

12/7/12

Dear Mr. Shoemaker & Mr. Johansen,

I am appealing the denial letter dated November 30, 2012 signed by Mr. Keith Johansen. I am repealing the denial pursuant to Utah Code Ann. 63G-2-205.

Perhaps, I didn't explicitly request the packets to exclude any restricted public information. Based on the fact that the documents that are given to the board are in existence in order for the board to receive them, I request to have these documents made available to myself and the public prior to the board work and public meetings as they will "technically actually exist".

The code quoted by Mr. Johansen is as follows, please see highlighted info:

(22) (a) "Record" means a book, letter, document, paper, map, plan, photograph, film, card, tape, recording, electronic data, or other documentary material regardless of physical form or characteristics:
(i) that is prepared, owned, received, or retained by a governmental entity or political subdivision;
and
(ii) where all of the information in the original is reproducible by photocopy or other mechanical or electronic means.

(b) "Record" does not mean:

(i) a personal note or personal communication prepared or received by an employee or officer of a governmental entity:
(A) in a capacity other than the employee's or officer's governmental capacity; or
(B) that is unrelated to the conduct of the public's business;

I would suggest that even though the packet **IS** "prepared . . . by an employee" (*Keith IS an employee*). It **IS** in the "employee's . . . governmental capacity" and it **IS definitely** "related to the conduct of the public's business." And at the moment it is prepared it **DOES EXIST**.

Further,

63G-2-102. Legislative intent.

(1) In enacting this act, the Legislature recognizes **two constitutional rights**:
(a) the **public's right of access** to information concerning the conduct of the public's business; and
(b) the **right of privacy** in relation to personal data gathered by governmental entities.
(2) The Legislature also recognizes a public policy interest in allowing a government to restrict access to certain records, as specified in this chapter, for the public good.
(3) It is the intent of the Legislature to:
(a) promote the public's right of **easy and reasonable access** to unrestricted public records;
(b) specify those conditions under which the public interest in allowing restrictions on access to records may outweigh the public's interest in access;
(c) prevent abuse of confidentiality by governmental entities by permitting confidential treatment of records only as provided in this chapter;
(d) provide guidelines for both disclosure and restrictions on access to government records, which are based on the equitable weighing of the pertinent interests and which are consistent with nationwide standards of information practices;

(e) favor public access when, in the application of this act, countervailing interests are of equal weight; and

(f) establish fair and reasonable records management practices.

Thank you,

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