



OFFICE OF THE  
UTAH STATE AUDITOR

September 5, 2014

Mark R. Gaylord  
Ballard Spahr, LLP  
One Utah Center, Suite 800  
201 South Main Street  
Salt Lake City, Utah 84111

Re: Jordanelle Special Service District Notice of Appeal August 22, 2014

Dear Mr. Gaylord:

I have received your Notice of Appeal dated August 22, 2014, appealing the denial by the Office of the Utah State Auditor ("Office") dated August 1, 2014 of your records request made pursuant to the Government Records Access and Management Act ("GRAMA"). Your original request was for the following:

1. Any and all documents and other records, including all communications between the Office of the Utah State Auditor ("Utah State Auditor") and any other person, that relate to the "Standstill Agreement," a copy of which is attached hereto as Exhibit A;
2. Any and all documents and other records, including all communications between the Utah State Auditor and any other person, regarding or relating to the Utah State Auditor's authorization to include his name in the Standstill Agreement;
3. Any and all documents and other records, including all communications between the Utah State Auditor and any other person wherein the Utah State Auditor disseminated copies of the Standstill Agreement to persons outside the office of the Utah State Auditor after March 14, 2014.

In our Records Officer's initial denial letter dated August 1, 2014, Linda Siebenhaar found that we were unable to provide any records relating to:

- (1) Request #1 because the records are part of an ongoing investigation by the Office of the Utah State Auditor;
- (2) Request #2 because the Utah State Auditor never gave authorization to have his name included in the "Standstill Agreement"; and
- (3) Request #3 because no person in the Office of the Utah State Auditor has disseminated copies of the Standstill Agreement to persons outside the office of the Utah State Auditor.

Your appeal letter disagrees with Ms. Siebenhaar's decision regarding Request #1, claiming that the records withheld do not relate to an ongoing or planned audit, and that any records "not created by, or originated from, your Office" relating to the Standstill Agreement should be made public.

After a careful review of your Notice of Appeal, I adopt and re-affirm Ms. Siebenhaar's decision and reasoning. A review of your initial request compared to your appeal shows that your appeal differs from your initial request. Since this is an appeal of our initial denial, my decision is based solely upon what you requested in your initial request. Accordingly, I make the following findings:

1. Request #1 as written requests any and all documents and other records that relate to the Standstill Agreement, which includes any all documents and other records in our possession relating to any persons (including Jordanelle Special Service District ("JSSD") Board members and "managerial employees") related to the Standstill Agreement. The breadth of this request relates to all of the Office's audit records concerning JSSD.
2. The protections afforded by GRAMA to the Office are broad. "Records of a governmental audit agency relating to an ongoing or planned audit until the final audit is released" are protected records. Utah Code § 63G-2-305(16). These records include records created, received, and/or maintained by the Office of the State Auditor. Currently the Office is conducting an audit of the JSSD. The Standstill Agreement relates to the JSSD. Therefore, any records relating to the Standstill Agreement relate to the audit and would not be subject to disclosure pursuant to Utah Code § 63G-2-305(16). Similarly, GRAMA also protects records if the release of records created or maintained for audit purposes reasonably could be expected to interfere with the audit or disclose audit techniques. See, Utah Code § 63G-2-305(10).
3. The purpose of -305(10) & -305(16) is to allow an audit agency, such as the Office, to have the ability to gather, evaluate, and generate documents concerning a governmental entity for an audit without the concern of the very governmental entity that is being audited interfering with the audit through a GRAMA request.
4. Additionally, the State Auditor conducts audits for many reasons including to determine honesty and integrity in fiscal affairs, accuracy and reliability of financial statements, effectiveness and adequacy of financial controls, operational performance, and compliance with the law. Utah Code § 67-3-1(3)(a)(iii). In order to accomplish this task, the State Auditor "is independent of any executive or administrative officers of the state." Utah Code § 67-3-1(1)(a). Accordingly, any records relating to an audit of a governmental entity during the time of the audit are not subject to disclosure in order to allow the Office to independently accomplish its stated constitutional and statutory duties.

While having already noted the lack of documents because the State Auditor "never gave authorization to have his name included in the 'Standstill Agreement'" and "no person in the Office of the Utah State Auditor has disseminated copies of the Standstill Agreement to persons outside the office of the Utah State Auditor," it is the policy of the Office, based upon its constitutional and statutory authority, that it alone has the discretion to determine whether documents can be disclosed relating to an audit of a governmental entity while that governmental entity is being audited. Accordingly, your appeal is denied.

"The State Auditor shall perform financial post audits of public accounts [and] other duties as provided by statute." Utah Const. Art. VII, § 15. The Utah Constitution grants the State Auditor the duty and authority to review the use of all public funds. The Auditor also has the authority to

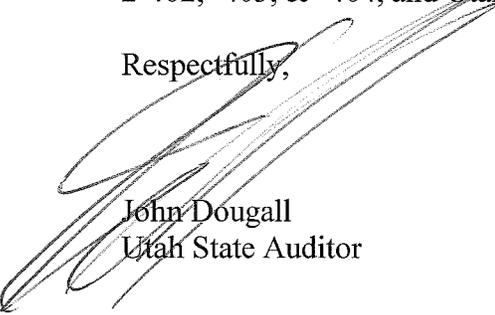
conduct audits to determine "honesty and integrity in fiscal affairs...and compliance with the law." Utah Code § 67-3-1(3)(a)(iii). Let there be no mistake, the Office is engaged in an ongoing audit of JSSD. That audit continues to expand in scope because of the array of concerns we have and continue to encounter. The attempts to impair and limit the audit continue to cause us unnecessary delays.

You have the right to an appeal of this decision. Should you wish to appeal, you must file your appeal within thirty (30) days to either the Utah State Records Committee or, for judicial review, in a Utah District Court pursuant to Utah Code §§ 63G-2-403(1) and 63G-2-404(2). An appeal to the Utah State Records Committee should be filed with the following individual:

State Records Committee  
Attn: Nova Dubovik, Executive Secretary  
State Archives  
346 S. Rio Grande  
Salt Lake City, Utah 84101

For further information concerning the procedures of an appeal, please review Utah Code §§ 63G-2-402, -403, & -404, and Utah Administrative Code R. 35-2.

Respectfully,



John Dougall  
Utah State Auditor