

THE CENTER FOR MEDIA AND DEMOCRACY

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April 3, 2024

John Dougall
Chief Administrative Officer
Office of the State Auditor
Utah State Capitol Complex, East Office Building, Suite E310
Salt Lake City, Utah 84114-2310

Re: Notice of Appeal for March 6, 2024 GRAMA Request

Dear Mr. Dougall,

I am writing to file a Notice of Appeal concerning your office's response to our Government Records Access and Management Act ("GRAMA") Request, which was emailed to the Center for Media and Democracy ("CMD") Research Director David Armiak on March 11, 2024.

In response to our request, the Office of the State Auditor ("OSA") released just four emails received during the three-month period at issue and noted that their attachments were "withheld [as] protected drafts under Utah Code Section 63G-2-305(22)." No texts or other forms of communication, calendars, or expense reports were included in OSA's response.

CMD has reason to believe that the OSA's response is inadequate and fails to comply with the requirements of GRAMA or its intent to protect "the public's right of access to information concerning the conduct of the public's business." § 102(1).

Omitted Records

The only emails the OSA released to CMD pertain to the upcoming 2024 State Financial Officers Foundation ("SFOF") Spring National Meeting and an "SFOF National Debt Crisis Task Force."

However, those emails make reference to other public records that were not produced. For example, the Feb. 28 email from Indiana Comptroller Elise Nieshalla references a Feb. 26 meeting for which no emails or scheduling records were provided. The email also references a scheduling email to soon follow for a Mar. 25 meeting "via SFOF's Zoom link," as well as an anticipated draft email and letter for congressional leaders. None of those communications have been provided as part of OSA's response.

Similarly, the Jan. 19 email from SFOF concerns reservations for the upcoming SFOF meeting in Clearwater Beach, Florida. No further communications, agenda, scheduling, or expense records have been provided as part of OSA's response. The Feb. 23 email thanks Auditor Dougall for

“saying ‘yes’ to serving” on an SFOF task force, yet there are no records of the invitation, Mr. Dougall’s response, or scheduling of a prior meeting pertaining to an invitation.

In addition, CMD is in possession of several communications with the auditor concerning SFOF that were not produced by the OSA in response to our records request.

Based on the above, it appears that additional records responsive to our request have also been inappropriately overlooked, misclassified, or withheld as “protected” drafts.

Drafts

Through the emails released by OSA, CMD is aware of at least three documents that OSA withheld as being “protected drafts,” including:

- SFOF National Debt Crisis SFOF Task Force Founding Document - 2 23 24.docx
- SFOF National Debt Crisis SFOF Task Force Draft Working Document - 2 28 24.docx
- SFOF File 2.26.pdf

In its response letter, the OSA cited § 305(22) regarding drafts as the basis for withholding otherwise responsive documents. However, § 301(3)(j) requires that “drafts that are circulated to anyone other than” a list of covered government entities are public records, as are “drafts that have never been finalized but were relied upon by the governmental entity in carrying out action or policy” per § 301(3)(k).

The emails to which the above documents were attached were sent between the Auditor and staff members of a non-government entity—SFOF. Accordingly, the OSA must release these and any other drafts that were shared between the Auditor or his staff and SFOF, or other private persons or organizations concerning SFOF, as well as drafts that were not finalized but relied upon.

Insufficient Notice of Denial

The OSA’s response to our GRAMA request merely cites the draft exemption under the law for an unspecified number of records with no further information or explanation.

To the extent that the OSA withholds records under that or any other rationale, it needs to provide CMD with “a description of the record or portions of the record to which access was denied” per § 205(2)(a), in addition to specific citations to GRAMA provisions or court rules or orders the OSA relies upon to deny access.

In enacting GRAMA, it was the Legislature’s intent to “prevent abuse of confidentiality by governmental entities by permitting confidential treatment of records only as provided” by the law. §102(3)(c).

CMD, therefore, respectfully requests that the Chief Administrative Officer carefully review and revise the OSA’s response to our GRAMA Request in accordance with the letter, spirit, and intent of the law.

I have attached CMD's GRAMA request and the OSA's response for your convenience.

Thank you for your time and attention to this important matter.

Sincerely,

A handwritten signature in black ink that reads "Arn H. Pearson". The signature is written in a cursive style with a long horizontal flourish at the end.

Arn H. Pearson. Esq.
Executive Director
207-272-2886