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Corporation d/b/a KSL-TV

IN THE FOURTH JUDICIAL DISTRICT COURT

UTAH COUNTY, STATE OF UTAH

BONNEVILLE INTERNATIONAL
CORPORATION d/b/a/ KSL-TV,

Plaintiff,

vs.

UTAH COUNTY, a political subdivision of
the State of Utah, UTAH COUNTY BOARD
OF COUNTY COMMISSIONERS, a political
subdivision of the State of Utah, and the
UTAH COUNTY HEALTH DEPARTMENT,
a political subdivision of the State of Utah,

Defendants.

**COMPLAINT AND PETITION FOR
JUDICIAL REVIEW**

(Tier 2)

Case No.: _____

Judge: _____

Pursuant to Utah Code §§ 63G-2-402 and -404, and Article 2-3-8 of the Utah County Code, Plaintiff Bonneville International Corporation d/b/a KSL-TV (“KSL”), through its undersigned counsel, hereby files this Complaint and Petition for Judicial Review against Defendants Utah County, the Utah County Board of County Commissioners, and the Utah County Health Department (collectively, “the County”) and petitions for judicial review of the

County’s denial of KSL’s request for public records under the Utah Government Records Access and Management Act, Utah Code §§ 63G-2-101, *et seq.* (“GRAMA”), and for their claims, KSL alleges as follows:

NATURE OF THE CASE

1. This case concerns the County’s wrongful refusal to release public records identifying two businesses that were publicly declared to have flouted COVID-19 restrictions, leading to outbreaks that infected over five dozen people and endangered countless others.

2. On May 4, 2020, the Utah County Commission posted the following on its publicly available Facebook page:

[T]wo . . . businesses in Utah County . . . did not follow COVID-19 best practices in two different geographic locations that resulted in 68 positive COVID-19 cases, including 48% of employees being infected at one business. During the tracing contacts conducted by the Utah County Health Department and Utah Department of Health, we found these businesses instructed employees to not follow quarantine guidelines after exposure to a confirmed case at work and required employees with a confirmed COVID-19 diagnosis to still report to work.

3. Two days later KSL submitted a request (the “GRAMA Request”) to the Utah County Health Department for “records identifying these businesses and any others similarly sanctioned since COVID-19 guidelines were put into place since mid-March.”

4. Despite the profound implications on public health and safety—not to mention the overriding public interest in transparency, particularly during a pandemic—the County denied the GRAMA Request in its entirety, shrouding the identities of these businesses in secrecy.

5. KSL timely appealed this denial to the County’s Chief Administrative Officer for GRAMA appeals—the Board of County Commissioners—but that appeal went unanswered and is now deemed denied.

6. KSL petitions this Court to rectify the County's violations of GRAMA and vindicate the public's right to know the identities of these businesses.

PARTIES, JURISDICTION, AND VENUE

7. Plaintiff KSL is a television broadcast station based in Salt Lake City engaged in the business of gathering and disseminating news and information of interest to the general public.

8. Defendant Utah County is a political subdivision of the State of Utah and a "governmental entity" within the meaning of Utah Code § 63G-2-103(11) and amenable to suit pursuant to Utah Code § 17-50-302(2)(a)(i). The mailing address for Utah County is 100 East Center Street, Suite 2300, Provo, Utah 84606.

9. Defendant Utah County Board of County Commissioners is a political subdivision of the State of Utah and a "governmental entity" within the meaning of Utah Code § 63G-2-103(11). The mailing address for Utah County Board of County Commissioners is 100 East Center Street, Suite 2300, Provo, Utah 84606.

10. Defendant Utah County Health Department is a political subdivision of the State of Utah and a "governmental entity" within the meaning of Utah Code § 63G-2-103(11). The mailing address for Utah County Health Department is 589 South State Street, Provo, Utah 84606.

11. This court has jurisdiction over this matter pursuant to Utah Code §§ 63G-2-404, 63G-2-701 and any related ordinance adopted by Utah County pursuant to that section including Utah County Code § 2-3-8, 63G-2-802, and 78A-5-102.

12. Venue is proper pursuant to Utah Code §§ 78B-3-303(1) and -307.

13. The only monetary relief sought by KSL in this case is an award of its reasonable attorneys' fees and other litigation costs reasonably incurred in connection with this matter pursuant to Utah Code § 63G-2-802(2)(a). Because the amount of those fees and costs is presently unknown, this case is classified as Tier 2 for discovery purposes under Rule 26 of the Utah Rules of Civil Procedure. Utah R. Civ. P. 26(c)(3). KSL reserves the right to amend this designation should later events in this case so warrant.

GENERAL ALLEGATIONS

The COVID-19 Pandemic and Best Practices for Businesses

14. On March 11, 2020, the World Health Organization officially declared the Coronavirus Disease 2019 ("COVID-19") a global pandemic.

15. Federal, state, and local leaders soon followed suit in acknowledging the severity of the threat posed by COVID-19. For example, the President of the United States declared public health emergency on March 13, 2020; a week prior, Utah Governor Gary Herbert had issued an executive order declaring a statement of emergency due to COVID-19; and beginning March 18, 2020, the Utah County Health Department has promulgated a series of "Public Health Orders," finding "that there is an imminent and proximate threat to public health from the introduction of COVID-19 into Utah County" and imposing numerous restrictions on public gatherings and the operation of businesses.

16. The pandemic has posed acute challenges to government officials as they have tried to satisfy the twin goals of "flattening the curve"—avoiding exponential spread of COVID-19 and potentially overburdening the healthcare system—while not devastating the economy.

17. The result has been a series of restrictions on businesses: gatherings, first mass and later even relatively small, have been prohibited; social distancing has been strongly encouraged; and, most relevant here, businesses have been instructed to be proactive in developing procedures to handle quarantine and isolation of individuals who have been exposed to COVID-19 or exhibit symptoms consistent therewith.

18. For example, mirroring CDC guidance, both the Utah Department of Health and Utah County Health Department promulgated Public Health Orders¹ stating, in pertinent part:

- Businesses should review and implement best practices regarding employee and customer health and screening, including:
 - (i) requiring a manager or supervisor to screen each employee, on a daily basis and at the beginning of the employee’s shift, for any symptom of illness consistent with COVID-19;’
 - (ii) prohibiting an employee who presents any symptom of illness consistent with COVID-19 from being physically present on the premises of the business; and
 - (iii) prohibit a member, guest, patron, or customer who presents any symptom of illness consistent with COVID-19 from being physically present on the premises of the business.
- Recommendation for All Individuals and Businesses: (a) We strongly recommend that all individuals and businesses do their part to fight the spread of the virus by adhering to the Utah Governor’s Coronavirus Directive for Utah, “STAY SAFE, STAY HOME” issued on March 27, 2020.

19. Governor Herbert’s Stay Safe, Stay Home Directive² provided, in pertinent part, that businesses were to “[p]roactively implement policies and best practices” to:

¹ See, e.g., Utah County Health Department, *Amended Public Health Order*, effective April 1, 2020, available at https://health.utahcounty.gov/wp-content/uploads/sites/49/2020/04/4_3_2020-Public-Health-Order-UCHD-1.pdf

Copies of other Utah County Health Department orders, as well as Utah Department of Health orders, are available at <https://health.utahcounty.gov/2020/05/15/public-health-orders/>

² See Governor Gary Richard Herbert, *Directive to the State of Utah – The Governor’s Coronavirus Directive for Utah, “Stay Safe, Stay Home,” Updated April 10, 2020*, available at

- (a) reduce disease transmission among employees and volunteers;
- (b) maintain a healthy work environment; and
- (c) maintain critical operations while complying with state and local orders, directives, and recommendations.

And, in instances of non-remote work, the directive instructed businesses to, among other things:

- (a) Require employees and volunteers who present symptoms of illness consistent with COVID-19 to stay home[, and]
- (b) Do not require a positive COVID-19 test result or healthcare provider’s note for an employee or a volunteer who stays home due to illness.

Utah County Announces Two Businesses Flouted Guidelines, Leading to Outbreaks

20. On May 4, 2020, Utah County Commission uploaded to its publicly available Facebook page, called “Utah County Today,” a statement (the “Facebook Post”) that included the following language:

Over the last several weeks we have found that most businesses ARE following best practice guidance, which is essential to protect the health of the public and help move Utah County toward the reduction and ultimately removal of restrictions. We have many great examples of compliant businesses. We acknowledge the economic sacrifice you are making for the community and we THANK YOU!

Unfortunately, we do need to reference two cases of businesses in Utah County who did not follow COVID-19 best practices in two different geographic locations that resulted in 68 positive COVID-19 cases, including 48% of employees being infected at one business. During the tracing contacts conducted by the Utah County Health Department and Utah Department of Health, we found these businesses instructed employees to not follow quarantine guidelines after exposure to a confirmed case at work and required employees with a confirmed COVID-19 diagnosis to still report to work. This is completely unacceptable and resulted in a temporary full closure for one business along with heightened requirements for future cleaning and inspections. Businesses who fail to follow COVID-19 guidelines are putting employees, their families, and ultimately the health of the community at risk. Additionally, employers not following best practices jeopardize Utah County efforts to reopen businesses affected by the pandemic.

A copy of the complete Facebook Post is attached hereto as Exhibit 1.

<https://health.utahcounty.gov/wp-content/uploads/sites/49/2020/04/Extension-of-Stay-Safe-Stay-Home-Directive-1.pdf>

21. The Utah County Today Facebook Page is managed by a public information officer on behalf of the Utah County Commissioners' Office.

The County Refuses Repeated Inquiries from the Public to Identify the Businesses

22. The County's decision to withhold the names of the two businesses referenced above has been the subject of intense public interest, and in the weeks since the County announced that these businesses violated COVID-19 restrictions, numerous concerned members of the public have called upon the County to release the identities of the businesses.

23. Indeed, there were so many inquiries that the Utah County Health Department created a master Twitter thread (the "Twitter Thread") on May 6, 2020 to route all the many inquiries it was receiving. A copy of the Twitter Thread is attached hereto as Exhibit 2.

24. The public interest was so acute that Utah County Attorney David Leavitt called a press conference on May 26, 2020 (the "Press Conference") to more fully explain and defend the County's decision to withhold the names of the businesses.³

25. During the Press Conference, Mr. Leavitt, speaking on behalf of the County Commission, attempted to walk back portions of the Facebook Post, in an apparent effort to justify the continued withholding of the identities of the business, while affirming other information in the Facebook Post, including the large numbers of employees infected at the businesses.

26. For example, the County Attorney made the following statements:

- [I]n the first week of May, the Utah County Health Department reported to the Utah County Commission that nearly half of the employees of a Utah County business had tested positive for COVID-19, after the business instructed the employees to not

³ A recording of the Press Conference is available in its entirety at the following address: <https://www.facebook.com/KUTV2News/videos/vb.39114729405/245845353158627>

follow the quarantine guidelines and that they required the staff who had tested positive to report to work regardless of their situation and their illness. That was by a statement from the Health Department to the County Commission. Another business that was reported was also ignoring guidelines and were [sic] forcing its employees to work as well. Attempting to protect the public by warning other businesses not to engage in such conduct, the County Commission issued a statement that repeated the Health Department assertion. Now understandably, this created not only statewide but it also created national news and headlines when the public and the media were shocked and outraged that businesses would have such insensitivity to require such a thing of its employees during such a lethal time in our history.

- The requests began immediately to find out who these businesses were. The County Health Department, the County Commission and in consultation with my office as the County Attorney, we concluded to refuse to name the businesses in an effort at finding a balance between public safety on the one hand and the need for confidentiality on the other. We declined to provide the names of the businesses because it appeared that the public was, that the need to warn other employers not to engage in this activity could be done without informing the public who these businesses were. But that keeping the names confidential of the businesses confidential was important because number one, the assertions made by the Health Department were allegations and were not substantiated. They had been made through contact tracing where people who had tested positive are then interviewed by the Health Department to make some effort at knowing where they got it.
- So it is important that we didn't name the businesses because the allegations were not substantiated and because number two the businesses did not service the walk-in public and so we believed that we didn't need to warn the public because the public had no threat of stumbling into a business that was engaging in this kind of conduct[.]
- [M]y people met with the health department and what we learned from that was that the original communication from the health department wasn't accurate. In fact there were not two businesses who were forcing employees to work. That was information that was not right. It was communicated by an abundance of caution from the health department to the County Commission, and as we've gotten deeper into the issue, we have learned that the assertions weren't true. That there are not two businesses in Utah County that were forcing its employees to work. That was reported; upon further investigation that does not appear to be the case. And so I did not begin a criminal investigation beyond asking my investigator to visit with the health department because it became abundantly clear that there really was nothing to investigate. And so, in an effort, at simply saying, you know we're doing the very best we can, the County Commission, the County health department, we are all trying to act responsibly. Part of that duty of acting responsibly is to take responsibility when you give information that is inaccurate, and that is the purpose of this meeting and this discussion today is to simply tell you in as straightforward a way as we can, the County Commission was absolutely trying to protect

the public by going out and making information that was not substantiated public. In reality I'm pretty glad we didn't name the businesses frankly, because the businesses were not engaged in that conduct.

27. The County Attorney did not deny that the two businesses in question had been the sites of COVID-19 outbreaks—68 cases between the two businesses—including one outbreak that infected nearly half the work force of one business.

28. In fact, the County Attorney was asked a clarifying question in that regard, in response to which he clarified: "I'm not saying that those businesses weren't a hot spot. I am saying that these businesses were not forcing their employees to work."

29. Under further questioning, the County Attorney stated: "In fact, when they were sick, the only thing that was stated" by these businesses to their employees "was: 'Go home if you're sick. Please don't tell... Please don't noise it around that you were sick.'"

30. The County Attorney stated at one point that he was "not invalidat[ing] the work of the health department" in investigating the businesses.

31. And the County Attorney also stated: "From my understanding, they didn't force employees to work. Whether they were in strict compliance with all the health department guidelines or not, I don't know."

32. When asked whether there is "still substantial public interest" in knowing the location of businesses where there were 68 confirmed cases of COVID-19, "even if they don't have foot traffic," the County Attorney responded: "Yes. To answer your question bluntly. But the state law forbids us from giving you that information."

33. And when asked why, in a similar context, the health department could identify nursing homes that had been hot spots of COVID-19 outbreaks, the County Attorney stated: "If

the health department wants to name them, they can do that, if they feel like it complies with the law.”

KSL’s Request for Records Identifying the Businesses

34. On May 6, 2020, just two days after the County created the Facebook Post, KSL joined those seeking the identities of these businesses by submitting a formal GRAMA request to the Utah County Health Department. A copy of the GRAMA Request is attached hereto as Exhibit 3 and incorporated herein. In its entirety, the GRAMA Request stated:

On May 4, 2020, Utah County posted on its Facebook page that two businesses were found not to be in compliance with COVID-19 health guidelines. One business was temporarily closed while the other was sanctioned. Both were found to be instructing employees to ignore COVID-19 guidelines leading to 68 employees to test positive for the virus. I am requesting records identifying those businesses and any others similarly sanctioned for not following COVID-19 guidelines since they were put into place in mid-March 2020.

35. The GRAMA Request did not seek any protected health information or other private information pertaining to any individual.

36. On May 8, 2020, the County, through a representative of the Utah County Attorney’s Office, issued a written denial of the GRAMA Request (the “Denial”), in which the County denied the GRAMA Request in its entirety. A copy of the Denial is attached hereto as Exhibit 4 and incorporated herein.

37. In the Denial, the County provided the following bases for its refusal to disclose the identities of the businesses.

38. The Denial first stated that the “requested information, pertaining to the novel coronavirus, was obtained during an epidemiological investigation. Subsequently, all information is strictly confidential under Utah Code 26-6-27.” [Ex. 4, at 1.]

39. The Denial further stated that “Your request is further denied under 63G-2-201(8)(a), 302(1)(b), 302(2)(d), 304, and 305(10)(a).” [Ex. 4, at 1.]

40. Finally, the Denial stated that “under 63G-2-204 (2)(a,b), we are obligated to inform you Utah County received some limited information, in regards to one of the businesses mentioned, from the Utah Department of Agriculture and Food in addition to the Utah Department of Health. As Utah County received this information pursuant to 63G-2-206, we are not able to release any information contained within.” [Ex. 4, at 1.]

41. Other than the foregoing bases, the Denial did not identify any other basis for withholding the names of the businesses.

42. On May 13, 2020, KSL timely appealed the Denial to the County’s Chief Administrative Officer (“CAO”) for GRAMA appeals, Tanner Ainge, Chair of the Board of County Commissioners. A copy of KSL’s appeal to the County’s CAO is attached hereto as Exhibit 5 and incorporated herein.

43. The County’s CAO did not respond to KSL’s appeal within the time provided by statute or ordinance, so under Utah County Code § 2-3-8(a)(5) and Utah Code § 63G-2-401(5)(b)(i), the appeal is deemed denied and KSL is entitled to petition this Court for judicial review of the County’s Denial of the GRAMA Request. Although the County’s CAO did not act on KSL’s appeal, the Utah County Attorney confirmed by email to counsel for KSL that the County did not intend to release the information in response to KSL’s appeal.

STATEMENT OF REASONS WHY KSL IS ENTITLED TO RELIEF

44. Under GRAMA, all government records are public unless expressly provided otherwise by statute. *See* Utah Code § 63G-2-201(2).

45. Neither GRAMA nor any other statute expressly classifies the names of businesses who have allegedly violated COVID-19 guidelines—or which are potential hotspots during a pandemic—as private, protected, controlled, or otherwise unavailable to the public.

46. None of the provisions of the Utah Code that the County relied upon in its Denial justify withholding the names, and each of these purported justifications fails on its merits.

47. First, Utah Code section 26-6-27 provides: “Information collected pursuant to this chapter in the possession of the department or local health departments relating to an individual who has or is suspected of having a disease designated by the department as a communicable or reportable disease under this chapter shall be held by the department and local health departments as strictly confidential.”

48. Section 26-6-27 does not justify denial of the GRAMA Request because that statute restricts only disclosure of information “relating to an individual who has or is suspected of having a disease”—the identity of a business that is alleged to have flouted COVID-19 restrictions is not “an individual who has or is suspected of having a disease,” so Section 26-6-27 does not restrict disclosure of such information.

49. Further, Utah Code section 26-6-30 states that the confidentiality provisions discussed in Section 26-6-27 “do not apply to” “any information relating to an individual who willfully or maliciously or with reckless disregard for the welfare of others transmits a communicable or infectious disease.” Because the businesses in question appear to have contributed to outbreaks of COVID-19 by disregarding health directives, they have acted willfully or maliciously or with reckless disregard for the welfare of others.

50. Second, Utah Code section 63G-2-201(8)(a) provides that “[i]n response to a request, a government entity is not required to: (a) create a record.”

51. Section 63G-2-201(8)(a) does not justify denial of the GRAMA Request because the request does not require the County to create any records.

52. Third, Utah Code section 63G-2-302(1)(b) provides that “records containing data on individuals describing medical history, diagnosis, condition, treatment, evaluation, or similar medical data” are “private.”

53. Section 63G-2-302(1)(b) does not justify denial of the GRAMA Request because the request does not seek any “data on individuals,” let alone any “medical history, diagnosis, condition, treatment, evaluation, or similar medical data” of such individuals.

54. Fourth, Utah Code section 63G-2-302(2)(d) provides that “records containing data on individuals the disclosure of which constitutes a clearly unwarranted invasion of personal privacy” are “private if properly classified by a governmental entity.”

55. Section 63G-2-302(2)(d) does not justify denial of the GRAMA Request because the request does not seek any “data on individuals,” let alone any data on individuals disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

56. Fifth, Utah Code section 63G-2-304 provides that “[a] record is controlled if” “the record contains medical, psychiatric, or psychological data about an individual” and other specified conditions are met.

57. Section 63G-2-304 does not justify denial of the GRAMA Request because the request does not seek “medical, psychiatric, or psychological data about an individual.”

58. Sixth, Utah Code section 63G-2-305(10)(a) provides that “[t]he following records are protected if properly classified by a government entity”: “records created or maintained for civil, criminal, or administrative enforcement purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if release of the records: (a) reasonably could be expected to interfere with investigations undertaken for enforcement, discipline, licensing, certification, or registration purposes.”

59. Section 63G-2-305(10)(a) does not justify denial of the GRAMA Request because—by the County’s own admission at the Press Conference—the County is apparently not pursuing any investigation into the two businesses. Even if the County were pursuing such investigations, identifying the names of the two businesses cannot reasonably be expected to interfere with any such investigation because the two businesses are already aware that the County has been looking into their conduct—indeed, the County imposed sanctions on them.

60. Seventh, and finally, Utah Code section 204(2)(a) provides that “[i]n response to a request for a record, a governmental entity may not provide a record that it has received under Section 63G-2-206 as a shared record.”

61. As KSL explained in its appeal to the County’s CAO, KSL is “not requesting to see the information shared with” the County by the Utah Department of Agriculture and Food or the Utah Department of Health. [Ex. 5, at 1.]

62. Moreover, GRAMA does not permit the withholding of an entire document on the basis that some portion of that document is protected. Rather, the County is required to segregate any non-public information and release the remainder. *See* Utah Code § 63G-2-308.

63. Because the requested records are not properly classified as private, controlled, or protected under GRAMA, there is no legal basis for the County's refusal to release the records.

64. But even if there were some basis to classify the above records as private, controlled, or protected, the legitimate public interest in learning the identities of the businesses who were the epicenter of outbreaks, apparently fueled by the businesses' refusal to follow state and local health directives, is significant, and outweighs any interest in secrecy. *See* Utah Code § 63G-2-404(7)(a).

65. The County's own Facebook Post said it best: "Businesses who fail to follow COVID-19 guidelines are putting employees, their families, and ultimately the health of the community at risk."

66. There is additional public interest in learning the identities of these businesses in light of the County's sudden change of position at the Press Conference. The flip-flop from initially accusing these businesses of forcing employees to report to work despite COVID-19 exposure, followed by the County's reversal and retraction of these accusations, heightens the public interest in getting to the bottom of what happened, and learning the identities of these businesses is an important first step in that process.

67. Weighed against this substantial public interest in disclosure and transparency are the justifications by the County addressed above, which consist almost entirely of the desire of the County to protect these businesses' supposed interest in maintaining their misconduct behind a veil of secrecy. That interest is not legitimate, but even if it were, it is substantially outweighed by the public's right to know.

CLAIM FOR RELIEF

(Appeal from Wrongful Denial of Access to Public Records Under GRAMA)

68. KSL incorporates the foregoing allegations of this Complaint as though fully set forth herein.

69. The records requested by KSL in the GRAMA Request are public records under GRAMA.

70. The County's position that the records are non-public is erroneous, and the Court should order the release of the requested records.

71. More specifically, the County's classification of the requested records as "private," "controlled," and "protected," and refusal to release the records to KSL, is unlawful, and the Court should order their release.

72. Alternatively, if the records at issue were properly classified as "private," "controlled," or "protected" under GRAMA, the Court should order their release under Utah Code § 63G-2-404(7)(a) because the public interest in disclosure is compelling and far outweighs any interest in keeping the records secret.

73. Pursuant to Utah Code section 63G-2-802(1), KSL is entitled to an injunction enjoining the County from violating KSL's statutory right of access and ordering the County to provide access to the requested records.

74. Pursuant to Utah Code section 63G-2-801(2), should KSL substantially prevail in this matter, it is entitled to an award against the County of KSL's attorneys' fees and other litigation costs reasonably incurred in connection with this matter.

PRAYER FOR RELIEF

WHEREFORE, KSL demands judgment against the County as follows:

1. For an order declaring that the records requested by KSL are public records under GRAMA, and that KSL has a right to inspect and receive copies of those records;
2. For an order enjoining the County from violating KSL's statutory right of access and ordering the County to provide access to the requested records;
3. For an order against the County awarding KSL its attorneys' fees and other litigation costs reasonably incurred in connection with this matter; and
4. For such other relief as the Court deems just.

DATED this 2nd day of June 2020.

PARR BROWN GEE & LOVELESS, P.C.

/s/ Jeffrey J. Hunt
Jeffrey J. Hunt
David C. Reymann
Jeremy M. Brodis

Attorneys for Plaintiff Bonneville International
Corporation d/b/a KSL-TV

Plaintiff's Address:

KSL-TV
55 North 300 West
5 Triad Center
Salt Lake City, Utah 84110

EXHIBIT 1

Get Tested:

- Go to www.testutah.com to find out if you should be tested. We have testing sites in Orem and Provo which are 100% free and no insurance is required. We would like every resident to fill out the survey and see if testing is recommended for them.

Restaurants:

- Our restaurant community continues to be hit hard and we are grateful for residents who have supported our local eateries.
- www.DineUtahValley.com has a directory of many restaurants offering curbside and takeout options in Utah County.
- As we transition to Orange and then Yellow in the future, in-restaurant dining will be allowed if extreme precautions for hygiene and physical distancing are made by the restaurant owner.

Outdoor Recreation:

- We understand that as spring arrives and temperatures warm, more people will naturally want to take advantage of our county's great parks and outdoor opportunities.
- Outdoor activities can be safe and healthy if guidelines such as maintaining physical distance, wearing masks, and strict hygiene are followed.

Vulnerable Populations:

- It is important to note that the overwhelming majority of severe or fatal COVID-19 cases are associated with those over the age of 65 or with other conditions such as diabetes, heart disease, obesity, or those with immunocompromised conditions.
- While the rest of the county is moving to an Orange level, members of our community in these vulnerable sub-groups should continue to follow the more restrictive guidelines set forth in the Version 4.0 Guidelines.

Over the last several weeks we have found that most businesses ARE following best practice guidance, which is essential to protect the health of the public and help move Utah County toward the reduction and ultimately removal of restrictions. We have many great examples of compliant businesses. We acknowledge the economic sacrifice you are making for the community and we THANK YOU!

Unfortunately, we do need to reference two cases of businesses in Utah County who did not follow COVID-19 best practices in two different geographic locations that resulted in 68 positive COVID-19 cases, including 48% of employees being infected at one business. During the tracing contacts conducted by the Utah County Health Department and Utah Department of Health, we found these businesses instructed employees to not follow quarantine guidelines after exposure to a confirmed case at work and required employees with a confirmed COVID-19 diagnosis to still report to work. This is completely unacceptable and resulted in a temporary full closure for one business along with heightened requirements for future cleaning and inspections.

Businesses who fail to follow COVID-19 guidelines are putting employees, their families, and ultimately the health of the community at risk. Additionally, employers not following best practices jeopardize Utah County efforts to reopen businesses affected by the pandemic.



Utah County Today

· May 4 ·

Turn on notifications

Cynthia Heyman, AnnMarie Saunders and Doug Nickle like this. Most Relevant

4 Shares

10 Comments



Marci Hutchinson You should release the names of these businesses! Let the free market do it's work when people decide not to support them (or maybe the opposite, you never know)! There was no secrecy or attempt to hide when the poor Spur Bar & Grill was all over the news in March when they had the first community case. They were done a terrible disservice and it wasn't even negligent or intentional, like these cases.

3w

1 Reply



Rus N Karen Rodeback It's our right to know the names of these companies. What is Utah County hiding? Could the LDS Church own these businesses and that's why the names are not being released? Seriously this should not be allowed. This is our community, how are we to protect ourselves and our families if things like this are kept in the dark?

3w

2 Replies



Robert Zaugg How is anyone supposed to know if they may have been exposed if these businesses aren't named? Why should anyone Who was exposed become a vector because some selfish business owners demand protection from the

EXHIBIT 2



Search Twitter

Log in

Sign up



UtahCountyHealthDept
@UCHD



Concerned about the (non) release of business names in Utah County in relation to COVID-19?

See this thread. We'll provide some context.

We will do our best to monitor this thread and answer questions; please be patient with us!

1/21

5:15 PM · May 6, 2020 · [Twitter Web App](#)

49 Retweets 12 Likes



UtahCountyHealthDept @UCHD · May 6
Replying to @UCHD
First and foremost:



This information is strictly confidential under Utah Code 26-6-27, and as such we are not permitted to disclose this information (names of individuals or names of businesses as that could reasonably lead someone to identify the individuals).

2/21



3



5



UtahCountyHealthDept @UCHD · May 6
COVID is treated like any other infectious disease regarding confidentiality and need-to-know. We need to remember: what is the purpose of breaking confidentiality?



3/21



1



3



UtahCountyHealthDept @UCHD · May 6
We carefully weigh the rights of confidentiality of an individual with the right of the public to know.



4/21



2



3



UtahCountyHealthDept @UCHD · May 6
Epidemiologists are working hard at contact tracing.



If someone tests positive for COVID-19 (or any reportable disease) an epidemiologist calls them & identifies individuals who they may have exposed.

Those individuals are then contacted, and the cycle continues.

5/21

New to Twitter?

Sign up now to get your own personalized timeline!

[Sign up](#)

Relevant people



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@UCHD

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If all contacts can be identified, then there is no need for the public to know. For example, if a business is involved and it is determined that all exposures were in an precise group of individuals, the public is not at risk and does not need to know.

6/21

2 4

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If the business is considered compliant with all recommendations and requirements, then there is no danger to the public from that time on. Therefore, any future clients would not be at risk of exposure; the public again does not need to know.

7/21

1 3

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If there is no possibility of identifying all individuals who may have been exposed, then a public announcement may be made to notify anyone at that place during that time to self-identify as possibly exposed. (More on this later.)

8/21

1 3

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Only the information that will help a member of the public know whether or not an exposure may have occurred will be disclosed.

Disclosing the identity of either the case or the contact:

9/21

2 4

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Unnecessarily puts the privacy of that individual at risk; in turn, Potentially puts the case into danger of receiving ridicule or rejection, having a reputation destroyed, or even bodily harm from others in the public.

10/21

2 4

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A place of business, school, or other entity who is affected is given the same consideration as a person who has the disease. See the above dangers of disclosing the names of businesses.

11/21

5 3

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Most may not take the time to delve deep into epidemiological processes but there are over 75 reportable communicable diseases tracked by the Utah Department of Health. These diseases are transmitted every day and cases are reported every day of the year.

12/21

1 3

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virus, and are placed into quarantine, if needed.

13/21

1 Retweet 3 Likes

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They do their job every day without your intentional focus; it is during outbreaks where they become visible to the general public.

Let's look at another instance when this happened in 2015 when a person with measles attended a movie at a theater.

14/21

2 Retweet 3 Likes

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In order to do proper contact tracing, UCHD employees would have needed to know the names of every person who sat in the movie theater both during the movie and 3 hours afterward, and those who were in the lobbies, bathrooms, etc.

15/21

1 Retweet 3 Likes

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It is an impossible task to identify all of the affected individuals (as movie theaters do not collect this information) and thus we released the name of the business to the public.

16/21

1 Retweet 3 Likes

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This was done in order to notify individuals who may have been affected to call in for more information and to be tested regarding the outbreak if necessary.

17/21

2 Retweet 3 Likes

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For those upset or concerned about the safety of the employees working conditions in this event, other governmental entities such as the Department of Labor may be able to investigate businesses based on these reports. We are not directly affiliated with those efforts.

18/21

1 Retweet 3 Likes

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We understand your frustration. But ultimately it is up to you to maintain and follow the social distancing guidelines set forth by the CDC and the Utah Governor's Coronavirus Task Force.

19/21

2 Retweet 3 Likes

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If you are following those guidelines, and you have not been contacted directly by a public health employee in regards to contact tracing, you would

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If you show any signs and symptoms of COVID-19, get tested! There are also mobile clinics being set up across Utah County in the coming days and weeks and you can hear about them through this page, Intermountain Health, and the Utah Department of Health.

21/End

3 4

UtahCountyHealthDept @UCHD · May 6
Please list your questions here if possible. We will be answering them tonight and tomorrow throughout the day.

Again, please be patient with us as we get back to you.

Thank you!

12 3

UtahCountyHealthDept @UCHD · May 7
Q1: "...as citizens of the county we have the freedom to choose not to support those companies as a result."

A1: True. Many individuals are voicing the same feeling about this situation. UCHD would release the information if it was of dire importance to public health. (con't)

1 1

UtahCountyHealthDept @UCHD · May 7
But boycotting a business is not equivalent to a public health danger. That isn't sufficient justification to break confidentiality.

UCHD is working closely with the two businesses in the county that are experiencing an outbreak of COVID-19 among employees. (con't)

2 1

UtahCountyHealthDept @UCHD · May 7
Neither of these businesses conduct direct interactions with members of the public and as a result, the risk to the public from these businesses is generally low. In determining whether to name businesses that are experiencing outbreaks publicly,... (con't)

1

UtahCountyHealthDept @UCHD · May 7
...we weigh protecting the public's health with protecting privacy. In this instance, UCHD feels we can continue to protect the public's health without publicly naming these businesses. (end A1)

1

UtahCountyHealthDept @UCHD · May 7
Q2: When would the businesses in question be charged for disregarding the proper procedures?

A2: That is a question for the US Department of Labor. We do not have a specific answer for this question.

(end A2)

1

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A3: Following the CDC's social distancing guidelines is the primary method of preventing transmission of disease. That is our focus.

(end A3)



3



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Q4: If the business did this intentionally instead of unintentionally, we deserve to know the name of the business.

A4: Regardless of intention, the release of information is only done "to undertake public health efforts to interrupt the transmission of disease." (con't)



1



UtahCountyHealthDept @UCHD · May 7

Here is a direct link to Utah Code 26-6-7 which we quoted in the previous tweet:

le.utah.gov/xcode/Title26/...

We'll abbreviate the language in the next tweets, but please read the full code. (con't)



1



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EXHIBIT 3

Covid-19 Health Guideline Sanctions

Due 5/13/2020

Open Records Portal Request

Submitted 5/6/2020, 11:37

Received 5/6/2020, 12:45

Requestor	Agency
Sloan Schrage	Utah Co. Health Department
sschrage@ksl.com	589 South State Street
3854996273	Provo, UT 84606
55 North 300 West	Eric Edwards
5 Triad Center	
Salt Lake City, Utah 84110	

Main Request

On May 4, 2020, Utah County posted on its Facebook page that two businesses were found not to be in compliance with COVID-19 health guidelines. One business was temporarily closed while the other was sanctioned. Both were found to be instructing employees to ignore COVID-19 guidelines leading to 68 employees to test positive for the virus. I am requesting records identifying those businesses and any others similarly sanctioned for not following COVID-19 guidelines since they were put into place in mid-March 2020.

Date range of requested records: 3/12/2020 - 5/6/2020

Additional Request: Please Expedite Response

Status: Open

Additional Request: Please Waive Fee

Releasing the record primarily benefits the public.

Status: Open

Additional Details

EXHIBIT 4

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: Laura Mendoza [mailto:LauraM@utahcounty.gov]
Sent: Friday, May 08, 2020 5:02 PM
To: Sloan Schrage <sschrage@ksl.com>
Subject: GRAMA Request-Schrage

Dear Mr. Schrage,

I received your attached GRAMA request for “...records identifying those businesses and any others similarly sanctioned for not following COVID-19 guidelines since they were put in place mid-March 2020”

The requested information, pertaining to the novel coronavirus, was obtained during an epidemiological investigation. Subsequently, all information is strictly confidential under Utah Code 26-6-27. GRAMA recognizes records “are not public” in the event a record to which access is restricted pursuant to “another state statute” under 63G-2-201 (3)(b). Accordingly, your request is denied under the same. Your request is further denied under 63G-2-201(8)(a), 302(1)(b), 302(2)(d), 304, and 305(10)(a).

Lastly, under 63G-2-204 (2)(a,b), we are obligated to inform you Utah County received some limited information, in regards to one of the businesses mentioned, from the Utah Department of Agriculture and Food in addition to the Utah Department of Health. As Utah County received this information pursuant to 63G-2-206, we are not able to release any information contained within.

This concludes our response to your attached request for government records. Please feel free to reach out, should you have any questions.

Notice of Right to Appeal: You have the right to appeal a denial. The appeal must be in writing stating the reasons the record(s) should be released. The appeal should be filed with the Chair of the Board of County Commissioners within 30 days of the denial at 100 East Center Street, Suite 2300, Provo, Utah 84606. The appeal may be reviewed in an administrative hearing of which you will receive notice or processed pursuant to the Utah County and State Codes.

Laura Mendoza

Paralegal- Utah County Attorney Civil Division

100 E. Center St. Suite 2400

Provo, UT 84606

Tel: 801-851-8002

lauram@utahcounty.gov

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EXHIBIT 5

Mr. Tanner Ainge
Chair, Board of Utah County Commissioners
100 East Center Street, Suite 2300
Provo, Utah 84606

Dear Commissioner Ainge:

This is an appeal under the Government Records Access and Management ACT (GRAMA). On May 8, 2020, I received a response to my request in an e-mail sent by Laura Mendoza. I appeal the denial of my request.

The documents that were withheld must be disclosed under the GRAMA because the public interest in their release outweighs whatever public interest could be served by withholding them.

The May 4, 2020 Facebook post on the Utah County that announced two businesses had been sanctioned for not following COVID-19 guidelines, itself succinctly describes why the public should know their identity: "Businesses who fail to follow COVID-19 guidelines are putting employees, their families and ultimately the health of the community at risk."

The public is allowed to look up inspection reports easily through the Utah County Health Department's Environmental Health website even though the risk is limited to the patrons and staff of those restaurants, and those include the threat of foodborne illnesses caused by improper handling and care. The public should be equally entitled to know if they are at risk from a deadly airborne spread by a business that is not following guidelines designed to contain its spread.

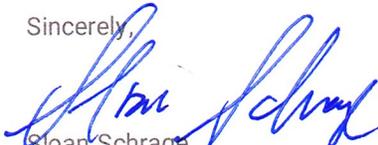
My request was also denied based on Utah Code 63G-2-302(1)(b) which was not part of my request. I did not ask for any information on individuals that described their medical history, diagnosis, condition, treatment, evaluation or anything similar. I am asking only for the name of the companies. 63G-2-302(2)(d) was also cited in the denial, but again I'm not requesting data on individuals that would amount to an unwarranted invasion of personal privacy. Same reasoning applies to 63G-2-304, which only applies to individuals. The information I am asking for is regarding companies, not individuals.

The denial also cited Utah Code 63G-2-305(10)(a) which I also dispute because the investigation has already been undertaken. Those businesses have already been sanctioned, according to the May 4 Facebook post, making my request unable to interfere with that investigation. It's already done.

Also cited was 63G-2-206 and so I understand that some of the information the Utah County Health Department used to sanction those businesses was received from the Utah Department of Agriculture and Food as well as the state health department. I'm not requesting to see the information shared with you by those agencies. I am asking for the identities of those businesses sanctioned by the Utah County Health Department in that May 4, 2020 post on the Utah County Facebook page.

If you need to discuss this request, I can be reached at 385-499-6273 or sschrage@ksl.com. Thank you for your consideration of this appeal.

Sincerely,



Sloan Schrage
Producer, KSL-TV
55 North 300 West
Salt Lake City, Utah 84101