUEST FOR CIVIL PENALTY FOR NONCOMPLIANCE WITH THE DECISION AND ORDER OF THE UTAH STATE RECORDS COMMITTEE</b>  <b>Case No.: 21-45</b>
--	--

Pursuant to Utah Code Ann. § 63G-2-403(15)(d)(i)(A), Petitioner Mark Christopher Tracy (“Mr. Tracy”) dba Emigration Canyon Home Owners Association (“The ECHO-Association”) hereby submits this Request for Civil Penalty for Noncompliance with the Decision and Order of the Utah State Records Committee (“SRC”).

**I. STATEMENT OF FACTS**

1. Emigration Canyon is prone to both domestic household and wildfire fatalities.<sup>1</sup>
2. On September 26, 2014, Mr. Tracy commenced legal action under the federal False Claims Act (“FCA”)<sup>2</sup> against trustees, managers and consultants of Emigration Improvement District

---

<sup>1</sup> See audio-video recording entitled, “Mayor Smolka, EID, and Eric Hawkes of the Simplifi Company – Misrepresentation of Fire Protection Lines in Violation of the Safe Drinking Water Act of 1974” and corresponding documents at the website administered by The ECHO-Association at [https://echo-association.com/?page\\_id=7603](https://echo-association.com/?page_id=7603).

<sup>2</sup> 31 U.S.C. §§ 3729-3733.

(“EID” aka Emigration Canyon Improvement District aka ECID) including EID General Manager Eric Hawkes (“Mr. Hawkes”) of the Simplifi Company (“Simplifi”) and private land-developers R. Steve Creamer, The Boyer Company LC and City Development Inc. currently pending with the United States Court of Appeals for the 10th Circuit.<sup>3</sup>

3. In November 2014, in order to prevent default of yet outstanding federally-backed loans germane to the FCA litigation, EID through Simplifi commenced state tax-foreclosure proceedings against 46 Emigration Canyon households for the collection of “fire hydrant rental fees” via alleged class-based animus in violation of 42 U.S.C. §§ 1983, 1985(3) (“Civil Rights Act”).<sup>4</sup> *See e.g.*, EID correspondence entitled “Proposal for Raising Funds for Annual Payments of Utah State Loan,” dated June 1, 2013, attached as **Exhibit A**.

4. In order to secure public documents related to pending federal FCA and Civil Rights Act litigation, on February 11, 2021<sup>5</sup> Mr. Tracy requested all fire flow test results of public drinking-water system no. 18143 owned by EID and operated by Simplifi through Emigration Canyon Deputy Mayor Jennifer Hawkes (“Deputy Mayor Hawkes”) and Mr. Hawkes as the designated “EID records office”<sup>6</sup> since August 1, 1998.

---

<sup>3</sup> *United States of America ex rel. Mark Christopher Tracy v. Emigration Improvement District et al.*, Case No. 21-4051 (10th Cir.)(pending).

<sup>4</sup> *See Mark Christopher Tracy v. Simplifi Company et. al*, Case No. 2:21-cv-00444-RJS-CMR (D. Utah)(pending).

<sup>5</sup> Mr. Tracy’s first appeal of the de facto denied request for fire-flow test results was denied by the SRC because Mr. Tracy had listed only the EID Records Office (*i.e.*, Simplifi) instead of “Emigration Improvement District c/o Simplifi Company” on the GRAMA request from published by the Office of Government Records Ombudsman. *See* GRAMA request, dated September 11, 2020, attached as **Exhibit B**; *see also* Decision and Order, *Mark Tracy v. Emigration Improvement District and Simplifi Company*, Case No. 21-09 (Utah State Records Committee, February 22, 2021), attached as **Exhibit C**.

<sup>6</sup> *See* true and correct copy of email correspondence of EID and Simplifi legal counsel Utah Attorney Jeremy R. Cook of the Salt Lake City law firm Cohne Kinghorn P.C., dated February 24, 2021, attached as **Exhibit D**; *see also* Utah Code Ann. § 63G-2-103(11)(b)(i).

5. Contrary to the order issued by the SRC on May 12, 2021, EID failed to produce the requested government records for in-camera review. *See* Notice of Appeal, Case No. 2021-67, attached as **Exhibit E**.

6. Following oral hearing on August 12, 2021, the SRC granted Mr. Tracy's Appeal and ordered EID to produce the requested government records. *See* Revised GRAMA request, dated February 11, 2021, attached as **Exhibit F**; *see also* Decision and Order, *Mark Tracy v. Emigration Improvement District*, Case No. 21-45 (Utah State Records Committee, August 23, 2021), attached as **Exhibit G**.

7. EID failed to appeal the decision to the Utah Third District Court, failed to produce a single responsive document, and failed to file notice of compliance within 30 days.

## **II. ARGUMENT**

8. The SRC Decision and Order required EID to produce government records responsive to Mr. Tracy's request and file notice of compliance. *See Id.*

9. Pursuant to Utah Code Ann. § 63G-2-403(15)(c), if the SRC orders the governmental entity to produce a record and no appeal is filed, the government entity shall comply with the order of the Committee and shall: (1) produce the record; and (2) file a notice of compliance with the SRC.

10. As EID failed to appeal the Decision and Order, failed to produce the requested government records and failed to file notice of compliance, the SRC may impose a civil penalty of up to \$500 for each day of continuing noncompliance pursuant to Utah Code Ann. § 63G-2-403(15)(d)(i)(A).

11. In imposing a civil penalty, the SRC shall consider the gravity and circumstances including whether the failure to comply was due to neglect or was willful or intentional under Utah Code Ann. § 63G-2-403(15)(d)(ii).

12. In the present case, EID failed to produce the requested records for either in-camera review, or following the SRC Decision and Order, failed to file appeal, and failed to file notice of compliance.

13. The refusal to comply with Mr. Tracy's lawful GRAMA request of September 11, 2020, Revised GRAMA request dated February 11, 2021, and the SRC Decision and Order from August 23, 2021 was willful and was intended to "withhold a record, document, or other object" from pending federal FCA and Civil Rights Act litigation in possible violation of 18 U.S.C. § 1512(c)(1).

### **III. CONCLUSION**

Respondent has failed to produce a single responsive document since Mr. Tracy's GRAMA request on September 11, 2020 and Revised GRAMA request of February 11, 2021. Due to inherent danger of household and wildfire fatalities in Emigration Canyon and therewith the immediate threat to public health and safety from the intentional refusal to comply with both repeated lawful request for government records by Mr. Tracy and the SRC Decision and Order, Mr. Tracy respectfully requests the SRC impose the maximum civil penalty of \$500 per day against EID since September 23, 2021.

DATED this 27th day of September, 2021.

**MARK CHRISTOPHER TRACY dba  
EMIGRATION CANYON HOME OWNERS  
ASSOCIATION**

/s/ Mark Christopher Tracy  
Mark Christopher Tracy  
*Pro se Petitioner*

## CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of September, 2021, a true and correct copy of the foregoing **REQUEST FOR CIVIL PENALTY FOR NONCOMPLIANCE WITH THE DECISION AND ORDER OF THE UTAH STATE RECORDS COMMITTEE** was sent via electronic mail to the following:

Rebekkah Shaw  
[srcsecretary@utah.gov](mailto:srcsecretary@utah.gov)  
346 South Rio Grande St.  
Salt Lake City, UT 84101-1106  
*Executive Secretary Utah State Records Committee*

Jeremy R. Cook  
[jcook@ck.law](mailto:jcook@ck.law)  
COHNE KINGHORN, P.C.  
111 E. Broadway, Suite 1100  
Salt Lake City, Utah 84111  
*Attorney for Emigration Improvement District,  
Simplifi Company, Jennifer Hawkes and Eric Hawkes*

/s/ Mark Christopher Tracy  
Mark Christopher Tracy

# EXHIBIT A

**PROPOSAL FOR RAISING FUNDS FOR ANNUAL PAYMENTS OF STATE OF UTAH LOAN**  
**June 1, 2013**

**Introduction and overview**

The Emigration Improvement District (EID) is drilling a new well to serve the residents of the Canyon. The decision about whether and where to drill the well have been considered in great detail by the EID board. This new source of water is crucial to providing water reliably to present and future subscribers of the water system. The cost of the new well is expected to be in the range of \$1.6 to \$1.8 million. We have received a 25-year, interest-free loan from the State of Utah to pay the costs of drilling and related development. In order to meet the terms of repayment, the District must raise about \$84,000 more money each year. This letter describes the proposed increases needed to service that debt. This matter will be considered at a public hearing on Thursday, 20 June 2013, 7:00 PM at the Emigration Canyon fire station.

This letter covers three topics: (1) the proposed increase in the base or standby fees to pay for the new well; (2) the proposed inauguration of a fire hydrant fee for those who have access to a hydrant who are not currently paying anything to the District; and (3) the proposed increase in water fees for the heaviest users. This first page outlines the issues and provides the key information for each of these topics, so you should read it even if you are not interested in the details of the proposal. We've added additional explanatory material for those who want to consider these matters in more depth.

**Increase in base fees to pay for the new well**

We propose to increase the monthly amount of each base and standby fee by \$15. The base fee doesn't vary with the amount of water used, and therefore it represents a reliable source of income. This will provide about 88% of the money needed to satisfy our annual payment requirements.

**Inauguration of a fire hydrant fee for non-subscribers**

We have 86 households in the Canyon who are within 250 feet of an EID hydrant but who pay nothing to the District for that service. We propose to levy a fee of \$15/mo to help sustain the system and ensure that those hydrants can be used for fire suppression. The policy of the District has been that we would allow use of the hydrants for non-subscribers, but charge a fee for water use in the event they were needed to fight a fire. With this new hydrant fee, the District will eliminate that policy, so that all who have access to a hydrant will be entitled to its use with no emergency water use charge. This fee will yield the additional 12% of the money needed for debt service.

**Increase in the water use fee for the heaviest users**

The amount of water in the underground reservoirs from which we draw is finite. The purpose of a progressive rate schedule is to discourage heavy consumption of this limited and shared resource. However, even with the increment of 7 cents per 1000 gallons, we still have a significant number of households that use more than 50,000 gallons per month during the hottest months. Heavy use by some affects all who share the system by disproportionately drawing on the aquifers. We propose to increase the 1000-gallon increment to 14 cents per gallon for all use that exceeds 50,000 gallons in a month. Frankly, we would rather have the water than the money, so if you are a heavy user of the system, please consider all available conservation measures to reduce your water use.



entirely appropriate for heavier users to pay proportionately more for their water use (as the current rate structure demands), it is not fair for those users to pay a larger share for an asset that all benefit from equally. Secondly, the income from water use fees is unreliable. Consider the following example. Suppose that the low water runoff conditions we have seen for the past two years continued for another two or three years. We might at that point be forced into water-use restrictions that would result in a significant reduction in the income to the District. That would have little effect on our ability to pay for water production costs, which would fall more or less in concert with the revenue from use. But if we were relying on use fees to pay the annual fixed bond payment, what would we tell the State when those revenues were not sufficient for us to meet our bond debt service? Do we really want to live in a community that has a reputation for defaulting on our obligations because we chose a faulty income model? We received our latest bond from the State Water Resources board at a 0% interest rate—do we want to weaken our position with them for future funding requests? Those are very real risks if we choose to pay for capital improvements from use fees that are sensitive to both price and availability.

#### **Details about the decision to levy a fire hydrant fee**

The only households affected by this charge will be the 86 who have the benefit of a proximate hydrant but who pay nothing at all to the entity that provided it, the EID. Charging the modest proposed fee will remove a historical inequity, where some residents receive a benefit for which they pay nothing. Please note that around 40% of households which pay a base or standby fee do not now use EID water.

#### **Details about the rate change for heavy water use**

The heaviest months of use for the community are July and August, although June and September are often heavy as well, depending on the climate conditions during the summer. During the period of most intense use, our community-wide consumption has exceeded 9,000,000 gallons a month. Last July, the 18% of households who used more than 50,000 gallons a month accounted for about 47% of the 8,000,000 gallons used that month. If we deduct their first 50,000 gallons and only look at their collective use of water exceeding 50,000 gallons, we find that amounts to fully 20% of the total community use.

An examination of water use the following month is instructive. As subscribers became aware of the problems we were having with the wells, they (you) began to reduce use. August use was about three-fourths of the use in July, and the percentage of households whose use exceeded 50,000 gallons dropped from 18% to 11%. Consequently, their excessive use (>50,000 gallons) accounted for just 8% of the total use. If we could treat every summer month as we did last August, and keep our community-wide consumption to around 6,000,000 during those hot times, we'd certainly breathe easier during the summer. Let us emphasize yet again: The proposed rate increase is not primarily an income measure, but rather an incentive to conserve.

#### **EMIGRATION IMPROVEMENT DISTRICT BOARD**

Michael Hughes, Chairman

David Bradford

Mark Stevens

Fred A. Smolka, Manager



## EXHIBIT B

## GRAMA Request Form

**Note:** Utah Code § [63G-2-204](#) (GRAMA) requires a person making a records request furnish the governmental entity with a written request containing the requester's name, mailing address, daytime telephone number (if available); and a description of the record requested that identifies the record with reasonable specificity.

### Requester's information

Mark Christopher Tracy dba EMIGRATION CANYON HOME OWNERS ASSOCIATION

September 11, 2020

Name: \_\_\_\_\_ Date: \_\_\_\_\_

1160 E. BUCHNELL DR.

Address: \_\_\_\_\_

SANDY, UTAH 84094

City/State/zip: \_\_\_\_\_

929-208-6010

Daytime telephone number: \_\_\_\_\_

### Request made to

Simplifi Company (operator of Water System 18143 owned by Emigration Improvement District)

Government agency or office: \_\_\_\_\_

271 N. Margarthe Lane

Address: \_\_\_\_\_

Salt Lake City, Utah 84108

City/State/zip: \_\_\_\_\_

### Records requested

**Note:** The more specific and narrow the request, the easier it will be for an agency or office to respond to the request. If you are unsure about the records' description, contact the agency or office records officer.

**Note:** Government keeps records in "series" or groups of records. To find out what series an agency or office maintains, visit the Archives' website, <http://archives.utah.gov>. The record series retention schedules on the Archives' website include relevant descriptions.

Title or series number of records (if known): \_\_\_\_\_

Description of records including all relevant information—location of event(s) described in records, city, county, address; date range of the records; names of the person(s); and subject of the request.

All fire flow test results of water system 18143 owned by Emigration Improvement District and operated by the Simplifi Company.

## EXHIBIT C

---

BEFORE THE STATE RECORDS COMMITTEE OF THE

STATE OF UTAH

---

MARK TRACY,

Petitioner,

v.

EMIGRATION IMPROVEMENT  
DISTRICT, and SIMPLIFI COMPANY,

Respondents.

**DECISION AND ORDER**

Case No. 21-09

---

By this appeal, Petitioner, Mark Tracy, seeks access to records allegedly held by Respondents, Emigration Improvement District and Simplifi Company.

**FACTS**

In September 2020, Mr. Tracy, President of the Emigration Canyon Home Owners' Association, made three requests for records pursuant to the Government Records Access and Management Act ("GRAMA"). The request to Emigration Improvement District ("EID") was for e-mail correspondence regarding lead contamination of water system 18143 and the use of public funds for private legal costs. Mr. Tracy made a similar request to Simplifi Company ("Simplifi"), a contractor for EID.

After Mr. Tracy's appeals were denied, he filed three appeals (2020-115, 2020-121,

2020-125) with the State Records Committee (“Committee”). Because of the similar nature of the appeals, the Committee combined the appeals for an electronic hearing held on February 11, 2021. After carefully considering the requested relief of the parties, the Committee issues the following Decision and Order.

#### **STATEMENT OF REASONS FOR DECISION**

1. A person making a request for a record shall submit to the governmental entity that retains the record a written request for the record describing the record requested with reasonable specificity. Utah Code § 63G-2-204(1)(a). GRAMA defines governmental entities in Utah Code § 63G-2-103(11).
2. Regarding appeals 2020-115 and 2020-121, a review of the file shows that these records requests were made to Simplifi, a private company. Although work was done by Simplifi on behalf of EID, Simplifi is not a governmental entity. If a records requester desires records of a governmental entity that are held by a private entity, the request for records should be made to the governmental entity pursuant to Utah Code § 63G-2-204(1).
3. GRAMA’s definition of “record” includes records: (1) Prepared, owned, received, or retained by a governmental entity or political subdivision; and (2) Where all of the information in the original is reproducible by photocopy or other mechanical or electronic means. Utah Code § 63G-2-103(22)(a). It should be noted that a record does not need to be retained by a governmental entity in order for the record to be subject to GRAMA.

GRAMA could apply to a record that a governmental entity prepared, owned, or received even though the record is retained by another party.

4. In the present case, evidence was presented that Simplifi retains records that are owned by EID that are subject to the records request made by Mr. Tracy. Accordingly, the Committee finds that the records requests made to Simplifi were not properly requested to the governmental entity pursuant to GRAMA, and appeals 2020-115 and 2020-121 are denied.
5. Accordingly, the Committee finds that EID may be the holder of records responsive to Mr. Tracy's request in Appeal 2020-125 submitted to EID for e-mail correspondence regarding lead contamination of water system 18143 and records regarding the use of public funds for private legal costs. EID is ordered to do a more thorough search for records and provide any public records responsive to Mr. Tracy's records request including records retained by Simplifi on behalf of EID.

### **ORDER**

THEREFORE, IT IS ORDERED THAT the appeals of Petitioner, Mark Tracy, are hereby **GRANTED** in part, and **DENIED** in part.

### **RIGHT TO APPEAL**

A party to a proceeding before the Committee may seek judicial review in District Court of a Committee's Order by filing a petition for review of the Committee Order as provided in

Utah Code § 63G-2-404. Utah Code § 63G-2-403(14). A petition for judicial review of a Committee Order "shall be filed no later than 30 days" after the date of the Committee Order. Utah Code § 63G-2-404(1)(a). The petition for judicial review must be a complaint which is governed by the Utah Rules of Civil Procedure and include the Committee as a necessary party and contain the required information listed in Subsection -404(2). Utah Code § 63G-2-404(1) & (2). The court shall make its decision *de novo* but shall allow introduction of evidence presented to the Committee, determine all questions of fact and law without a jury, and decide the issue at the earliest practical opportunity. Utah Code § 63G-2-404(6). In order to protect a parties' rights on appeal, a party may wish to seek advice from an attorney.

#### **PENALTY NOTICE**

Pursuant to Utah Code § 63G-2-403(15)(c), if the Committee orders the governmental entity to produce a record and no appeal is filed, the government entity herein shall comply with the order of the Committee and shall: (1) Produce the record; and (2) File a notice of compliance with the Committee. If the governmental entity ordered to produce a record fails to file a notice of compliance or a notice of intent to appeal, the Committee may do either or both of the following: (1) Impose a civil penalty of up to \$500 for each day of continuing noncompliance; or (2) Send written notice of the entity's noncompliance to the Governor. Utah Code § 63G-2-403(15)(d)(i)(B). In imposing a civil penalty, the Committee shall consider the gravity and circumstances of the violation, including whether the failure to comply was due to neglect or



was willful or intentional. Utah Code § 63G-2-403(15)(d)(ii).

Entered this 22 day of February 2021

BY THE STATE RECORDS COMMITTEE



---

KENNETH R. WILLIAMS  
Chair, State Records Committee

**CERTIFICATE OF SERVICE**

I hereby certify that I mailed a true and correct copy of the foregoing **Decision and Order**, U.S. mail postage prepaid, this 22 day of February 2021 to the following:

MARK TRACY  
1160 E. Buchnell Dr.  
Sandy, UT 84094  
*Petitioner*

JEREMY COOK  
COHNE KINGHORN  
111 East Broadway, 11<sup>th</sup> Floor  
Salt Lake City, UT 84111  
*Counsel for Respondent,  
Emigration Improvement District*

## EXHIBIT D

From: Jeremy Cook <jcook@ck.law>  
Date: February 24, 2021 at 2:40:28 PM PST  
To: mark.tracy72@gmail.com, The ECHO-Association <m.tracy@echo-association.com>  
Cc: "Eric Hawkes (eric@ecid.org)" <eric@ecid.org>  
Subject: GRAMA Requests

Mr. Tracy,

As you are aware, on February 10, 2021, Judge Kouris awarded fees against you and in favor of EID's records office, Eric Hawkes, Simplifi Company and Jennifer Hawkes related to a previous GRAMA request that you submitted to EID. Judge Kouris found that the filing of a GRAMA appeal against Eric Hawkes, Jennifer Hawkes and Simplifi Company (all of which you have continued to include in your GRAMA request despite Judge Kouris' decision) lacked merit and was filed in bad faith.

In accordance with Utah Code Ann. 63G-2-203(8)(a), a governmental entity may require payment of past fees and future estimated fees before beginning to process a request if: (ii) the requester has not paid fees from previous requests. Based on your request, the fees owed to Eric Hawkes, Jennifer Hawkes and Simplifi Company are clearly past due and owing fees related to the attached GRAMA requests. Accordingly, EID will not process to the attached GRAMA requests until the amount of \$5,758.50 is paid in full (see attached Judgment).

Thanks,  
Jeremy

# EXHIBIT E



State of Utah

SPENCER J. COX  
Governor

DIEDRE HENDERSON  
Lieutenant Governor

Department of Administrative Services

JENNEY REES  
Executive Director

Division of Archives and Records Service

KENNETH R. WILLIAMS  
Director

Appeal Req. #2021-67

Sent via email

May 12, 2021

Mike Hughes  
271 N. Margarthe Lane  
Salt Lake City, UT 84108  
[mike@ecid.org](mailto:mike@ecid.org)

RE: Appeal to the State Records Committee

Dear Mr. Hughes:

The State Records Committee has received an appeal from Mr. Tracy. I understand he is requesting access to fire flow test results of water system 18143. This is to inform you that a hearing will be scheduled for **August 12<sup>th</sup>, 2021**. The meeting is expected to be held using Zoom. As we get closer to the hearing we will schedule a start time for your appeal, and I will send you details to join the meeting.

**You are required to submit to me, no later than five business days prior to the hearing, a written statement of facts, reasons, and legal authority supporting your position.** Under Utah Code 63G-2-403(5), you must also send copies of the same statements to the petitioner by first class mail.

The State Records Committee, under the authority of Utah Code 63G-2-403(9)(a), may review the disputed records in camera. **Therefore, please have the records in question available at the hearing and Bates stamped.**

If you have any questions please contact me, and if you are interested in mediation contact the state government records ombudsman, Rosemary Cundiff, at (801) 531-3858 or [rcundiff@utah.gov](mailto:rcundiff@utah.gov).

Sincerely,

e/s: Rebekkah Shaw

Rebekkah Shaw  
Executive Secretary

Page 2  
May 12, 2021

State Records Committee  
346 S. Rio Grande Street  
Salt Lake City, UT 84101-1106  
(801)531-3851  
[rshaw@utah.gov](mailto:rshaw@utah.gov)

cc: Members of the State Records Committee and Legal Counsel

## EXHIBIT F



## GRAMA Request Form

**Note:** Utah Code § [63G-2-204](#) (GRAMA) requires a person making a records request furnish the governmental entity with a written request containing the requester's name, mailing address, daytime telephone number (if available); and a description of the record requested that identifies the record with reasonable specificity.

### Requester's information

Name: Mark Christopher Tracy dba EMIGRATION CANYON HOME OWNERS ASSOCIATION Date: February 11, 2021  
Address: 1160 E. Buchnell Dr.  
City/State/zip: Sandy, UT 84094  
Daytime telephone number: 929-208-6010

### Request made to

Government agency or office: Emigration Improvement District aka Emigration Canyon Improvement District c/o Simplifi Company  
Address: 271 N. Margarethe LN  
City/State/zip: Salt Lake City, UTAH 84108

### Records requested

**Note:** The more specific and narrow the request, the easier it will be for an agency or office to respond to the request. If you are unsure about the records' description, contact the agency or office records officer.

**Note:** Government keeps records in "series" or groups of records. To find out what series an agency or office maintains, visit the Archives' website, <http://archives.utah.gov>. The record series retention schedules on the Archives' website include relevant descriptions.

Title or series number of records (if known): \_\_\_\_\_

Description of records including all relevant information—location of event(s) described in records, city, county, address; date range of the records; names of the person(s); and subject of the request.

All fire flow test results of water system 18143 owned by Emigration Improvement District and operated by Simplifi Company since August 1, 1998.

## EXHIBIT G

---

BEFORE THE STATE RECORDS COMMITTEE OF THE

STATE OF UTAH

---

MARK TRACY,

Petitioner,

v.

EMIGRATION IMPROVEMENT  
DISTRICT,

Respondent.

**DECISION AND ORDER**

Case No. 21-45

---

By this appeal, Petitioner, Mark Tracy, requests access to records allegedly held by Respondent, Emigration Improvement District (“District”).

**FACTS**

On February 11, 2021, Mr. Tracy made a request for records pursuant to the Government Records Access and Management Act (“GRAMA”) from the District. Mr. Tracy requested all fire flow test results of water system 18143 owned by the District and operated by Simplifi Company since August 1, 1998.

In an e-mail dated February 24, 2021, Jeremy Cook, legal counsel for the District, stated that based upon a decision made on February 10, 2021 awarding attorney fees against Mr. Tracy, the District “will not process the attached GRAMA request until the amounts of \$5,758.50 is paid in full.” Mr. Tracy filed an appeal with the chief administrative officer for the District on March 24, 2021, and after no response was made by the District, an appeal was filed with the State Records

Committee (“Committee”). On August 12, 2021, the Committee held a hearing during which the parties were allowed to participate electronically. At the hearing, the Committee considered the written materials, oral testimony, and oral arguments of the parties. After having carefully considered all evidence presented to the Committee, the Committee issues the following Decision and Order.

#### **STATEMENT OF REASONS FOR DECISION**

1. Pursuant to GRAMA, a person has the right to inspect a public record free of charge and take a copy of a public record during normal working hours subject to Utah Code §§ 63G-2-203 & -204. Utah Code § 63G-2-201(1)(a). A governmental entity may require payment of fees not paid by the requester from previous requests before beginning to process a request. Utah Code § 63G-2-203(8)(a)(ii).
2. In the present case, the District required Mr. Tracy to pay the judgment amount of \$5,758.50 prior to processing Mr. Tracy’s records request. The judgment was granted on February 10, 2021 after a court hearing with Judge Mark Kouris in *Tracy v. Simplifi, Co.*, 3<sup>rd</sup> Dist. Court Case No. 200905074, and memorialized in a written decision drafted by Mr. Cook and signed by Judge Kouris dated April 15, 2021.
3. A review of the April 15, 2021 Decision and Order shows the following pertinent facts about the case. On June 10, 2020, Mr. Tracy made a records request pursuant to GRAMA “correctly designat[ing]” the governmental entity as the District. After appealing the purported denial of his records request to the District’s board of trustees, Mr. Tracy filed the district court action against two private individuals and the Simplifi Company.
4. Although being informed “at least six times by this Court, Judge Faust, the State Records Committee, [and the District’s] attorney that GRAMA requests should be made only to” the

District, Mr. Tracy continued to include private individuals and the Simplifi Company in new GRAMA requests. Because of Mr. Tracy's actions, Judge Kouris found that "Respondents should be awarded reasonable attorneys' fees" pursuant to Utah Code § 78B-5-825(1) including attorney fees incurred responding to Mr. Tracy's Motion to Vacate the February 10, 2021 decision. The only named parties involved in the case were Mr. Tracy, the two private individuals, and the Simplifi Company, with Judge Kouris noting that Mr. Tracy failed to include the District as a party.

5. The question before the Committee is whether attorney fees awarded in a district court case to two private individuals and a company can be the basis for not processing a request for records pursuant to Utah Code § 63G-2-203(8)(a)(ii). The language used by the statute is that before processing a request, a governmental entity may require payment of fees "from previous requests." Although Judge Kouris ordered Mr. Tracy to pay attorney fees in the district court case, the fees were associated with the *Tracy v. Simplifi, Co.* case and not from a previous records request. As confirmed by the District's legal counsel, Judge Kouris' order did not require Mr. Tracy to pay the District any fees. Additionally, the records being requested have been classified as public records by the District.
6. Accordingly, the Committee finds that the attorney fees that Mr. Tracy has been ordered to pay by Judge Kouris, are not fees "from previous requests" to be paid to the District. Therefore, the District cannot rely upon Utah Code § 63G-2-203(8)(a)(ii) as a basis to deny Mr. Tracy access to public records. However, the District may require payment of future estimated fees before beginning to process Mr. Tracy's request if the fees are expected to exceed \$50 and may charge a reasonable fee to cover the governmental entity's actual cost of

providing the record pursuant to Utah Code § 63G-2-203(8)(a)(i) & -203(1)(a).

### **ORDER**

THEREFORE, IT IS ORDERED THAT the appeal of Petitioner, Mark Tracy, is hereby **GRANTED.**

### **RIGHT TO APPEAL**

A party to a proceeding before the Committee may seek judicial review in District Court of a Committee's Order by filing a petition for review of the Committee Order as provided in Utah Code § 63G-2-404. Utah Code § 63G-2-403(14). A petition for judicial review of a Committee Order "shall be filed no later than 30 days" after the date of the Committee Order. Utah Code § 63G-2-404(1)(a). The petition for judicial review must be a complaint which is governed by the Utah Rules of Civil Procedure and include the Committee as a necessary party and contain the required information listed in Subsection -404(2). Utah Code § 63G-2-404(1) & (2). The court shall make its decision *de novo* but shall allow introduction of evidence presented to the Committee, determine all questions of fact and law without a jury, and decide the issue at the earliest practical opportunity. Utah Code § 63G-2-404(6). In order to protect parties' rights on appeal, a party may wish to seek advice from an attorney.

### **PENALTY NOTICE**

Pursuant to Utah Code § 63G-2-403(15)(c), if the Committee orders the governmental entity to produce a record and no appeal is filed, the government entity herein shall comply with the order of the Committee and shall: (1) Produce the record; and (2) File a notice of compliance with the Committee. If the governmental entity ordered to produce a record fails to file a notice of compliance or a notice of intent to appeal, the Committee may do either or both of the following:

(1) Impose a civil penalty of up to \$500 for each day of continuing noncompliance; or (2) Send written notice of the entity's noncompliance to the Governor. Utah Code § 63G-2-403(15)(d)(i)(B). In imposing a civil penalty, the Committee shall consider the gravity and circumstances of the violation, including whether the failure to comply was due to neglect or was willful or intentional. Utah Code § 63G-2-403(15)(d)(ii).

Entered this 23 day of August 2021

BY THE STATE RECORDS COMMITTEE



KENNETH R. WILLIAMS  
Chair, State Records Committee

**CERTIFICATE OF SERVICE**

I hereby certify that I mailed a true and correct copy of the foregoing **Decision and Order**, U.S. mail postage prepaid and electronic mail, this 23 day of August 2021 to the following:

MARK TRACY  
1160 E. Buchnel Dr.  
Sandy, Utah 84094  
[m.tracy@echo-association.com](mailto:m.tracy@echo-association.com)  
*Petitioner*

JEREMY R. COOK  
Cohne Kinghorn, P.C.  
111 E. Broadway, Suite 1100  
Salt Lake City, Utah 84114  
[jcook@ck.law](mailto:jcook@ck.law)  
*Counsel for Respondent, the Emigration  
Improvement District*



---

Rebekkah Shaw  
Executive Secretary