
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.*, 3rd 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
Petitioner

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



Rebekkah Shaw
Executive Secretary

