

Judge orders release of Utah jail standards, ruling copyright is not a blanket protection

By MARK SHENEFELT Standard-Examiner

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FARMINGTON — A judge has ruled that Davis County must release Utah Jail Standards documents to two civil liberties groups, determining that Utah's public records law allows such disclosures under the federal copyright fair use doctrine.

The American Civil Liberties Union of Utah and the Disability Law Center petitioned the 2nd District Court in 2017 to overturn the county's denial of a request for the records, which counties around the state at the time used for legal guidance in running their jails.

The request came during a year in which scrutiny of jails was intensifying. A record 25 people died in Utah jails in 2016. Davis County failed a state jail inspection that year, but records with the details were withheld. Civil libertarians argue seeing such records is vital for public understanding of how jails care for inmates.

Judge David Connors, who in January presided over a three-day trial in the records dispute, ruled Thursday that the Utah Jail Standards are records under the Utah Government Records Access and Management Act.

He said that is because release of the records to the civil liberties groups constitutes fair use as defined by the federal copyright doctrine.

Davis County, and later the State Records Committee, denied the records request on the grounds that they were owned and controlled by a copyright holder, Deland and Associates. The county interpreted GRAMA's copyright reference "as a prohibition on any materials being released under GRAMA that are, or could be, protected by copyright."

However, Connors ruled the GRAMA provision that says records releases are "limited by the laws of copyright" does not preclude the release of all records protected by copyright.

During the trial, Deland, who wrote the standards for the Utah Sheriffs' Association, testified that he personally held the copyright. Deland later sold modified versions of the standards to jails in other states.

But Connors said the county was unable to show Deland was the copyright owner. He said the standards apparently were a derivative version of prison standards Deland earlier wrote and copyrighted under his company name, and that the Utah Jail Standards never were copyrighted. He said the civil liberties groups also prevailed on the question of whether releasing the standards would harm the financial interests of Deland and the current owner of the standards, the National Institute of Jail Operations.

The evidence did not show that the standards' release for the civil libertarians' "noncommercial use of education and advocacy would impact the market for or value of the copyrighted work," Connors wrote. He said the use "easily" falls within the fair use doctrine.

During the trial, the judge told the county's attorneys that Deland or NIJA could sue the civil liberties groups if they went beyond fair use of the documents, and an attorney for the groups said a competing jail standards company could not obtain the records with a fair use argument.

Jeremy Brodis, an attorney representing the ACLU and the Disability Law Center, said Friday that Connors' ruling is an important judicial interpretation that copyright is not a "massive exception" in GRAMA.

"Copyright is a pretty big problem for GRAMA because a lot of records generated outside of government make their way into government hands," Brodis said.

Connors said he found no Utah case law on the GRAMA copyright question. He cited several decisions in other state and federal courts.

A U.S. appeals court said interpreting records laws to exclude from release any materials that have been copyrighted "would allow an agency to mask its processes or functions from public scrutiny simply by asserting a third party's copyright."

Brodis said Connors' ruling did not analyze broadly the issue of wider public disclosure of the jail records. But now for other requesters, "the framework to be applied would be to apply copyright law," Brodis said.

Efforts to contact Neal Geddes, Davis County's chief civil deputy attorney, were not immediately successful.

Connors said that before releasing the records to the civil libertarians, he would review the jail records for redaction of any security concerns the Sheriff's Office might have.

In reforms following the record year of jail deaths, the Utah Legislature ordered in 2018 that jails disclose annual information about jail deaths and the care of inmates suffering from drug addiction or mental health issues.

Davis County still is defending against two federal civil rights suits over jail deaths in 2016 and 2017. Since the current sheriff, Kelly Sparks, took office in 2019, the jail has added programs to better screen incoming inmates for mental health and drug withdrawal problems.

You can reach reporter Mark Shenefelt at mshenefelt@standard.net. Follow him on Twitter at [@mshenefelt](https://twitter.com/mshenefelt).