

**VIA FIRST CLASS U.S. MAIL**

State of Utah  
State Records Committee  
346 S. Rio Grand Street  
Salt Lake City, UT 84101-1106  
Attn: Ms. Susan Mumford

Re: GRAMA Appeal Hearing, March 19, 2014

Dear Ms. Mumford:

This letter explains the legal authority, under federal law, for the withholding of a certain category of information, specifically records of daily water usage at the Utah Data Center in Bluffdale, Utah, requested by Mr. Nate Carlisle of the *Salt Lake Tribune* in his December 13, 2013 request for information under the Utah Government Records Access and Management Act ("GRAMA"). In his request, Mr. Carlisle asked for the following information:

- A completed copy of the agreement for Bluffdale to provide water to the National Security Agency and/or the Utah Data Center [and,]
- Records of water daily usage at the Utah Data Center from inception to date. If daily water usage is not available, please provide monthly water usage statistics."

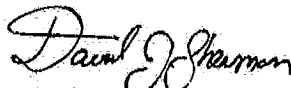
Mr. Carlisle made the above-mentioned request to Mr. Vaughn Pickell, City Attorney, City of Bluffdale, in an e-mail dated December 17, 2013. Mr. Pickell responded to Mr. Carlisle via letter on December 17, 2013, informing him that an updated copy of the requested contract would be made available to him upon the payment of fees, and that, regarding his request for information about daily water usage, the responsive records were exempted from disclosure under GRAMA, per §63G-2-305(12) and §63G-2-305(31). Mr. Carlisle then appealed Mr. Pickell's decision to Mr. Mark Reid, Manager, City of Bluffdale, in correspondence dated January 16, 2014. In his response, Mr. Reid upheld Mr. Pickell's decision to withhold production of the requested agreement until the payment of reasonable fees by Mr. Carlisle, and the decision to withhold information regarding daily water usage at the Utah Data Center. Mr. Carlisle then requested an appeals hearing with the Utah State Records Committee. That hearing is currently scheduled for March 19, 2014.

Should a request for the same or similar records have been submitted directly to the National Security Agency ("NSA"), we would have released the records in part, with redactions of information that reveal any function or activity of the NSA or information with respect to NSA's activities in carrying out its foreign intelligence mission. Such information would have been redacted from the records pursuant to FOIA Exemption 3, 5 U.S.C. §552(b)(3), as the information requested is protected from release pursuant to Section 6 of the National Security Agency Act of 1959, Pub. L. No. 86-36, 73 stat. 63 (codified at 50 U.S.C. § 3605) ("NSA Act").

This statute indicates, in relevant part, “[n]othing in this Act or any other law . . . shall be construed to require the disclosure of the organization or any function of the National Security Agency, [or] of any information with respect to the activities thereof, or of the names, titles, salaries, or number of persons employed by [NSA].” Congress, in enacting the language in this statute, decided that disclosure of any information relating to NSA activities is potentially harmful. See *Hayden v. NSA*, 608 F.2d 1381, 1390 (D.C. Cir. 1979); see also *Wilner v. NSA*, 592 F.3d 60, 75 (2nd Cir. 2010); *Larson, et al. v. Department of State*, 565 F.3d 857, 868 (D.C. Cir. 2009); *Students Against Genocide, et al. v. Department of State, et al.*, 257 F.3d 828 (D.C. Cir. 2001); *Lahr v. National Transp. Safety Bd., et al.*, 453 F. Supp.2d 1153, 1171-73 (C.D. Cal. 2006); *People for the American Way v. NSA*, 462 F.Supp.2d 21, 30 (D.D.C. 2006), *Florida Immigrant Advocacy Center v. NSA*, 380 F.Supp.2d 1332, 1340-41 (S.D. Fla. 2005). Federal courts have held that the protection provided by this statutory privilege is, by its very terms, absolute; See, e.g., *Linder v. NSA*, 94 F. 3d 693 (D.C. Cir. 1996). Section 6 states unequivocally that, notwithstanding any other law, including the FOIA, NSA cannot be compelled to disclose any information with respect to its activities. See *Hayden*, 608 F.2d at 1389. Further, NSA is not required to demonstrate specific harm to national security when invoking this statutory privilege, but only to show that the information relates to its activities. Id. at 1390. To invoke this privilege, NSA must demonstrate only that the information it seeks to protect falls within the scope of Section 6. NSA’s functions and activities are therefore protected from disclosure regardless of whether or not the information is classified.

As part of its responsibilities, NSA collects foreign intelligence, which is gathered, stored, and maintained for analysis, thereby creating our need for the Utah Data Center. In the instant matter, Mr. Carlisle is requesting records of daily water usage at the Utah Data Center from inception to date, and if that information is not available, monthly water usage statistics at the Utah Data Center. However, by computing the water usage rate, one could ultimately determine the computing power and capabilities of the Utah Data Center. Armed with this information, one could then deduce how much intelligence NSA is collecting and maintaining, and this clearly relates to one of NSA’s core missions, which is the collection of foreign intelligence. Likewise, NSA’s water usage rate at this data center clearly relates to NSA activities in carrying out its foreign intelligence mission. As such, NSA would redact information concerning the daily water usage from the records requested by Mr. Carlisle in accordance with Exemption 3 of the FOIA, under Section 6 of the NSA Act of 1959.

Sincerely,



DAVID J. SHERMAN

Associate Director for Policy and Records  
National Security Agency