

IN THE UTAH COURT OF APPEALS

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| Nasrulla Khan,                | ) | MEMORANDUM DECISION            |
|                               | ) | (Not For Official Publication) |
| Petitioner and Appellant,     | ) |                                |
|                               | ) | Case No. 20070341-CA           |
| v.                            | ) |                                |
|                               | ) |                                |
| State Records Committee,      | ) | F I L E D                      |
| Department of Public Safety,  | ) | (March 6, 2008)                |
| Robert L. Flowers, and Janell | ) |                                |
| B. Tuttle,                    | ) | 2008 UT App 76                 |
|                               | ) |                                |
| Respondents and Appellees.    | ) |                                |

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Third District, Salt Lake Department, 050921490  
The Honorable Anthony B. Quinn

Attorneys: Nasrulla Khan, Ogden, Appellant Pro Se  
Bridget K. Romano, Salt Lake City, for Appellees

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Before Judges Thorne, Bench, and Orme.

PER CURIAM:

Nasrulla Khan appeals a summary judgment granted on de novo review of a decision on his records request under the Government Records Access and Management Act (GRAMA). See Utah Code Ann. §§ 63-2-101 to -909 (2004 & Supp. 2007).

Khan's August 2005 GRAMA request vaguely referred to any records pertaining to his November 2002 complaint to the Department of Public Safety (the Department) or his claim of illegal activity by the Ogden City Police Department. The Department interpreted the request as seeking records of an investigation, although none was conducted. Accordingly, the Department responded that it had no documents complying with the GRAMA request. However, in response to discovery requests made in the district court, the Department provided all documents in its possession that referred to Khan in any manner. It is not necessary to address whether the Department correctly construed the GRAMA request because we conclude that there is no genuine dispute that the Department responded to discovery by providing any documents referring to Khan.

The Department and the Utah State Records Committee (the Committee) moved for summary judgment on the petition for judicial review, providing supporting affidavits. The affidavit of Rick Wyss, counsel for the Department, attested that he "was unable to locate any documents the Department possessed that were responsive to [Khan's] request because the Department of Public Safety never conducted such an investigation." Wyss further attested that the documents provided during discovery included any nonprivileged records that pertained to Khan in any manner. The affidavit of Janell B. Tuttle, executive secretary of the Committee, stated that the documents provided by the Committee through discovery included anything that pertained to Khan in any manner. Khan simply denied the statements and persisted in his unsupported claim that additional documents existed that were being withheld.

The district court granted summary judgment based upon its ruling that no genuine issue of material fact existed regarding whether the Department and the Committee complied with GRAMA. The court found that undisputed material facts demonstrated the agencies did not fail to produce records because they did not have records of an investigation. The court also found that the agencies had complied with the GRAMA procedures and had given Khan the information to which he was entitled in response to his requests.

Khan claims that the district court erred by reviewing the actions of the Department rather than the order of the Committee. The claim is without merit. Following the ruling of an agency's chief administrative officer on a GRAMA request, a party may elect either to appeal to a records committee or to seek judicial review. See id. § 63-2-402(1). A party may also seek judicial review after an appeal to a records committee. See id. § 63-2-404(1)(a). The court correctly stated that when reviewing a petition for judicial review under GRAMA, the district court shall make a decision on the case de novo after allowing introduction of any evidence presented to the records committee. See id. § 63-2-404(7)(a). Therefore, the district court in this case applied the correct standard of review.

The district court required the Department and the Committee to file a motion for summary judgment supported by affidavits describing the record searches performed and the results of those searches. Rather than demonstrating bias as Khan claims, this procedure afforded him an opportunity to demonstrate that genuine issues of material fact remained for trial on his petition. Khan produced no specific facts demonstrating that other records

existed and were withheld. Hence Khan has not met his burden. In Orvis v. Johnson, 2008 UT 2, ¶ 18, 595 Utah Adv. Rep. 22, the Utah Supreme Court clarified the burden of a nonmoving party who would bear the burden of proof on an issue at trial, stating:

A summary judgment movant, on an issue where the nonmoving party will bear the burden of proof at trial, may satisfy its burden on summary judgment by showing, by reference to "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any" that there is no genuine issue of material fact. Utah R. Civ. P. 56(c). Upon such a showing, whether or not supported by additional affirmative factual evidence, the burden then shifts to the nonmoving party, who "may not rest upon the mere allegations or denials of the pleadings," but "must set forth specific facts showing that there is a genuine issue for trial." Id. [R. 56](e).

Id. Khan also claims that he was entitled to complete copies of documents that were produced in redacted form pursuant to the order of the district court after in camera review. However, he does not raise any legal basis that would entitle him to disclosure of the redacted information. We afford a trial court's decision to grant summary judgment no deference and review it for correctness. See Norman v. Arnold, 2002 UT 81, ¶ 15, 57 P.3d 997.

The district court determined that no genuine issue of fact existed regarding whether the Department or the Committee had provided Khan with all documents responsive to his GRAMA request. In responding to a GRAMA request, a governmental entity "is not required to . . . create a record." Utah Code Ann. § 63-2-201(8)(a) (Supp. 2007). The district court did not err in concluding that there were no genuine issues of material fact and granting summary judgment as a matter of law. Because summary judgment was appropriate, Khan was not entitled to an award of costs in the district court. Similarly, Khan's claim that he was entitled to an award of costs in bringing the motion to compel lacks merit. The district court required the Department to provide redacted copies of two documents, only after in camera review, and denied the motion to compel in all

other respects. Khan's remaining claims have been considered and are without merit.

We affirm.

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William A. Thorne Jr.,  
Associate Presiding Judge

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Russell W. Bench, Judge

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Gregory K. Orme, Judge