

BEFORE THE OGDEN CITY RECORDS REVIEW BOARD

Nate Carlisle (Salt Lake City Tribune),	DECISION AND ORDER
Appellant,	
v.	Hearing Date: February 10, 2009
Ogden City Corporation,	
Appellee.	

On Tuesday, February 10, 2009, the Ogden City Records Review Board met to hear the appeal from the Salt Lake Tribune, represented by Nate Carlisle. Mr. Carlisle had appealed Ogden City's decision to deny access to a records request dated December 11, 2008, for records relating to former Ogden City Police Officer Kenneth Hammond. Mr. Carlisle had requested the following:

1. Records of any "personnel" or citizen complaints made against Mr. Hammond since January 1, 2005.
2. Records of disciplinary actions taken against Mr. Hammond.
3. A listing of internal affairs investigations by case number in which Mr. Hammond was the subject or accused party.
4. All reports resulting from internal affairs investigations in which Mr. Hammond was the subject or accused party.

In addition, Steve Gehrke of the Tribune had requested a copy of the letter of resignation submitted by Mr. Hammond terminating his employment with Ogden City. The City also denied this request, and Mr. Gehrke also appealed this decision. The hearing on the two appeals was combined.

The City denied access to these records on the grounds that: 1) the records were not public pursuant to 63G-2-201(3)(b) as the records were "restricted pursuant to court rule, another state statute, federal statute, or federal regulation" because, due to pending litigation, the records were subject to discovery under the Utah State Rules of Criminal Procedure and the Federal Rules of Civil Procedure; 2) the records are private under 63G-2-301(2)(o)(i) and (ii) because no formal disciplinary actions were taken against Mr. Hammond; 3) the records were private pursuant to 63G-2-302(2)(d) because the records contained data that, if released, would be a "clearly unwarranted invasion of personal privacy;" and 4) the records were protected pursuant to 63G-2-305(9)(c) because the disclosure of the records could deprive Mr. Hammond of a fair trial or impartial hearing in the pending litigation.

The Board heard arguments from Mr. Carlisle on behalf of the Tribune, and Mara Brown on behalf of the City. The Board also took comments from Stephen Noel and Brenda Beaton, attorneys representing the interests of Mr. Hammond in the pending civil and criminal litigation. Ms. Brown also presented a letter from Allan Larson, the attorney representing Ogden City and Police Chief Greiner in the federal civil suit.

STATEMENT OF REASONS FOR DECISION

After considering the evidence and arguments presented and reviewing the pertinent ordinances, the Board makes the following findings:

1. The requested records are protected under 63G-2-305(9)(c) because the disclosure of the records could deprive Mr. Hammond of a fair trial or impartial hearing in the pending litigation. It was the Board's determination that the pending litigation placed the records squarely within this protected classification.
2. Additionally or alternatively, the requested records are private under 63G-2-302(2)(a) because the disclosure of the records could constitute an unwarranted invasion of personal privacy. The Board determined that the nature of police work lends itself to unwarranted and frivolous complaints and that police officers should not be concerned that every complaint be subject to public scrutiny. Although the work carried out by police officers is clearly public, officers are still entitled to a reasonable amount of privacy regarding day-to-day personnel issues or complaints.

ORDER

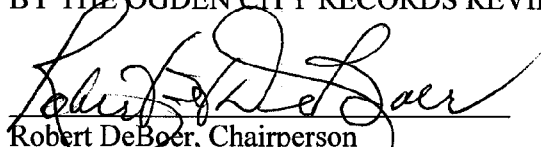
Based on the foregoing, the Board affirms Ogden City's decision to deny access to the requested records.

RIGHT TO APPEAL

Any party may appeal this Decision and Order to the district court. The petition for review must be filed no later than thirty (30) days after the date of this order. The petition for judicial review must be a complaint. The complaint and appeals process are governed by Utah Code Ann. §63G-2-701(6) and §63G-2-404. The court is required to make its decision *de novo*. In order to protect its rights on appeal, a party may seek advice from an attorney.

Entered this 10th day of February, 2009

BY THE OGDEN CITY RECORDS REVIEW BOARD



Robert DeBoer, Chairperson
Ogden City Records Review Board