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BEFORE THE STATE RECORDS COMMITTEE OF THE

STATE OF UTAH

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WASATCH TAXPAYER  
ASSOCIATION,

Petitioner,

v.

WASATCH COUNTY SCHOOL  
DISTRICT.

Respondent.

**DECISION AND ORDER**

Case No. 20-33

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By this appeal, Petitioner, Tracy Taylor, for herself and on behalf of Wasatch Taxpayer Association, seeks access to records allegedly held by Respondent, the Wasatch County School District.

**FACTS**

On or about January 8, 2020, Petitioner, made a request for records pursuant to the Government Records Access and Management Act (“GRAMA”). Petitioner requested records related to the “Bio-West Wetlands Delineation Report” prepared for Respondent related to a proposed new high school in Wasatch County. On January 23, 2020, Respondent responded to the request by providing Petitioner a copy of invoices related to engineer studies performed on

the New High School site and directing Petitioner to a related website.

On February 13, 2020, Petitioner submitted an additional request to which the Respondent provided additional information and invoices for Bio-West Engineers, and stated that the draft completed by Bio-West Engineers was excluded pursuant to Utah Code § 63G-2-305(22). Dissatisfied with Respondent's response, Petitioner filed an appeal with the Chief Administrative Officer, who on April 10, 2020, notified Petitioners that "the original decision was correct and am therefore denying your appeal."

Thereafter, Petitioner filed an appeal with the State Records Committee ("Committee"). On August 13, 2020, the Committee held a hearing during which the parties were allowed to participate electronically and present their arguments. After carefully considering the requested relief of the parties, the Committee issues the following Decision and Order.

#### **STATEMENT OF REASONS FOR DECISION**

1. GRAMA specifies that "all records are public unless otherwise expressly provided by statute." Utah Code § 63G-2-201(2). Records that are not public are designated as either "private," "protected," or "controlled." See, Utah Code §§ 63G-2-302, -303, -304 and -305.
2. Respondent argued that pursuant to Utah Code § 63G-2-305(22), the requested records should be considered "drafts" and therefore were properly classified as protected

non-public records. Petitioner contended that the taxpayers of the Wasatch County School District should have access to the reports that had been submitted to Respondent even if the reports were considered drafts, the information within the reports were relied upon by Respondent. See, Utah Code § 63G-2-301(3)(k).

3. After hearing the arguments by the parties, the Committee found that the records were inappropriately classified as drafts pursuant to Utah Code § 63G-2-305(22). The Committee was persuaded by Petitioner's arguments that the taxpayers should have access to the report even though it may not have been completed because it contains information that was relied upon by Respondent. Accordingly, the requested records should be considered public records pursuant to Utah Code § 63G-2-201(2).

### **ORDER**

THEREFORE, IT IS ORDERED THAT the appeal of Petitioner, Wasatch Taxpayer Association, is hereby **GRANTED**.

### **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 24 day of August 2020.

BY THE STATE RECORDS COMMITTEE



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PATRICIA SMITH-MANSFIELD  
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 24 day of August 2020 to the following:

TRACY TAYLOR  
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*Petitioner*

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Rebekkah Shaw  
Executive Secretary