

# EXHIBITS

- Exhibit "A" GRAMA Request Letter of August 9, 2006 to Summit County Clerk.
- Exhibit "A-1" GRAMA Denial Letter of August 15, 2006 from Summit County Clerk.
- Exhibit "B" GRAMA Request Letter of August 24, 2006 to Summit County Clerk.
- Exhibit "B-1" GRAMA Denial email of September 8, 2006 from Summit County Clerk.
- Exhibit "C" GRAMA Denial Letter from Summit County Clerk.
- Exhibit "D" GRAMA Denial Letter of September 30, 2006 from Summit County Clerk.
- Exhibit "E" GRAMA Denial Letter of October 6, 2006 from Summit County Clerk.
- Exhibit "F" GRAMA Denial Letter of October 25, 2006 from Summit County Clerk.

- Exhibit "G" GRAMA Request Letters of November 8, 2006; November 9, 2006; November 10, 2006 to Summit County Clerk.
- Exhibit "G-1" GRAMA Denial Letter of November 22, 2006 from Summit County Clerk.
- Exhibit "H" Utah Records Committee Decision and Order of February 14, 2007.
- Exhibit "I" Statutory Notice Letter of March 12, 2007 to Utah Lt. Governor Gary Herbert (as *per* NVRA Notice Requirement).
- Exhibit "J" GRAMA Attorney Fee Letter to Summit County



Exhibit "A"

GRAMA Request Letter of August 9, 2006 to Summit County Clerk.



Wednesday, August 09, 2006

Sue Follet, Summit County Clerk  
Summit Count Clerk Elections Office  
60 North Main  
PO Box 128  
Coalville, UT 84017

Dear Ms. Follett,

Pursuant to Utah open records law, Utah Code -- Title 63 -- Chapter 02 -- Government Records Access and Management Act, I write to request access to and a copy of All electronic or computerized documents (of any type including text, databases or spreadsheets in original format) containing tallies or vote count or recount information concerning the June 2006 primary and the November 2006 general elections including election results, broken down by precinct and by precinct by Type of vote (Types of vote include Election Day, Election Day provisional, early, early-provisional, absentee, overseas, mail-in, military, etc.) including method used to count each vote type to the maximum extent available, together with any documents of any type (text, databases or spreadsheets) containing tallies of election results broken down by voting machine, if available. In the event any or all of the above are not available in electronic form, then and only then are they requested in print form. If your agency does not maintain these public records, please let me know who does and include the proper custodian's name and address.

I agree to pay any reasonable copying and postage fees of not more than \$50.00. If the cost would be greater than this amount, please notify me. Please provide a receipt indicating the charges for each document.

As provided in the open records law, I will expect your response within ten (10) business days.

If you choose to deny this request, please provide a written explanation for the denial including a reference to the specific statutory exemption(s) upon which you rely. Also, please provide all segregable portions of otherwise exempt material.

Please be advised that I am prepared to pursue whatever legal remedy necessary to obtain access to the requested records, particularly for the November 2006 election. I would note that under statute 63-2-802 willful violation of the open records law can result in the award of court costs and reasonable attorney fees.

Thank you for your assistance.

Sincerely,

Kathy Dopp  
P.O. Box 680192  
Park City, UT 84068  
435-658-4657

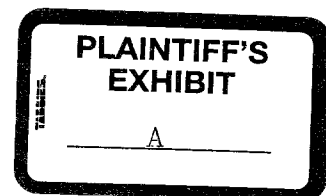


Exhibit "A-1"      GRAMA Denial Letter of August 15, 2006 from Summit County Clerk.





*not note  
for an  
available  
report*

August 15, 2006

Kathy Dopp  
PO Box 680192  
Park City, UT 84068

Kathy,

Pursuant to your GRAMA request dated August 9, 2006, the attached documents are the June 26, 2006 Election results. Summit County did not process any early-provisional, overseas, or military type votes.

There are 77 pages @ \$.25 per page. Please consider this an invoice for \$19.25.

We are also denying your request at this time for the November 2006 General Elections results as they do not exist. Please resubmit your request after November 21, 2006, the canvassing period for that election.

If you need anything further, please feel free to contact me at the number listed below.

Sincerely,

Susan Follett  
Summit County Clerk

cc: Lt. Governor Gary Herbert/Michael Cragun, Utah State Elections Office  
David Brickey, Summit County Attorney

Summit County Clerk  
60 N. Main, PO Box 128  
Coalville, UT 84017  
435-336-3203, fax 435-336-3030

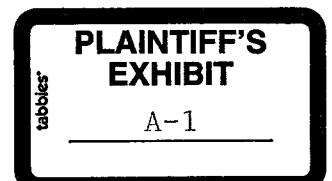


Exhibit "B"

GRAMA Request Letter of August 24, 2006 to Summit County Clerk.



Thursday, August 24, 2006

Sue Follet, Summit County Clerk  
Summit Count Clerk Elections Office  
60 North Main  
PO Box 128  
Coalville, UT 84017

Dear Ms. Follett,

Pursuant to Utah open records law, Utah Code -- Title 63 -- Chapter 02 -- Government Records Access and Management Act, I write to request access to and a copy of All electronic or computerized documents (of any type including text, databases or spreadsheets in original format) containing tallies or vote counts concerning the June 2006 primary and the November 2006 general elections including election results, broken down by DRE machine. Specifically, I am requesting a list of each DRE serial number, the total number of ballots cast on that DRE, and the precinct identifier for the precinct each DRE was used in.

I need the above information (the list of DRE machines with the total number of votes cast on each, and the precinct for each), for mathematical research into the possible effect of DRE count size variation on the probability of detecting outcome-altering error via vote count audits.

Also, if possible, I would also like an auditable report of the number of votes cast for each race and each ballot issue on each DRE machine. In other words, if it is possible, I would like to see a report on the number of votes and ballots cast for each race on each DRE that must be generated in order to conduct a vote count audit.

**In the event any or all, of the above are not available in electronic form, then and only then are they requested in print form.** If your agency does not maintain these public records, please let me know who does and include the proper custodian's name and address. I agree to pay any reasonable copying and postage fees of not more than \$50.00. If the cost would be greater than this amount, please notify me. Please provide a receipt indicating the charges for each document.

As provided in the open records law, I will expect your response within ten (10) business days.

If you choose to deny this request, please provide a written explanation for the denial including a reference to the specific statutory exemption(s) upon which you rely. Also, please provide all segregable portions of otherwise exempt material.

Please be advised that I am prepared to pursue whatever legal remedy necessary to obtain access to the requested records, particularly for the November 2006 election. I would note that under statute 63-2-802 willful violation of the open records law can result in the award of court costs and reasonable attorney fees.

Thank you for your assistance.

Sincerely,

Kathy Dopp, P.O. Box 680192, Park City, UT 84068  
435-658-4657

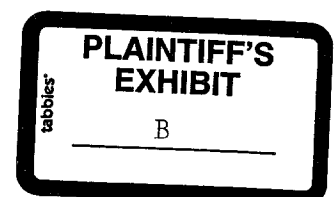


Exhibit "B-1"      GRAMA Denial email of September 8, 2006 from Summit County Clerk.





Kathy Dopp <kathy.dopp@gmail.com>

## 8-24-06 GRAMA request

1 message

Sue Follett <sfollett@co.summit.ut.us>

To: "kathy@uscountvotes.org" <kathy@uscountvotes.org>

Fri, Sep 8, 2006 at 11:40 AM

Kathy,

Your requests are responded to as follows:

1. DRE serial number with total number of ballots cast and which precinct they were used in:

This information is contained in the paperwork that has been sealed and according to Utah State Law is to remain sealed until destruction 22 months after the election.

2. Number of votes and ballots cast for each race and issue - the 36 precinct report that was given to you from your last GRAMA request is the report that is available.

Polling locations with number of machines:

Henefer 3  
Coalville 6  
Hoytsville 3  
Wanship 3

Oakley 5  
Kamas 5  
Francis 3

Jeremy Ranch Elem 6  
Ecker Hills Elem 7  
Richins Building 4  
Parley's Park Elem 4  
McPolin Elem 6  
Treasure Mtn Int'l Elem 4  
Marsac Building 5  
Trailside Elem 4

Coalville Courthouse Early voting 2

I believe if I have transferred the numbers correctly we deployed and used 70 machines.

If you need anything further please let me know.

Sue Follett  
Summit County Clerk  
435 336 3203

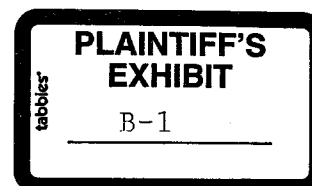
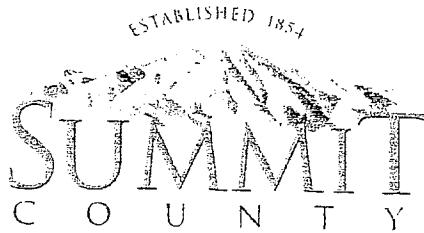


Exhibit "C"

GRAMA Denial Letter from Summit County Clerk.





September 22, 2006

Kathy Dopp  
PO Box 680192  
Park City, UT 84068

Kathy,

I would like to recap our Thursday, September 21, 2006 conversation in writing. I explained that your statements of "Unwilling" or "Trying to hide" elections results were incorrect statements. I explained in that conversation, as I have done several times before even before receiving your official written requests, I stated that the County's interpretation of UCA 20A-4-202, 2 & 4. - the information is sealed and I must adhere to the Utah Code. (see below)

(2) Each election officer shall:

- (a) preserve ballots for 22 months after the election or until the time has expired during which the ballots could be used in an election contest;
- (b) package and seal a true copy of the ballot label used in each voting Precinct
- (c) preserve all other official election returns for at least 22 months after an election, and
- (d) after that time, destroy them without opening or examining them

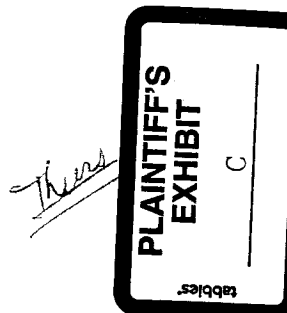
These "all other official election returns" have consisted of:

Ballot reconciliation sheets	Receiving Board Log
Inspection Board Log	Duplication Board Log
Write-In Board Log	Pink Poll Books

- (4) (a) If an election contest is begun within 12 months, the election officer shall:
- (i) keep the ballots and election returns unopened and unaltered until the contest is complete; or
  - (ii) surrender the ballots and election returns to the custody of the court having jurisdiction of the contest when ordered or subpoenaed to do so by that court.

You stated you have reviewed the Code and believe our interpretation is incorrect.

Summit County Clerk  
60 N. Main, PO Box 128  
Coalville, UT 84017  
435-336-3203, fax 435-336-3030

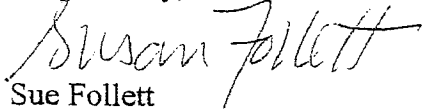


Kathy Dopp  
Page Two  
September 22, 2006

From the Summit County archived records, it appears each County Clerk has followed the Utah Code.

You agreed to state County Clerk Sue Follett believes her hands are tied by the Utah Code, not that she is "unwilling" or "trying to hide" elections information. I appreciate your understanding and agreeing to correct these statements.

Respectfully,

A handwritten signature in cursive script that reads "Sue Follett". The signature is written in black ink and is positioned above the printed name and title.

Sue Follett  
Summit County Clerk

Exhibit "D"

GRAMA Denial Letter of September 30, 2006 from Summit County Clerk.





September 30, 2006

Kathy Dopp  
PO Box 680192  
Park City, UT 84068

Kathy,

The County Clerk's Office received two GRAMA requests dated September 20, 2006. I have enclosed copies of those two requests and assigned #1 and #2 to the documents. The appeal document has been labeled as #3.

**GRAMA request #1**

**Ballot sign in sheets** – I believe you are asking for copies of the Poll Book Register. This register is the book that each voter signs as he enters the polling location to receive a ballot. These books are available for review and are several hundred pages in length. They exceed your \$50.00 cost cap. You may come and review them at any time.

**Reconciliation Sheets** – as I have explained in previous conversations and GRAMA request denials, these sheets are in a sealed container and will not be opened without a court order. Reference UCA 20A-4-202, 2 & 4.

**GRAMA Request #2**

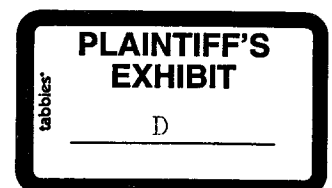
**Business License Fee Analysis** – You received a copy of the Business License Fee Analysis from the County Clerk's Office, September 20, 2006 at the Sheldon D. Richins Building.

**Report of number of votes and ballots cast for each race on each DRE** – this document is the Reconciliation Sheet for each polling location. These documents are sealed and will not be opened without a court order. Reference UCA 20A-4-202, 2 & 4.

**GRAMA Appeal and Re-request received via email September 25, 2006 #3**

The appeal has been forwarded to the Board of County Commissioners and is scheduled to be discussed Wednesday, October 4, 2006 in the Work Session and a possible decision later in the day. I have attached an agenda for said meeting for your review.

Summit County Clerk  
60 N. Main, PO Box 128  
Coalville, UT 84017  
435-336-3203, fax 435-336-3030



Page Two  
Kathy Dopp  
September 30, 2006

**DRE Zero Tapes, DRE Vote Total Tapes, DRE Reconciliation Forms, Provisional Ballot Forms and Printer Canister Logs** – all of these documents are sealed according to UCA 20A-4-202, 2 & 4 and will not be released without a court order.

Text reference of UCA 20A-4-202, 2 & 4

- (2) Each election officer shall:
- (a) preserve ballots for 22 months after the election or until the time has expired during which the ballots could be used in an election contest;
  - (b) package and seal a true copy of the ballot label used in each voting Precinct
  - (c) preserve all other official election returns for at least 22 months after an election, and
  - (d) after that time, destroy them without opening or examining them
- (4) (a) If an election contest is begun within 12 months, the election officer shall:
- (i) keep the ballots and election returns unopened and unaltered until the contest is complete; or
  - (ii) surrender the ballots and election returns to the custody of the court having jurisdiction of the contest when ordered or subpoenaed to do so by that court.

Respectfully,



Susan Follett  
Summit County Clerk

cc: David Brickey, County Attorney

Exhibit "E"

GRAMA Denial Letter of October 6, 2006 from Summit County Clerk.





October 6, 2006

Kathy Dopp  
President, National Election Data Archive  
P.O. Box 680192  
Park City, Utah 84068

Re: GRAMA Appeal of October 3, 2006

Dear Ms. Dopp:

I am in receipt of your appeal of my prior September 30, 2006 decision which denied your GRAMA request for DRE zero tapes, DRE vote total tapes, DRE Reconciliation Forms, Provisional Ballots Forms, Printer Canister Logs and poll books for the 2006 June Primary Election and 2006 November General Election. As stated in my letter of October 2, 2006, my decision should have been appealed to the Chief Administrative Officer of the County, which would be the Board of County Commissioners. Notwithstanding such, you have chosen to appeal my prior decision to myself as the County Clerk.

After consideration of your October 3, 2006 submittal, I hereby deny your appeal.

The release of DRE vote tapes and poll books are govern by the Utah Election Code. As GRAMA expressly states:

[t]he disclosure of a record to which access is governed or limited pursuant to . . . another state statute . . . is governed by the specific provisions of that statute . . . .

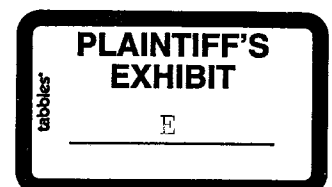
UCA 63-2-201(6)(a). Consequently, GRAMA is inapplicable to the information which you have requested.

The Utah Election Code defines ballot as:

the cardboard, paper, or *other material upon which a voter records his votes* and includes ballot cards, paper ballots, and secrecy envelopes.

UCA 20A-1-102(3)(emphasis added).

Summit County Clerk  
60 N. Main, PO Box 128  
Coalville, UT 84017  
435-336-3203, fax 435-336-3030



Further, election returns are defined to include:

*The poll book, all affidavits of registration, the military and overseas absentee voter registration and voting certificates, one of the tally sheets, any unprocessed absentee ballots, all counted ballots, all excess ballots, all unused ballots, all spoiled ballots, the ballot disposition form, and the total votes cast form.*

UCA 20A-1-102(28)(emphasis added).

DRE voting tapes, summaries of such, and polling books are clearly ballots and election returns under the Utah Election Code. That Code specifically provides for the disposition of such.

*Each election officer shall:*

*(a) preserve ballots for 22 months after the election or until the time has expired during which the ballots could be used in an election contest;*

*(b) package and seal a true copy of the ballot label used in each voting precinct;*

*(c) preserve all other official election returns for at least 22 months after an election; and*

*(d) after that time, destroy them without opening or examining them.*

UCA 20A-2-202(2)(emphasis added). Consequently, all ballots and election returns are immediately sealed after canvassing of the election for 22 months. The purpose of this is to protect the integrity of the elections process by having one and only one copy of the ballots and returns. I realize you believe that making copies and giving them to the public will help the integrity of elections. However, the State Legislature has indicated that the opposite would be true. Extra copies could lead to fraud by altering the data. Hence, the Election Code provides for only one original and no copies. The Code continues:

If an *election contest* is begun within 12 months, the election officer shall:

*(i) keep the ballots and election returns unopened and unaltered until the contest is complete; or*

*(ii) surrender the ballots and election returns to the custody of the court having jurisdiction of the contest when ordered or subpoenaed to do so by that court.*

Page Three  
Kathy Dopp  
October 7, 2006

UCA 20A-2-202(4)(a)(emphasis added). The County Clerk is prohibited from unsealing the ballots and election returns. The State Legislature has given the authority to view those ballots and elections returns only to a judge, and only during an election contest. This ultimately provides integrity to the process.

While I respect your motives to ensure appropriate audits of the DRE voting system, it is not your job or prerogative to conduct such audits under state law. That is the mission and duty of the Lieutenant Governor, who serves as the State's election officer. The Utah Election Code, which governs this area of the law (not GRAMA), simply will not allow the release of the information which you have requested.

If you believe such information and outside audits to be essential, I would recommend requesting the State Legislature to enact a change to the law in order to allow the release of the information which you are seeking.

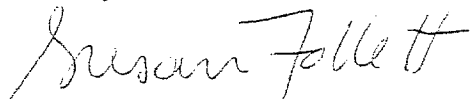
You may appeal my denial to the State Records Committee or to District Court within thirty (30) days of my decision. UCA 63-2-403; 404.

Appeals to the State Records Committee can be filed with:

Susan Mumford  
Utah State Records Committee  
346 S. Rio Grande  
Salt Lake City, Utah 84101  
(801) 531-3861

Again, I appreciate your sincere interest in the elections process.

Sincerely



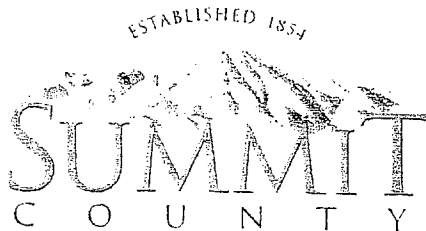
Susan Follett  
Summit County Clerk

cc: David L. Thomas, Chief Civil Deputy Summit County Attorney

Exhibit "F"

GRAMA Denial Letter of October 25, 2006 from Summit County  
Clerk.





October 25, 2006

Kathy Dopp  
President, National Election Data Archive  
P.O. Box 680192  
Park City, Utah 84068

Re: GRAMA Request of October 16, 2006

Dear Ms. Dopp:

I am in receipt of your GRAMA request of October 16, 2006 which seeks copies of all written policies and procedures for early voting, election day voting, absentee ballot handling and verification, audits, electronic voter registration roll handling and security, electronic voting machine security, and election recounts. Unfortunately, the written policies and procedures are still in draft form. As soon as the policies and procedures are in final written and approved form, I will send you copies. Until then, I must deny your request under UCA 63-2-304(22).

You have also requested a copy of the Diebold GEMS database, which is the proprietary software for the Diebold election machines. Such proprietary software is not a record under GRAMA and, therefore, is not releaseable and I must deny your request pursuant to UCA 63-2-104(22)(b)(iv), (v), and (x).

As you have taken the position in the past that the Board of Commissioners is not the proper appeal authority and have demanded that I review my initial decisions, this denial constitutes the final decision of my office. You may appeal my denial to the State Records Committee or to District Court within thirty (30) days of my decision. UCA 63-2-403; 404.

Appeals to the State Records Committee can be filed with

Susan Mumford  
Utah State Records Committee  
346 S. Rio Grande  
Salt Lake City, Utah 84101  
(801) 531-3861

Sincerely,

Sue Follett  
Summit County Clerk

cc: David L. Thomas, Chief Civil Deputy Summit County Attorney

Summit County Clerk  
60 N. Main, PO Box 128  
Coalville, UT 84017  
435-336-3203, fax 435-336-3030



Exhibit “G”

GRAMA Request Letters of November 8, 2006; November 9, 2006;  
November 10, 2006 to Summit County Clerk.



Wednesday, November 08, 2006

Sue Follet, Summit County Clerk  
Summit Count Clerk Elections Office  
60 North Main, PO Box 128  
Coalville, UT 84017

Dear Ms. Follett,

Pursuant to Utah open records law, Utah Code -- Title 63 -- Chapter 02 -- Government Records Access and Management Act, I write to request access to and a copy of All electronic or computerized documents (of any type including text, databases or spreadsheets in original format)

1. The Statement of Votes Cast for the county clerk race, with vote counts broken out by precinct and by type of vote (for example, absentee, early, Election Day, Election Day - provisional, and early - provisional) in its original pdf format for the Nov 06 election.
2. The Statement of Votes Cast for all races, with vote counts broken out by precinct and by type of vote as in #1 above, in its original pdf format for the November 2006 election.
3. The power-point presentation given to poll workers to train them in poll worker procedures for the November 2006 election.
4. The written poll opening and closing procedures that were given to poll managers for the November, 2006 election.
5. A list of the detailed vote counts on each DRE voting machine in the county clerk race corresponding to each voting machine in the November 2006 election.
6. A list of the detailed vote counts on each DRE voting machine in all races corresponding to each DRE voting machine used in the November 2006 election.
7. A copy of the poll books used in the November 2006 election.
8. Your written justification for denying the public from taking pictures during a public meeting such as poll closing procedures.
9. Copies of the ballot summary tapes that are printed during poll closing procedures for each DRE voting machine.

**In the event any or all, of the above are not available in electronic form, then and only then are they requested in print form.** If your agency does not maintain these public records, please let me know who does and include the proper custodian's name and address. I agree to pay any reasonable copying and postage fees of not more than \$50.00. If the cost would be greater than this amount, please notify me. Please provide a receipt indicating the charges for each document.

As provided in the open records law, I will expect your response within ten (10) business days.

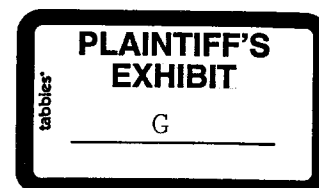
If you choose to deny any part of this request, please provide a written explanation for the parts denied including a reference to the specific statutory exemption(s) upon which you rely. Also, please provide all segregable portions of otherwise exempt material.

Thank you for your assistance.

Sincerely,

Kathy Dopp, P.O. Box 680192, Park City, UT 84068

phone: 435-658-4657



*copy*  
Wednesday, November 09, 2006

Sue Follet, Summit County Clerk  
Summit Count Clerk Elections Office  
60 North Main, PO Box 128  
Coalville, UT 84017

Dear Ms. Follett,

Pursuant to Utah open records law, Utah Code -- Title 63 -- Chapter 02 -- Government Records Access and Management Act, I write to request access to and a copy of All electronic or computerized documents (of any type including text, databases or spreadsheets in original format)

1. For the November 2006 election, a list of all Summit County poll workers and poll managers and their addresses which are needed to prove to the public that the poll workers were lawful residents of the county - I presume this was submitted to Summit County Commissioners for approval prior to the election and is a public record.
2. The number of total DRE touch-screen voting machines used in Summit County in the November 2006 election.
3. The GEMS server log file
4. The log files for each DRE touch-screen voting machine for the November 2006 election
5. The log file for the optical scan machine for the November 2006 election
6. The zero tapes for each DRE touch-screen voting machine for the November 2006 election
7. The GEMS database for the November 2006 election

**In the event any or all, of the above are not available in electronic form, then and only then are they requested in print form.** If your agency does not maintain these public records, please let me know who does and include the proper custodian's name and address. I agree to pay any reasonable copying and postage fees of not more than \$50.00. If the cost would be greater than this amount, please notify me. Please provide a receipt indicating the charges for each document.

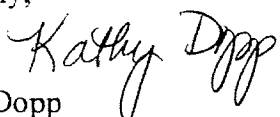
As provided in the open records law, I will expect your response within ten (10) business days.

If you choose to deny any part of this request, please provide a written explanation for the parts denied including a reference to the specific statutory exemption(s) upon which you rely. Also, please provide all segregable portions of otherwise exempt material.

Due to Summit County's using invisible electronic ballots which are secretly counted by private companies, and not independently or adequately manually audited, I need all of the above records, plus the records I requested yesterday to evaluate the probable accuracy of the vote counts, including in my own race. All of these records have been made publicly available in other states due to open records requests or court cases.

Thank you for your assistance.

Sincerely,

  
Kathy Dopp  
P.O. Box 680192, Park City, UT 84068  
phone: 435-658-4657

Wednesday, November 09, 2006

Sue Follet, Summit County Clerk  
Summit Count Clerk Elections Office  
60 North Main, PO Box 128  
Coalville, UT 84017

Dear Ms. Follett,

This is regarding my GRAMA request of November 8, 2006 requesting copies of poll worker and poll manager training materials:

You stated that poll worker training materials are drafts and therefore you might deny access to them. The following section of the GRAMA code [63-2-301 (3)(a)] states that these materials are normally public record:

**63-2-301. Records that must be disclosed.**

(3) The following records are normally public, but to the extent that a record is expressly exempt from disclosure, access may be restricted under Subsection **63-2-201(3)(b)**, Section **63-2-302**, **63-2-303**, or **63-2-304**:

(a) administrative staff manuals, instructions to staff, and statements of policy;

Summit County may be attempting to use section 63-2-304 (22) of the GRAMA laws which classifies drafts as protected records, unless they are otherwise classified as public.

The caveat to **that** section of the code is section 63-2-301(3)(j) and (k) which essentially states that, if a government entity circulated the drafts to outside individuals, or, if the government entity relied on these drafts to carry out any actions or policies, then they are no longer protected records.

In this case, Summit County apparently circulated the "drafts" to poll workers and/or relied on their contents to conduct the elections. In other words, not only were they not TREATED as drafts, but their employees and poll workers were instructed, verbally or otherwise, to follow the procedures in these "drafts".

Therefore, those manuals/materials are public record and they must make them available for me to view and/or provide me with copies of them.

Sincerely,

Kathy Dopp  
P.O. Box 680192, Park City, UT 84068  
phone: 435-658-4657

Friday, November 10, 2006

Sue Follet, Summit County Clerk  
Summit Count Clerk Elections Office  
60 North Main, PO Box 128  
Coalville, UT 84017

*copy*

Dear Ms. Follett,

This is an amendment to clarify my Wednesday, November 08, 2006 GRAMA request, namely

4. The written poll opening and closing procedures that were given to poll managers for the November, 2006 election.

Pursuant to Utah open records law, Utah Code -- Title 63 -- Chapter 02 -- Government Records Access and Management Act, I am requesting copies of any and all written materials given to poll workers and poll managers during their training or preparation for the November 2006 election.

Thank you for your assistance.

Sincerely,

*Kathy Dopp*

Kathy Dopp  
P.O. Box 680192  
Park City, UT 84068

phone: 435-658-4657

Friday, November 10, 2006

Sue Follet, Summit County Clerk  
Summit Count Clerk Elections Office  
60 North Main  
PO Box 128  
Coalville, UT 84017

APPEAL OF A GRAMA DENIAL:

Dear Ms. Follett,

Pursuant to Utah open records law, Utah Code -- Title 63 -- Chapter 02 -- Government Records Access and Management Act, I write appeal your October 25, 2006 denial of my October 16, 2006 request seeking copies of all written policies and procedures for conducting early voting, election day voting, absentee ballot handling and verification, audits, electronic voter registration roll handling and security, electronic voting machine security, and election recounts.

In response to your statement that all your written policies and procedures are drafts, please note that Utah statute section 63-2-301(3)(j) and (k) essentially states that, if a government entity circulated the drafts to outside individuals, or, if the government entity relied on these drafts to carry out any actions or policies, then they are no longer protected records.

Thank you for your assistance.

Sincerely,

Kathy Dopp  
P.O. Box 680192  
Park City, UT 84068

435-658-4657

Exhibit "G-1"

GRAMA Denial Letter of November 22, 2006 from Summit County Clerk.





November 22, 2006

Kathy Dopp  
P.O. Box 680192  
Park City, Utah 84068

Ms. Dopp,

Pursuant to your GRAMA request dated **Wednesday, 11-9-06 items:**

1. Poll workers and poll manager's names are attached. I have also attached the April 26, 2006 Board of County Commissioners meeting minutes for my compliance to UCA 20A-5-201; 20A-5-601
2. Summit County deployed 88 machines for the 2006 General Election
4. Log files for the DRE voting machines – this request is not clear enough
5. Log files for the optical scan voting machines – this request is not clear enough
6. Zero tapes for each DRE voting machine – denied

Item 6 are elections returns. They are not released for the integrity and security of the election.

Further, election returns are defined to include:

*The poll book, all affidavits of registration, the military and overseas absentee voter registration and voting certificates, one of the tally sheets, any unprocessed absentee ballots, all counted ballots, all excess ballots, all unused ballots, all spoiled ballots, the ballot disposition form, and the total votes cast form.*

Zero tapes are clearly ballots and election returns under the Utah Election Code. That Code specifically provides for the disposition of such. UCA 20A-2-202(2)

*Each election officer shall:*

*(a) preserve ballots for 22 months after the election or until the time has expired during which the ballots could be used in an election contest;*

*(b) package and seal a true copy of the ballot label used in each voting precinct;*

Summit County Clerk  
60 N. Main, PO Box 128  
Coalville, UT 84017  
435-336-3203, fax 435-336-3030

**PLAINTIFF'S  
EXHIBIT**

G-1

tabbles

*(c) preserve all other official election returns for at least 22 months after an election; and*

*(d) after that time, destroy them without opening or examining them.*

UCA 20A-2-202(2)(emphasis added). Consequently, all ballots and election returns are immediately sealed after canvassing of the election for 22 months. The purpose of this is to protect the integrity of the elections process by having one and only one copy of the ballots and returns. Extra copies could lead to fraud by altering the data. Hence, the Election Code provides for only one original and no copies. The Code continues:

If an *election contest* is begun within 12 months, the election officer shall:

*(i) keep the ballots and election returns unopened and unaltered until the contest is complete; or*

*(ii) surrender the ballots and election returns to the custody of the court having jurisdiction of the contest when ordered or subpoenaed to do so by that court.*

UCA 20A-2-202(4)(a)(emphasis added). The County Clerk is prohibited from unsealing the ballots and election returns. The State Legislature has given the authority to view those ballots and elections returns only to a judge, and only during an election contest. This ultimately provides integrity to the process.

3. GEMS server log file – denied
7. The GEMS database – denied

The GEMS server and database are considered controlled records:

UCA 63-2-303 (11).....the disclosure of which would jeopardize the security of governmental property, governmental programs, or governmental recordkeeping systems from damage, theft, or other appropriation or use .....

#### **Dopp request 11-8-06**

- 1 & 2. Statement of Votes Cast for Clerk's race and all races - enclosed on the CD as one file
  - 3 & 4. Power point and written instruction for election workers - power point presentation and written instruction were personally handed to you on 11-13-06.
  5. List of detailed vote counts County Clerk's race from DRE voting machine – denied
  6. Detailed vote count for all races from DRE voting machine – denied
  7. Poll books - denied
  9. Copies of ballot summary tapes - denied
- UCA 20A-1-102(3)(emphasis added).

Further, election returns are defined to include:

The *poll book*, all affidavits of registration, the military and overseas absentee voter registration and voting certificates, one of the *tally sheets*, any *unprocessed absentee ballots*, all counted ballots, all excess ballots, all unused ballots, all spoiled ballots, *the ballot disposition form*, and the *total votes cast form*.

UCA 20A-1-102(28)(emphasis added).

DRE voting tapes, summaries of such, and polling books are clearly ballots and election returns under the Utah Election Code. That Code specifically provides for the disposition of such.

*Each election officer shall:*

*(a) preserve ballots for 22 months after the election or until the time has expired during which the ballots could be used in an election contest;*

*(b) package and seal a true copy of the ballot label used in each voting precinct;*

*(c) preserve all other official election returns for at least 22 months after an election; and*

*(d) after that time, destroy them without opening or examining them.*

UCA 20A-2-202(2)(emphasis added). Consequently, all ballots and election returns are immediately sealed after canvassing of the election for 22 months. The purpose of this is to protect the integrity of the elections process by having one and only one copy of the ballots and returns. Extra copies could lead to fraud by altering the data. Hence, the Election Code provides for only one original and no copies. The Code continues:

If an *election contest* is begun within 12 months, the election officer shall:

*(i) keep the ballots and election returns unopened and unaltered until the contest is complete; or*

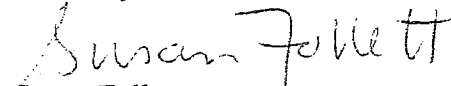
*(ii) surrender the ballots and election returns to the custody of the court having jurisdiction of the contest when ordered or subpoenaed to do so by that court.*

Kathy Dopp  
Page Four  
November 22, 2006

UCA 20A-2-202(4)(a)(emphasis added). The County Clerk is prohibited from unsealing the ballots and election returns. The State Legislature has given the authority to view those ballots and elections returns only to a judge, and only during an election contest. This ultimately provides integrity to the process.

If you choose to appeal my decision; the appeal should be directed to the Chair of the Board of County Commissioners as Administrative Officers of the County (entity) at PO Box 128, Coalville, UT 84017 (as outlined in UCA 63-2-401) as head of the governmental entity.

Sincerely,



Susan Follett  
County Clerk

Attachments:     Primary and General election poll workers  
                          Canvass pdf – Statement of Votes Cast  
                          BCC meeting mins 4-26-06

cc: Dave Thomas, Deputy County Attorney

Exhibit "H"

Utah Records Committee Decision and Order of February 14, 2007.



BEFORE THE STATE RECORDS COMMITTEE OF THE  
STATE OF UTAH

KATHY DOPP,

**DECISION AND ORDER**

Petitioner,

vs.

SUMMIT COUNTY,

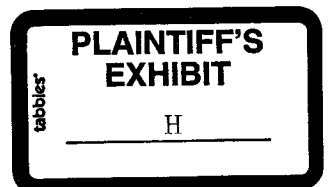
Case No. 07-02

Respondent.

By this appeal, Kathy Dopp seeks access to records of Summit County election summary data. The State Records Committee, having reviewed the materials submitted by the parties, and having heard oral argument and testimony on February 8, 2007, now issues the following Decision and Order.

**STATEMENT OF REASONS FOR DECISION**

1. The Government Records Access and Management Act ("GRAMA") specifies that "all records are public unless otherwise expressly provided by statute." Utah Code Ann. § 63-2-201(2). Records that are not public are designated as either "private," "protected," or "controlled." See Utah Code Ann. §§ 63-2-302, -303 and -304.



2. Summit County denied Ms. Dopp the records she seeks on the grounds that said records are "election returns" which are not subject to GRAMA but rather governed by the "Election Code" Title 20A Chapters 1 and 4 Utah Code Ann. Furthermore, Summit County determined that pursuant to Utah Code Annotated 63-2-201 (6) (a), access to these records is "exempt," governed or limited pursuant to another state statute, and is therefore governed by the specific provisions of that statute, not by GRAMA. The County determined that the State Records Committee does not have jurisdiction in the immediate matter. Summit County denied Ms. Dopp access to the records she seeks as they are directed to be sealed under the election code.

3. The Committee is persuaded that all the records requested by the requestor are "election returns" as defined by Utah Code Annotated §20A-1-102(28) and access to them and their disposition is governed by Utah Code Annotated § 20A-4-202(2)(c) and (d) and their release may not be ordered under GRAMA pursuant to Utah Code Ann. §63-2-201 (6)(a).

### ORDER

THEREFORE, IT IS ORDERED THAT Summit County's determination regarding the classification of these records as exempt is affirmed. The appeal of Kathy Dopp is denied.

### RIGHT TO APPEAL

Either 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 the appeals process are governed by the Utah Rules of Civil Procedure and Utah Code Ann. § 63-2-404.

The court is required to make its decision de novo. In order to protect its rights on appeal, a party may wish to seek advice from an attorney.<sup>1</sup>

Entered this 14<sup>th</sup> day of February, 2007.

BY THE STATE RECORDS COMMITTEE



Carl R. Albrecht, Chairperson  
State Records Committee

---

<sup>1</sup>This notice is required by Utah Code Ann. § 63-2-403(12)(d).

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing Decision and Order, postage prepaid, this 14<sup>th</sup> day of February, 2007, to the following:

KATHY DOPP  
P.O. Box 680192  
Park City, Utah 84068

DAVID L. THOMAS  
JAMI R. BRACKIN  
SUMMIT COUNTY ATTORNEY'S  
OFFICE  
60 North Main Street  
P.O. Box 128  
Coalville, Utah 84017

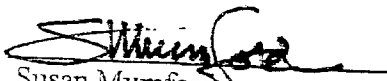
  
Susan Mumford  
Executive Secretary

Exhibit “I”

Statutory Notice Letter of March 12, 2007 to Utah Lt. Governor  
Gary Herbert (as *per* NVRA Notice Requirement).



Lt. Governor Gary Herbert  
Utah State Capitol Complex  
PO Box 142220  
Salt Lake City, Utah 84114-2220  
Fax 801-538-1133

Monday, March 12, 2007

Dear Lt. Governor Herbert:

I write to you as the chief election official of the State of Utah. I write to seek your assistance in forcing Summit County and the Summit County Clerk to comply with state and federal election and voter registration laws. I write as required by the federal Voting Rights Act, 42 U.S.C. §§ 1973 et seq., 42 U.S.C. § 1973gg-9(b) and other federal laws, in the hopes that your intervention and action will prevent the need for litigation.

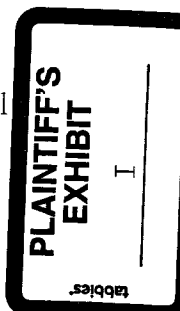
Summit County, Utah is denying public access to copies of virtually all records having anything to do with elections and thus denying Utah citizens the right of oversight of their elections process. The County is denying access to voter registration and elections-related records needed in order to verify the integrity of the electoral process and the accuracy and currency of voter registration records.

Beginning in August 2006, I requested public access to election records from Utah's June 2006 Primary and November 2006 General Elections. Citing Utah's Government Records Access and Management Act (GRAMA) law, I made several requests to the Summit County Clerk's Office for these records. The county denied my requests. I appealed and, after being denied access to the records again, I appealed to the Utah State Records Committee. The Decision and Order of the Utah State Records Board (<http://utahcountvotes.org/UT/UT-Election-Records-07-02DoppOrder.pdf>) is that Utah election officials (County clerks) may declare any record having to do with elections as "election returns." Election returns are governed by Utah election code and are therefore "exempt" under GRAMA law.

All records that I requested relate directly or indirectly to voter registration. All records I requested must be available to the public pursuant to federal election and voter registration laws.

The election records that Summit County claim are exempt from public access include:

- Provisional ballot affidavit envelope registration forms, which are clearly identified as voter registration records in Utah election code;
- Voter registration verification records, including all poll books, absentee ballot envelope forms and other records needed to assess the accuracy and currency of voter registration records;
- The detailed vote totals from each DRE touch-screen voting machines, including the printed DRE vote totals tapes, reports from the Diebold GEMS server, or the DRE machine's memory cards;
- Any election summary data records created at poll opening or closing including precinct vote totals as recorded at the precincts, the DRE reconciliation/recap forms, the DRE zero tapes, print canister log forms;
- Any and all election summary data records created at poll opening or closing, including precinct vote totals as recorded at the precincts, DRE reconciliation/recap forms, Provisional Ballots reconciliation/recap forms, DRE zero tapes, Printer Canister Log forms; and



- Records containing DRE touch-screen machine serial numbers

The position of Summit County and the February 14, 2007 Utah Records Committee “Decision and Order: Case No. 07-02” are contrary to federal law.

The position of Summit County and the February 14, 2007 Utah Records Committee “Decision and Order: Case No. 07-02” mean, inter alia, the citizens and voters of Utah are not allowed to know if:

- The printed rolls of votes (DRE VVPATs) from each touch-screen machine were properly handled and accounted for;
- Vote counts reported at the precinct are the same as vote counts tallied at the county offices;
- Any voters were disenfranchised by being forced to use provisional ballots, and whether or not their ballots were counted;
- Absentee ballot voting was correctly handled or whether absentee ballot voters were disenfranchised or not;
- All voters were correctly recorded in the poll books and in the official registers;
- The total number of ballots recorded equals the total number of voters recorded in the poll books and matches the number who signed into vote;
- Voters in each precinct were given the correct ballots (correctly programmed with the right ballot definitions) and allowed to vote on all issues that voters were entitled;
- The manual audit totals actually match the electronic counts used to tally the votes;
- Proper security procedures are used to secure the voting machines and ensure that its software is accurately counting votes; and,
- The process to secure ballots and ensure vote count integrity is sufficient.

Please investigate this situation. Please take appropriate action.

Best Regards,

Kathy Dopp  
President, National Election Data Archive  
P.O. Box 682556  
Park City, UT 84068

Exhibit “J”

GRAMA Attorney Fee Letter to Summit County



UTAH LEGAL CLINIC  
214 East Fifth South Street  
Salt Lake City, Utah 84111-3204  
(801) 328-9531

**FILE**

Attorney  
Brian M. Barnard

Fax Number  
(801) 328-9533

September 8, 2007

KENT JONES  
SUMMIT COUNTY CLERK  
SUMMIT COUNTY OFFICES  
60 North Main  
P.O. Box 128  
Coalville UT 84017

RE: GRAMA Claim  
Statutory Notice & Claim for Attorney Fees

Dear Mr. Jones:

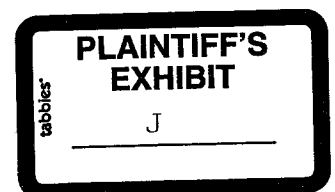
This office represents US COUNT VOTES and Kathy Dopp. In 2006, they made various requests under the Utah Government Records Access and Management Act to your office and to your predecessor. They were seeking access to certain documents, records, etc. related to voter registration, poll records, election results, etc.

The GRAMA requests were, in large part, denied. The matter was eventually appealed to the Utah State Records Committee, which upheld the denial of access.

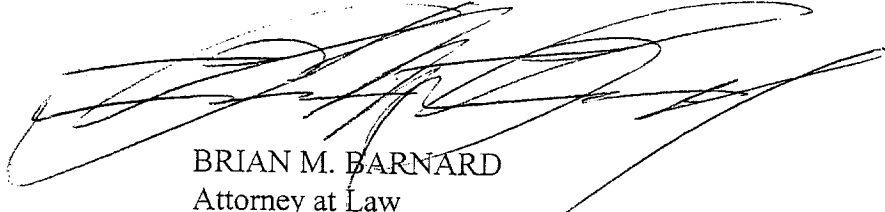
US COUNT VOTES and Kathy Dopp have commenced an action in Third District Court against you and Summit County challenging the denial of access to the requested records. On September 7, 2007, you and the County were served with a copy of the complaint in that action and a summons.

This letter is notice pursuant to Ut. Code Ann. § 63-2-802 (1953 as amended)(copy attached) as well as the Governmental Immunity Act of Utah that US COUNT VOTES and Kathy Dopp have incurred and will incur attorney fees, expenses and court costs in the pursuit of their claim. Demand is made that you and Summit County be responsible for and pay those attorney fees, expenses and court costs. The total amount incurred and to be paid can not be calculated until the litigation is completed.

The position of US COUNT VOTES and Kathy Dopp is: the denial of access is contrary to the terms and provisions of Utah Code Annotated; the documents requested are public records available under GRAMA; the statutory terms upon which the County claims



exemption do not include all records which were denied to US COUNT VOTES and Kathy Dopp; the County's interpretation of the applicable sections of the Utah Code Annotated is contrary to the National Voter Registration Act of 1993, 42 U.S.C. § 1973gg *et seq.* ("NVRA"); and, sections of the Utah Code Annotated are contrary to and violate the NVRA.



BRIAN M. BARNARD  
Attorney at Law

BMB/pdq

cc: Clients

Summit County Commission Chair Sally Elliott  
60 North Main  
P.O. Box 128  
Coalville UT 84017

David Brickey  
Summit County Attorney  
60 North Main  
P.O. Box 128  
Coalville UT 84017

Ut. Code Ann. § 63-2-802. Injunction - Attorneys' fees.

- (1) A district court in this state may enjoin any governmental entity or political subdivision that violates or proposes to violate the provisions of this chapter.
- (2)
  - (a) A district court may assess against any governmental entity or political subdivision reasonable attorneys' fees and other litigation costs reasonably incurred in connection with a judicial appeal of a denial of a records request if the requester substantially prevails.
  - (b) In determining whether to award attorneys' fees under this section, the court shall consider:
    - (i) the public benefit derived from the case;
    - (ii) the nature of the requester's interest in the records; and
    - (iii) whether the governmental entity's or political subdivision's actions had a reasonable basis.
  - (c) Attorneys' fees shall not ordinarily be awarded if the purpose of the litigation is primarily to benefit the requester's financial or commercial interest.
- (3) Neither attorneys' fees nor costs shall be awarded for fees or costs incurred during administrative proceedings.
- (4) Notwithstanding Subsection (2), a court may only award fees and costs incurred in connection with appeals to district courts under Subsection 63-2-404(2) if the fees and costs were incurred 20 or more days after the requester provided to the governmental entity or political subdivision a statement of position that adequately explains the basis for the requester's position.
- (5) Claims for attorneys' fees as provided in this section or for damages are subject to Title 63, Chapter 30d, Governmental Immunity Act of Utah.

