

The Salt Lake Tribune

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Reporter
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March 7, 2008

Chris Meeker
Acting City Recorder
Salt Lake City Corp.
451 South State Street
Suite 415
Salt Lake City UT 84111

Dear Chris Meeker and Salt Lake City Corp.:

I am appealing your denial of my Jan. 17, 2008 records request. I now request that you either schedule a hearing for this appeal or instruct the Salt Lake City Police Department to provide the requested materials.

I also ask you to instruct the Salt Lake City Police Department to comply with my Jan. 17 request by specifying whether additional documents exist that are "documents related to the shootings at Trolley Square Mall" not mentioned in the department's denial.

BACKGROUND

On January 17, 2008, I sent a request for records to the Salt Lake City Police Department (herein referred to as the "police department"). The request was made under the Utah Government Records Access and Management Act (herein referred to as "GRAMA"). A copy of the request is labeled Exhibit A.

The request sought:

"...all documents related to the shootings at Trolley Square mall and suspect Sulejman Talovic. This includes, but is not limited to, witness statements, recordings or transcripts of interviews, photographic or visual evidence, any statements or materials concerning Talovic's education and school background and his crimes as a juvenile."

On February 8, 2008, a representative of the police department denied my request in full. A copy of this denial is labeled Exhibit B.

Utah Code Ann. § 63-2-201(2) reads: "A record is public unless otherwise expressly provided by statute."

ARGUMENT

Witness statements

The police department denied the disclosure of witness statements based, in part, on Utah state statute 63-2-304(9)(d). That statute creates an exemption when the release of records identifies a source "not generally known" outside law enforcement and when identifying the source would "compromise" that person.

In the case of witnesses to the Trolley Square shootings and statements by those who discussed Talovic, dozens of people already have spoken to journalists or in other public forums. Their identities are generally known, and many are included on 911 tapes of the shootings that have been publicly released. Yet the police department applied the aforementioned exemption to every witness statement, regardless of whether that witness' identity is generally known. Such broad use of the exemption calls into question the validity of using it at all.

Also, there is no explanation by the police department of how disclosing the witness statements would compromise the witnesses, including those witnesses who already have identified themselves. There has been no indication any witnesses risk physical or other forms of retribution. The lone suspect accused of using physical force in this matter, Talovic, is dead. Witnesses to the shootings were at a public place where lawful commerce occurs. Witnesses could have invoked their Fifth Amendment rights if they were concerned with incriminating themselves.

The police department also denied the disclosure of witnesses statements based, in part, on 63-2-302(2)(d) which exempts records constituting "a clearly unwarranted invasion of personal privacy."

In the case of witness statements, the witnesses were speaking with or submitting written statements to police officers whose responsibility is to use information for such purposes as prosecution in open court or public purview. The witnesses therefore had no expectation of privacy in providing statements. Witnesses who were present for the shootings went to Trolley Square, a public place, and had no expectation of privacy there.

Recordings or transcripts of interviews

Earlier arguments in favor of disclosure are hereby repeated and reaffirmed.

The police department claims the recordings and transcripts are “protected,” and cite 63-2-304(9)(e). That statute exempts documents which reveal investigative techniques “if disclosure would interfere with enforcement or audit efforts.”

It is unlikely the recordings or transcripts would reveal techniques which are not readily known to the public. For example, consider the January 2008 edition of “FBI Law Enforcement Bulletin,” a journal published under the authority of the U.S. Department of Justice. The edition is dedicated to the topic of police interviewing. That journal is disseminated to the public and an abridged copy is enclosed as Exhibit C.

The public also has access to numerous books and Internet sites with information about law enforcement interview techniques. Recordings or transcripts or descriptions of interviews are played or submitted to courts as part of legal proceedings.

The prosecutions associated with the Trolley Square and Talovic case are complete and the recordings or transcripts cannot interfere with further law enforcement proceedings.

The police department also denied the disclosure of interview transcripts or recordings based, in part, on 63-2-302(2)(d). As with the witness statements, people interviewed were speaking to police officers whose responsibility it is to use information for such purposes as prosecution in open court or public purview. Persons interviewed had no expectation of privacy.

The police department has released interview recordings to the public in the past, including the 2005 interview of Michael Lane, who confessed to killing a child after he had been acquitted of the crime.

Photographic or visual evidence

Earlier arguments in favor of disclosure are hereby repeated and reaffirmed.

The police department claims photographic or visual evidence is protected, but did not cite any exemption designating them as protected under GRAMA.

The police department also denied the disclosure of photographic or visual evidence based, in part, on 63-2-302(2)(d). Such materials were addressed by the State Records Committee in Case No. 07-01, where the committee ordered the disclosure of a variety of investigative material.

In a similar recent case, the State Records Committee in Case No. 07-01 granted, in part, an appeal seeking records and reports from the Beaver County Sheriff’s Office regarding a murder-suicide investigation in which a man killed his wife, then turned the gun on himself. The committee found all but very specific records should be disclosed and ordered the dissemination of written reports and crime-scene photographs, dismissing concerns these documents should be classified as protected under 63-2-302(2)(d).

Any statements or materials concerning Talovic's education and school background and his crimes as a juvenile

These records are herein referred to as "Talovic records." Earlier arguments in favor of disclosure are hereby repeated and reaffirmed.

The police department claims the Talovic records are protected, but did not cite an exemption designating them as protected. State Records Committee in Case No. 07-01 also addressed police reports and ordered them released.

The police department also denied the disclosure of Talovic records, in part, on 63-2-302(2)(d). But Talovic had no and maintains no expectation of privacy. He traveled to a public place and committed murder, thereby making himself a public figure and a topic of discussion. The history of his education and crimes as a juvenile have relevance.

If a witness or agency provided the Talovic records to the police department, they therefore are public as the police department, by its own acknowledgment in the February 8 letter, says it does not maintain responsibility for such records.

Also, judicial and administrative precedence says the deceased have less privacy than the living. The Federal Bureau of Investigation, for example, routinely discloses the contents of individual files after the subject has died.

CONCLUSION

For the reasons stated above, I ask you please grant my appeal in accordance with my original request. Please contact me by mail at the above address, by e-mail at ncarlisle@sltrib.com, or by phone at 801-257-8794 with any questions or concerns. Thank you for your time in this matter.

Sincerely,

Nate Carlisle
Salt Lake Tribune

EXHIBIT

A

EXHIBIT

B

EXHIBIT

C

Please note, the January 2008 edition of "FBI Law Enforcement Bulletin" has 32 pages and the majority of those pages are dedicated to interviewing. This exhibit includes only the periodical's front and rear cover, the masthead and pages 1 and 2. A copy of the complete periodical can be provided upon request.