



STATEMENT FROM THE CITY OF CEDAR HILLS
FEBRUARY 25, 2014

Where inaccurate or incorrect information is publicly advanced, the City feels it is in the interest of the community to provide an accurate and correct summary. Recently, statements made on a public website present inaccurate or incomplete information regarding a recent GRAMA request. The City wishes to address those statements.

In a February 21, 2014, letter of appeal to the Utah State Records Committee Mr. Ken Cromar, on behalf of a group called Cedar Hills Citizens for Responsible Government (CHCRG), states the following:

Statement: Please be aware that despite this Appeal, we will continue to seek mediation through the Ombudsman hoping that the city will offer a legal option to avoid the Hearing, and tens of thousands spent by city in legal fees in order to collect \$900.

Mr. Cromar and CHCRG insinuate that the City intends to spend “tens of thousands in legal fees in order to collect \$900,” but this is inaccurate. The largest portion of the cost to provide the requested public records to Mr. Cromar/CHCRG lies in reviewing thousands of pages of emails, culling out private, protected and privileged information, and preparing the redacted records for delivery. Due to the volume of records requested, redaction costs far exceed the cost associated with any appeal and cannot be billed to the requestor. Making these redactions is required, as Utah Code imposes the same penalties on the City for disclosing private, protected, or privileged information that it does if the City withholds records. The City has no choice but to go through a tedious review to ensure that it fully discloses everything that it should, and also that it discloses nothing that it should not. The only costs that are being passed along to Mr. Cromar/CHCRG are the compilation costs, estimated at \$900, which are allowed under GRAMA law.

Statement: Our third invitation yesterday through the State Records Ombudsman Rosemary Cundiff to meet with City officials with her as mediator has not yet met with a response, -- nor did we receive a response to our acceptance of City Councilman's Rob Crawley's proposal that would help us avoid the need to submit this Appeal.

At the request of Mr. Cromar, Council Members Crawley and Zappala did meet with members of CHCRG, including Mr. Cromar, Mr. Dearing and Mr. Severn. Some recommendations were discussed, including spreading out the request for thousands of records over a longer period of time. However, payment for the GRAMA request wasn't considered at all and Council Member Crawley made it clear that his was not a formal proposal and that further discussion was needed. Additional communication efforts by the City continued, and on February 20, 2014, Mayor Gygi sent an email to Mr. Cromar requesting a proposal be sent to the Mayor and Council for review. Mr. Cromar/CHCRG did not respond to that request.

Statement: Our December 9, 2013, GRAMA request was denied twice...we believe the City of Cedar Hills improperly refused us our legal request to “inspect free of charge” in accordance with our Constitutional

guaranteed “public’s right of access to information concerning the conduct of the public’s business” ...The City did this by stating the need for an expensive “compilation” processes we did not request, in order to charge fees specifically designed to discourage our effort to review the public record.

Mr. Cromar/CHCRG demands that the City allow him to inspect, free of charge, City email and text accounts, as well as personal email and text accounts of City officials and employees, and also at least one private citizen. He even insists on inspecting such records, “as is,” meaning without removing any private, controlled, or protected information. It doesn’t matter what Mr. Cromar/CHCRG may agree to pay, it would be illegal and an unconstitutional invasion of privacy for the City to fulfill such requests.

Apart from the above, Mr. Cromar/CHCRG requests thousands of pages of emails that the City can provide. However, under State law the City is entitled to charge the actual cost of gathering those records. At the June 15, 2012, State Records Committee hearing, also held when Mr. Cromar filed an appeal against the City on a request for emails, the Committee ruled that Cedar Hills was allowed to require prepayment and that the City did not have to begin to fulfill the request until prepayment was received.

The City denied the Cromar/CHCRG GRAMA request based on several points. First, they have requested that all records be provided at no cost. As mentioned above, the largest cost associated with this request is for the review of thousands of pages and redaction of protected information and this cost cannot be passed on to the requestor. The only fee Mr. Cromar/CHCRG is required to pay is for the compilation of the records specifically requested. Mr. Cromar/CHCRG continues to assert that he wants to view the records “as is”; however, email records may contain information classified by GRAMA law as private, controlled, and protected, which cannot be provided to Mr. Cromar/CHCRG. The only way the City is able to legally comply with the request is to gather, sort, and compile all responsive emails in a format that allows for redaction and delivery to Mr. Cromar/CHCRG. The City’s email program does not have the ability to redact portions of an email, nor can it filter public records from private, controlled, or protected records. This is a manual process that must be done in order to comply with all aspects of GRAMA law. The City has notified CHCRG they will be required to prepay these costs and sees no reason why CHCRG should be exempt from doing so. Not only has the City determined this request does not generally benefit the public, but on many occasions city officials have heard from numerous residents who have stated they do not want a fee waiver to be granted for this request. CHCRG claims these fees are assessed to discourage their effort at obtaining public record. This is simply not true.

Second, the Cromar/CHCRG request is for email records between seven different people for a period of time exceeding 12 months. The City’s email retention policy is 12 months, which is a guideline from the State and one of which Mr. Cromar/CHCRG is fully aware from their previous appeal to the Records Committee. The City only has access to email records within a 12 month period of time.

Third, the Cromar/CHCRG request asks for text messages, which the City does not retain. Text messages are classified as transitory records and are not retained by the City. Text messages largely fulfill the function and role of a post-it note and are classified the same.

Statement: The City is abusing their power and the legal process by unnecessarily altering the public records from the form as “maintained” by the City Recorder.

This is again untrue. There is no abuse of power, but instead an insistence by the City to abide by current GRAMA laws with respect to all records requests, regardless of requestor. As mentioned above, as email records do contain private, protected, and controlled information, the City must compile the records in a format that allows for redaction. Mr. Cromar made this same argument to the Utah State Records Committee in 2012, and that body rejected it unanimously.

Statement: In 2012, the City demonstrated that they are willing to justify spending a stated \$30,000 (or more) in order to collect \$766.

As previously mentioned, the biggest cost comes from reviewing and redacting thousands of pages of emails being requested. This is sometimes called the cost of compliance and is required, not justified by the law. This cost would be incurred in order to fill the voluminous request, regardless of whether Mr. Cromar/CHCRG files an appeal or not. In comparison, the cost being passed along for compilation fees is a small fraction of the overall cost to provide these public records. The City feels it is only fair to the rest of the taxpayers of Cedar Hills to require the requestor to pay for the compilation costs, as allowed by State law.

Statement: It was not a benefit to Cedar Hills residents then, and they were ORDERED by the Records Committee to gather records they did not maintain from personal email accounts.”

One concern Mr. Cromar brought up in 2012 was with regards to emails that may exist on the personal accounts of the former mayor and/or current and former council members. Because elected officials did not have access to the City network prior to 2012, their city email accounts were setup to automatically forward any emails received at their city account to their personal account. These emails were not stored on the City server. No city is required to provide email accounts for elected officials. However, Cedar Hills felt it would be best to do so and now it provides a City supported email account. Elected officials may now remotely access the network, and all incoming and outgoing emails on these accounts are stored on the City server. At the time of the 2012 request the City also reached out to existing and former council members and requested that any city-related emails that were stored on personal accounts be sent to the City for classification and retention purposes. Each council member who had city-related emails on their personal accounts complied with this request and provided to the City all city-related emails in their possession.

Statement: Claims that public records are not public records until the City attorney declares them so.

Neither the City nor the City Attorney has made this claim. What has been stated is that email records, while classified as public records, are not released to the public until private, controlled, and protected information has been appropriately redacted. Again, City policy reflects GRAMA law.

Statement: Claims that we should “simply trust” the Mayor and Council and not seek the public record.

This is untrue. The City has never requested that Mr. Cromar/CHCRG not seek the public record.

Statement: Claims that CHCRG has illegally requested the email records “as is” without the required classification process of public, private, or redacted.

Mr. Cromar/CHCRG has emphatically demanded emails “as is” in their GRAMA requests and appeal to the State Records Committee. The scope of the Cromar/CHCRG subject request exceeds anything the City can provide anyone under the law. The City has stated that it is illegal for the City to provide private, controlled, or protected records, and this is why compilation and redaction are necessary steps to fulfill this request. The City has not claimed the request was illegal, but that the request cannot be filled as requested.

Statement: Claims the need to print out electronic mail records to be able to “compile” them into stacks for the attorney’s review and classification.

The City is required to redact private, controlled, and protected information and must compile records so as to have the ability to make the necessary redactions. The City has completed a previous voluminous request for email records for Mr. Cromar and is following the same process as before, which does require the printing of paper records. This process is currently employed because the City does not have software available to make electronic redactions that cannot be undone, which may reveal private, protected or controlled information. The City dealt with this issue with Mr. Cromar's 2012 request for emails, where Mr. Cromar asked the State Records Committee to require the City to provide email records in an electronic format. The Records Committee denied this request after it determined that it had no authority to require the City to provide the documents electronically. In addition, the City had appropriately determined that the best method for it to comply with GRAMA with regards to protected documents was to provide redacted paper copies.

Statement: After numerous communications with city officials, and the city not being willing to meet with the State Ombudsman to answer questions and explore solutions..."

As stated previously, several attempts to communicate with Mr. Cromar/CHCRG have genuinely been made, including informal discussions with this group and council members Rob Crawley and Daniel Zappala, and letter and email communications from Mayor Gygi. The City is always willing to pursue appropriate solutions to complex GRAMA requests with a variety of participants, including, but not limited to, the State Ombudsman.

Statement: We have concluded (that) we don't believe the City has all the responsive email kept at the office of the recorder as required by State law 10-3-603 and that the email remain on personal computers not maintained or monitored by the City.

While this statement may reflect Mr. Cromar's/CHCRG bias towards the City, the assertion that the City cannot provide responsive email communications is untrue. City officials send and receive city-related email on their city-issued email accounts, which are stored on the city server.

Statement: We do not believe the City needs an attorney at \$125/hour to classify documents when the City is already paying for a Records Officer who is required by the State to be certified capable to do so.

With all practicality, and in the majority of instances, the City Recorder is the person who is reviewing, redacting, and classifying records and reaches out to the City Attorney only with questions. While State requirements necessitate certification of the records officer, they do not require that position to absolutely, without variance, do all redactions. None of the reviewing and redaction costs, whether completed by the City Attorney or the City Recorder, are billed to the requestor. Finally, there is an actual cost to the City associated with the City Recorder doing the reviews, classification and redactions, and that cost is paid for by the taxpayers of Cedar Hills.

Statement: Having the records inspected by the City Attorney at \$125 was necessary because the City was trying to hire a new City Recorder, while leaving out the fact that the city officials forced her resignation.

Although Mr. Cromar/CHCRG speculates regarding the resignation of former employees, GRAMA requests are filled in an appropriate and timely manner regardless of specific individuals that may be employed at the city. The 2012 records request submitted by Mr. Cromar required over 30 hours to compile and those compilation costs were \$766. Again, the required redaction, although largely completed by the City attorney, was not charged to the requestor.

Statement: This seems to be a war of attrition waged by City officials who are willing to fight with tens of thousands of dollars of other people's money – apparently for the personal benefit and political protection.

Again, Mr. Cromar/CHCRG continues to make unfounded accusations. The City has never fought providing public records. The requirement is that Mr. Cromar/CHCRG prepay compilation costs. The City has never tried to withhold the public record, and city officials have nothing to hide. The City has been consistent in stating that GRAMA requestors must prepay compilation costs exceeding \$50, and that all public records requested will be provided once prepayment is received. This policy is not new, and is not unique to Mr. Cromar and his group, CHCRG. This policy is consistent with State law, unbiased, and fair to the rest of the taxpayers of Cedar Hills.

For additional information or for media inquiries please contact Jenney Rees at 801-358-8730 or via email at jrees@cedarhills.org.

Find us on Facebook at www.facebook.com/cedarhillsutah and on Twitter at @CedarHills_Utah.



Cedar Hills | 10246 N. Canyon Road, Cedar Hills, UT 84062 | www.cedarhills.org