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BEFORE THE STATE RECORDS COMMITTEE OF THE  
STATE OF UTAH

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MARK TRACY,

Petitioner,

v.

EMIGRATION IMPROVEMENT  
DISTRICT, and SIMPLIFI COMPANY,

Respondents.

**DECISION AND ORDER**

Case No. 21-09

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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



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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  
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Emigration Improvement District*

*Rebekkah Shaw*

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Rebekkah Shaw  
Executive Secretary