

Oct. 2007

IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

KEVIN TOLTON, M.D.,

Plaintiff,

vs.

**STATE RECORDS COMMITTEE OF
THE STATE OF UTAH, a Division of
Archives and Records Services of the State
of Utah, and THE TOWN OF ALTA, a
political subdivision of the State of Utah,**

Defendants.

**PARTIAL RULING AND
ORDER (RECORDS REVIEW)**

Civil No. 030914055

Judge Robert K. Hilder

I have previously agreed to review some thousands of pages of documents that the Town of Alta has withheld from production to plaintiff, Dr. Tolton, based on public records law concerning the following classes of documents: attorney/client privilege; personnel records of present and former Alta employees; and certain infrastructure, building and related documents that the Town claims implicate government security documents.

This partial Ruling and Order ("Ruling") addresses my determinations regarding personnel records, and my further instructions regarding an approach to government security records. I will shortly issue a supplemental ruling addressing attorney/client documents, but I am issuing this partial Ruling in response to the Town's ongoing need for access to its personnel records, and to permit counsel to take any action they wish consistent with my instructions regarding the government security records as soon as possible.

APPLICABLE LAW

containing personal information that, if disclosed, would constitute an unwarranted invasion of personal privacy and could jeopardize the life or safety of an individual or the security of the government. UCA § 63-2-304 (10)(11)

Dr. Tolton seeks the Town of Alta's personnel files. Alta responds by arguing that the personnel files contain protected records and disclosure could constitute an invasion of an individual's personal privacy.

Dr. Tolton responds by arguing any portion of the personnel files that is not designated as "private, controlled or protected" is public record and therefore should be made available for inspection and copying. Again, Dr. Tolton may be right in principle, but any right of access to protected rights as defined above should not be unfettered. Dr. Tolton must show a particularized need.

PERSONNEL RECORDS

Review of two full boxes of personnel files shows that the documents fall into ten main categories, with the exception of the miscellaneous category discussed below. Each category is listed below, along with the documents I find fit the categorization, along with my determination of what protections apply:

1. Insurance Applications

- *Life insurance applications
- *Health insurance applications (Blue Cross Blue Shield)
- *Dental insurance applications (DentalWise)
- *COBRA election forms, notice of event and termination
- * Statements of pre-existing conditions/health questionnaires

The life, health and dental insurance applications along with the COBRA election forms

*doctor's letters

This medical information is protected as private pursuant to UCA § 63-2-302(b) and may also be controlled under UCA § 63-2-303.

10. Miscellaneous

*Authorization for release of employment records for product liability litigation

*Handwritten letters

*Agreement between ATF and Alta Marshall's Office regarding overtime salary and project safe neighborhood

*Secondary employment indemnity agreement with Utah Attorney General

RULING AND ORDER

The above list contains just a sample of documents that are specific to certain employees. This brief list demonstrates the reality that, after about 200,000 documents have been produced, the Town of Alta has shown that it has acted in good faith. The classifications are accurate. Virtually nothing in the personnel files appears to be responsive to Dr. Tolton's stated objective to prove Alta's "anti-development agenda," or discover evidence of "favoritism, arbitrary and unique access to utilities, [and the] fostering [of] private rather than public objectives."

Based on the applicable law, and my review of the files, it is hereby **ORDERED** that the Town of Alta will have no obligation to produce any personnel records at this time. The court will consider specific requests from Dr. Tolton that make a good faith showing of at least the following factors: (1) that the document or class of documents is not protected in any way, or is subject to an exception; for example, those found in Utah Code Ann. § 63-2-301(2)(b) and/or 63-2-301(3)(o). And, (2) that Dr. Tolton has a good faith basis for asserting that he desires access for one of the purposes identified by him in his submissions to this court. I note that Dr. Tolton

has argued for a narrow exception to disclosure and a strong public policy in favor of disclosure, and both arguments have some force. In this case; however, the Town has disclosed records in great numbers, and I find that the application of the rules has been in favor of disclosure thus far. For these specific personnel records; however, it is my determination that strong privacy issues exist, and that Dr. Tolton's own reference to his "particularized need" for the records should be a guiding principle as the court considers any additional disclosure.

In the event Dr. Tolton makes any such request, in conformance with this Order, the Town of Alta shall have fifteen days to file a response either opposing the request, or agreeing in whole or in part, and stating the cost that Dr. Tolton must bear to obtain the documents.

Because the foregoing categorization is merely a summary of my review of many files, I will also add at this point a specific inventory of a sample of about twenty files to give counsel and Dr. Tolton a more complete understanding of the content of the files, with names and most obvious identifying information deleted:

Employee A:

- *Life Insurance Application
- *Fannie Mae request for employment verification for loan (x2)
- *Blue Cross/BlueShield HealthWise application
- *E-27 addition of family member to insurance
- *W-4 Form: Employee's Withholding Allowance Certificate (1992, 1988, 1987)
- *Authorization for release of personnel and employment records from 1982- present to Orthopedic "Bone Screw" Product Liability litigation
- *Blue Cross/Blue Shield Health Questionnaire
- *Group Insurance Coverage information
- *Cobra Election Form
- *Acknowledgment of receipt of Employee Manual for Town of Alta

Employee B

- *W-4 Form: Employee's Withholding Allowance Certificate (2007, 1995, 1992, 1991, 1988, 1987)
- *Cafeteria Plan Claim Form
- *Flex Account Claim Form

- *correspondence between claims manager to employee RE: insurance coverage on date of accident
- *correspondence between town clerk K Black and claims manager RE: information on original accident dates
- *Letters from employee to K Black RE: accident; envelopes with personal addresses
- *Individual Life Insurance Certificates/Forms
- *Forms
- *Schedule states: covered person, group policy number, date of coverage, maximum benefit, beneficiary
- *Employee Termination of Employment & Salary Changes (effective dates and new salary amounts)

Employee S

- *Unemployment request/employer notice
- *hand written notes from discussion with employee
- *hand typed notes RE: concerns about employee's performance
- *employee manual acknowledgment
- *job description and wages
- *Form !-4: 1993
- *hand written notes from meeting with employee

Employee T

- *COBRA application
- *Blue Cross Blue Shield letter RE: COBRA
- *Blue Cross Blue Shield application for health insurance
- *personal messages
- * 2 Letters of appreciation RE: assisting a guest suffering from heart pains
- *Letter from Town Clerk RE: employee's bi-weekly salary
- *employee manual acknowledgment
- *Blue Cross Blue Shield effective date confirmation
- *Form W-4: 1995
- *DentalWise application for membership
- *Application for Group Life/disability insurance

GOVERNMENT SECURITY RECORDS

I have reviewed the three boxes of documents designated "government security" in sufficient detail to reluctantly conclude that meaningful review is beyond my expertise, and beyond the expertise of any lawyer who is not trained in civil engineering, or perhaps architecture. Accordingly, if Dr. Tolton wishes to pursue review of these documents, he shall