

# Utah Jails Can't Hide Records In The 'Cloud,' Lawsuit Claims

By WHITTNEY EVANS

Link: <http://kuer.org/post/utah-jails-can-t-hide-records-cloud-lawsuit-claims>

Audio: [https://cpa.ds.npr.org/kuer/audio/2018/06/06072018-ACLU\\_Lawsuit-Whittney.mp3](https://cpa.ds.npr.org/kuer/audio/2018/06/06072018-ACLU_Lawsuit-Whittney.mp3)

Officials at a county jail in Utah have said they won't disclose records to the public, in part because the information is stored on a remote server linked to the internet that only certain employees can access. But in a recently filed lawsuit, the ACLU of Utah and the Disability Law Center claim the government can't hide behind technology, not even the "cloud."

Davis County and other jails in the state have refused to hand over a complete list of the rules and regulations that govern how lockups in the state are run and how jailers care for inmates.

Jail officials have withheld the records on two grounds. They said [a consultant has a copyright](#) on the materials to protect trade secrets. Officials have also claimed they don't have a copy of the records, because that information is stored on password-protected software.

"In this modern world where a lot of data, if not most of it, is cloud-based, can we really have government saying, 'We don't have any records'? We don't possess them. We think that's completely ludicrous," said Aaron Kinikini, the legal director for the [Disability Law Center](#), which sued Davis County to release the records.

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Watchdog groups and media outlets, including KUER, [started asking for the information](#) after 25 Utah jail inmates died in 2016. Six of those deaths were in Davis County.

Attorney [David Reymann](#) represents the ACLU and the Disability Law Center. He said the groups didn't start this fight wanting or even expecting to find evidence of mistreatment.

“We just need to know one way or the other,” Reymann said. “And it benefits everyone, including the jail, if it shows that they have good standards that they’ve been complying with. The problem with secrecy is that when all of this gets withheld, it leaves everybody to assume the worst about what is happening behind closed doors.”

In January, the Utah Sheriff’s Association posted a [redacted version](#) of the standards on its website. But Reymann said the bare-bones list lacks crucial information, so it’s not really useful.

Utah’s open records law, known as [GRAMA](#), is clear on what’s a public record and what is not. Public records include administrative staff manuals, instructions and policy statements.

“The law is always playing a little bit of catchup with technology,” Reymann said. “But GRAMA has been pretty forward looking in this way and is explicit in saying that an agency can’t use the way it stores a record to deny public access. And we think that’s what’s going on here.”

(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 63G-2-201(3)(b), Section 63G-2-302, 63G-2-304, or 63G-2-305:  
(a) administrative staff manuals, instructions to staff, and statements of policy;  
(b) records documenting a contractor’s or private provider’s compliance with the terms of a contract with a governmental entity;

*The ACLU argues jail standards are considered public record according to Utah's open records laws.*

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This issue has cropped up in different cases across the country.

Last year a Superior Court judge in California required San Jose officials to turn over communications about city business they’d shared on their private devices and email accounts.

“Pretty uniformly across the federal and state courts, they’ve more or less held that it’s not really the medium that a record is held in,” said Adam Marshall, an attorney with the Washington.D.C-based [Reporters Committee for Freedom of the Press](#).

“It’s the function that it plays in the business of government, so it doesn’t matter whether the information is stored on a piece of paper or in an email or on a WhatsApp message,” Marshall said. “What matters is how that information is part of the operations of government and what it shows about what the government is doing.”

But the “cloud” argument isn’t the only hurdle — the jailers say they don’t own the standards. Officials signed a contract they assert bans them from reproducing or sharing the documents. Those records are not

In April, the ACLU appealed Davis County's decision to release only redacted records to the Utah Open Records Committee, which ultimately ruled in favor of the county.

Members of the Open Records Committee are volunteers, not lawyers. There is a provision in GRAMA that precludes copyrights and trade secrets. How that weighs against the public's right to know remains a question as the Open Records Committee decided it wasn't their call.

(b) "Record" does not mean:

- (i) a personal note or personal communication prepared or received by an employee or officer of a governmental entity:
  - (A) in a capacity other than the employee's or officer's governmental capacity; or
  - (B) that is unrelated to the conduct of the public's business;
- (ii) a temporary draft or similar material prepared for the originator's personal use or prepared by the originator for the personal use of an individual for whom the originator is working;
- (iii) material that is legally owned by an individual in the individual's private capacity;
- (iv) material to which access is limited by the laws of copyright or patent unless the copyright or patent is owned by a governmental entity or political subdivision;

*Davis County Jail officials claim that because a private consultant wrote the standards, he owns a copyright and can preclude access to the documents.*

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Members of the committee didn't respond to requests for comment. But in a recording from the April meeting, a committee member joked that they're passing the buck, saying "I know absolutely what I'd do if this was a family situation. I'd make a decision and say go ask mom."

In this case, mom is a District Court judge.