

STATE RECORDS COMMITTEE MEETING

Location: Courtyard Meeting Room, 346 S. Rio Grande Str., SLC, UT 84101

Date: December 11, 2014

Time: 9:00 a.m. to 12:25 p.m.

Committee Members Present:

Patricia Smith-Mansfield, Chair, Governor's Designee
David Fleming, Private Sector Records Manager
Marie Cornwall, Citizen Representative
Tom Haraldsen, Media Representative
Holly Richardson, Citizen Representative
Blaine Breshears, Elected Official Representative

Member Absent:

Doug Misner, History Designee

Legal Counsel:

Paul Tonks, Attorney General's Office
David Jones, Attorney General's Office
Nicole Alder, Paralegal, Attorney General's Office

Executive Secretary:

Nova Dubovik, Utah State Archives

Telephonic Attendance:

Laura Smith/*Truth in Advertising, Inc.*
Daniel Rivera

Others Present:

Rosemary Cundiff, Ombudsman
Blake Hamilton, Attorney
David J. Pierson, Dept. of Commerce
Daniel O'Bannon, Dept. of Commerce
Francine Giani, Dept. of Commerce
Tom Brady, Dept. of Commerce
Carol Verdoia, AG, DCFS
Blaine Ferguson, Attorney General's Office
Leslie Larson, State Auditor's Office
Dan Harrie, *Salt Lake Tribune*
Kendra Yates, Archives staff

Nate Carlisle, *Salt Lake Tribune*
Jason Boren, JSSD
Zaren A. Sargsian, JSSD
Ché Arguello, Attorney General's Office
Catherine Taylor, DHS
Lorianne Ouderkirk, Archives staff
Cameron Mansen, Archives staff
Rebekkah Shaw, Archives staff
Renée Wilson, Archives staff

Agenda:

- Four Hearings Scheduled
- Approval of Retention Schedules
- Approval of Minutes
- Report on Appeals Received
- Report on Cases in District Court
- Other Business

I. Call to Order:

The meeting was called to order at 9:02 a.m. by the Chair, Ms. Patricia Smith-Mansfield, and she welcomed a new member Sheriff Blaine Breshears, Elected Official Representative, from Morgan County.

Ms. Smith-Mansfield introduced the parties for the first hearing: Mr. Daniel Rivera, Petitioner, and Ms. Carol Verdoia, representing on behalf of the Division of Child and Family Services (DCFS), from the Attorney General's Office.

II. Hearing: Daniel Rivera Jr. vs. Department of Human Services, DCFS

The Chair, announces there is a possible resolution to the Daniel Rivera vs. DCFS hearing and asks Ms. Verdoia to introduce herself and to explain the latest development on Mr. Rivera's GRAMA request. Ms. Verdoia explained that on December 10, 2014 the Attorney General's Office discovered that Mr. Rivera had requested the same records from law enforcement and it had a packet of information ready to deliver once Mr. Rivera pays the \$7.00 fee. The Committee Chair explained to Mr. Rivera the latest developments. Mr. Rivera stated he wants, in addition to law enforcements packet, the record that DCFS has in their custody to compare the records held in other agencies who were involved with the investigation that led to his parental rights termination. He asked for the hearing to proceed.

The Committee Chair explained the hearing procedures to both parties.

Opening-Petitioner

Mr. Rivera believes a raid conducted on his house on October 28, 2011 was the basis for terminating parental rights of his three children and wants the record that DCFS is holding. He received an undated denial letter on November 14, 2014, from Ms. Linda Bright, DCFS Records Officer, explaining that DCFS did not possess the records from the raid conducted on his house. He continues that he appealed to Ms. Sonia Sweeney, Chief Administrative Officer, and she directed Ms. Bright to conduct another search for the records after which they were located; subsequently Ms. Sweeney stated he could not have the records because they were classified private and he was not the subject of the record. Mr. Rivera argues how could he not be the subject of the records if it was his residence that was raided and his parental rights terminated? He believes the state is hiding something which he gleaned from the current records in his possession and that the state has changed information to help their case for terminating his parental rights.

Opening-Respondent

Ms. Verdoia, acting on behalf of the DCFS from the Attorney General's Office, alerts the Committee that some of the references that Mr. Rivera made in his opening statement involve confidential juvenile court and DCFS proceedings, and there may be times identities or certain information cannot be discussed in an open forum. She clarifies and discusses the procedures that took place over the initial GRAMA request. Mr. Rivera did submit a request for access to a police report from the October 28, 2011 raid on a residence in Roy, Utah. DCFS initially denied the request based upon his parental rights having been terminated. Mr. Rivera appealed to the chief administrative officer who contacted DCFS to conduct another search, but they found no records meeting the description to his request. Therefore, the chief administrative officer upheld the denial, although on different grounds than the initial denial because this time no records were found. Subsequently, or at the same time Mr. Rivera appealed to the State Records Committee, DCFS discovered that a record existed, and had not been in the file during the initial search. DCFS notified Mr. Rivera that a record matching the description in the request had been located, but that his access was denied because the record was classified as private and he is not the subject of the record.

Counsel continued that the record at issue is an investigative law enforcement report that was shared with DCFS under the record sharing statute Utah Code § 63G-2-206, and DCFS is bound to the same statute as law enforcement. The other procedural fact that Mr. Rivera refers to is, the report was used to terminate his parental rights, and as stated in the written statement to the Committee, that is not accurate. He relinquished his parental rights voluntary to his own petition. The state did not present evidence of the raid nor did the raid have anything to do with his conduct or the grounds to terminate parental rights.

Testimony-Petitioner

Mr. Rivera states that he has a copy of a letter sent on August 25, 2014, to Ms. Karma Dixon, Assistant Attorney General, in it he asked specifically for any and all police reports, warrants, statements of any children; any and all statements from DCFS as well as petitions, motions, and exhibits that were filed. He continues the testimony with references to the Appellee's Statement of Facts, Reasons and Legal Authority ("Statement of Facts"). He questions that there might be possible tampering with his case if the records existed but not when the file was initially searched by the records officer. It is also argued that although the Statement of Facts states he is not the subject of the record, because his name is not on the front page of the investigative report and that he was not involved during the investigation or charged with any conviction for the incident, is irrelevant because he was the subject of the search warrant. In addition, the State knows who he is because it had his correct date of birth and information and used that to terminate his parental rights.

The Petitioner points to the Statement of Facts where it mentions he voluntarily relinquished his parental rights as a result of the incident reflected in the police investigation. He emphasizes that the state served the petition on him to terminate his parental rights, he did not voluntarily petition to terminate his rights.

In conclusion, the reasons provided by the state as to why he could not have the records were the following: parental rights were terminated; can't find the records; not the subject of the record; classified as private and DCFS does not possess the records. Mr. Rivera wants clarification as to which reasoning is correct for being denied the records.

Testimony-Respondent

Ms. Verdoia clarifies to the Committee that Ms. Karma Dixon has retired and no longer works in the office. She continues to explain the October 28, 2011 law enforcement report is a shared documents with DCFS as part of the dual statutory obligation that DCFS and law enforcement share when investigating child abuse and neglect subject to Utah Code § 63G-2-206(6). This particular document does involve minor children, however the parental rights were relinquished by Mr. Rivera. She explains that DCFS did not generate the investigative report and it has to follow law enforcement's lead to determine what information needs to be protected. She noted the document references a confidential informant which law enforcement has already told DCFS needs to be protected, because some of the context and substance in the report could point to an identity and that is a of great concern to law enforcement.

As to the classification, these matters can be complicated when they pertain to shared records especially with law enforcement. DCFS does not have the insight to know if there are pending investigations or other issues going on with individuals or cases. DCSF is ultimately subject to the same restriction on the disclosure as law enforcement would want them to be under the shared records statute. She believes Mr. Rivera needs to contact and receive the information from law enforcement because they are the record creators. Even though the raid was three years ago law enforcement actually has up to 4 years under the statute of limitations to file felony charges; and that is information that DCFS is not always privy to. In conclusion, DCFS's denial should be upheld because DCFS does not know what law enforcement requires to be protected in the document, furthermore law enforcement has indicated it has a packet ready to deliver to Mr. Rivera upon payment of \$7.00 fee.

Ms. Cornwall outlines and clarifies the terms of the GRAMA request. The initial GRAMA request is a police report and any other document in DCFS's position. The problem is that they are not the originators of the document and do not have the authority to release them under the shared record statute. Further, law enforcement should be the focus not DCFS, and they already have a packet available and is ready to be delivered upon payment of the \$7.00 fee. Those are the essential facts related to this GRAMA request. Counsel agrees with the Committee.

Ms. Smith-Mansfield queries if there is any way DCFS can cooperate with law enforcement and redact the copy DCFS possesses to reflect what law enforcement requires under the shared records statute and still uphold the Utah Code § 63G-2-206 provision. Ms. Verdoia responds that they can certainly communicate with law enforcement, however her experience is that law enforcement wants to be the one who distributes the information, more than likely because they want to be able to make those decisions. If the Committee wants DCFS to work with law enforcement they are more

than willing to do so but they cannot be certain that law enforcement will allow DCFS to release the documents, but they can try.

Ms. Cornwall mentions that Mr. Rivera should look at what law enforcement is willing to provide because it may provide the information he is seeking. Ms. Verdoia agrees it would be a more efficient way to deal with the GRAMA request.

Ms. Smith-Mansfield explains that with a private classification this case is a bit unusual because usually investigative reports are classified protected under Utah Code § 63G-2-305(10), because it is clearly a warranted invasion of privacy, which is a higher bar than just an invasion of privacy. Could that personal identifying information be easily redacted from the investigative report? Ms. Verdoia responds that if she understands what information law enforcement wants protected it can be redacted. In addition she explains that DCFS should have placed a protected classification on the shared document not private because of the sensitive information within the report.

Closing-Petitioner

Mr. Rivera asks if he can request a copy of the petition that shows his relinquished parental rights. He makes a plea to the Committee for consideration and to allow him access to the records he is requesting from DCFS. He is trying to obtain records from both governmental entities to assist with the civil case pertaining to his parental rights being terminated.

Closing-Respondent

Ms. Verdoia restates the originating entity is law enforcement and DCFS does not feel comfortable releasing the document without law enforcement actually participating in the GRAMA request. The GRAMA request that Mr. Rivera has already sent to law enforcement is the best chance of receiving access to information he seeks and making sure the originating entity has the opportunity, because it is their document, to redact whatever information they feel is appropriate. In conclusion, DCFS denial should be upheld.

Deliberation

The Committee deliberates discussing whether to go *in camera* to review the investigative report. After a long discussion, the Committee agree the petitioner should go to the governmental entity who created the record, because it already has a packet available for a fee of \$7.00. The Committee members conclude *in camera* is not necessary and make a motion on the hearing.

Motion-A motion was made by Ms. Cornwall that in accordance to Utah Code § 63G-2-206 (1)(b) as a protected and shared document the committee feels that DCSF is justified in not wanting to release shared document. The originating entity is in the best position to release the document. Access to the report is denied through DCSF and the petitioner is encouraged to seek the document through law enforcement. The motion was seconded by Mr. David Fleming. A vote was unanimous, 6-0.

5 Minute Break

The Chair introduced the parties: Ms. Laura Smith representing *Truth in Advertising, Inc.*, petitioner, and Mr. Ché Arguello, Attorney General's Office, for the Department of Commerce, and explained the hearing procedures to both parties.

III. Hearing: Laura Smith/*Truth in Advertising, Inc.* vs. Department of Commerce, Division of Consumer Protection.

Opening-Petitioner

Ms. Laura Smith, Legal Director of *Truth in Advertising, Inc.*, (TINA) on August 28, 2014, TINA requested copies of citations, settlements, and redacted consumer complaints regarding three Utah companies: Vapex LLC, Sinless Vapor LLC, and OZN Web LLC. TINA has been provided the citations and settlements but have been denied the redacted copies of the consumer complaints. Ms. Smith expresses that the reasons for the denial of the requested records has been a moving target. She explains first when the Division had not made public whether or not a company is under investigation, as in the prior appeal with Wake up Now, it takes the position that it is required to investigate every single complaint it receives and therefore disclosing consumer complaints would reveal the confidential fact that the company is under investigation. Then when a company is actually under investigation and the information is made public by way of a citation, but the investigation has not yet concluded as was the case during the time of the initial request, the department takes the position that the disclosure of consumer complaints could reasonably be expected to interfere with enforcing proceedings. Now that the investigations are completed and the companies have all entered into settlements the Division is now taking the position that it will never disclose consumer complaints, because the legislature did not intend them to be public information. The Division supports that position by citing Utah Code § 13-11-7. The Division is making the outlined list in Statute 13 exhaustive as to what will be made public.

Furthermore, the Utah Consumers Sales Practices Act states that it is to be construed liberally to make Utah's regulations of consumers' sales practices not inconsistent with the policies of the Federal Trade Commission (FTC) Act relating to consumer protection. In that regard the FTC regularly provides TINA with copies of consumer complaints upon request including in this case. TINA had requested copies of consumer complaints filed against Vapex LLC, Sinless Vapor LLC, and OZN Web LLC and FTC provided those records. In conclusion, TINA urges the Committee to consider Utah Code § 63G-2-201 in the ruling. Ms. Smith concluded *Truth in Advertising, Inc.*, respectfully disagrees with the Division's decision and appeals its position and renews the request for copies of the consumer complaints relating to the three Utah companies, of course with personal identifying information redacted.

Opening-Respondent

Mr. Arguello is appearing on behalf of his client, the Department of Commerce, Division of Consumer Protections. He summarized, that in this particular case the three companies investigated resulted in an action and it was done under the Consumer Sales Practice Act. There are many Acts under Utah Code § 13-11-7 that his client has the ability to enforce,

therefore the behavior of the client in respect of these complaints is governed by Title 13. Title 13 has within it confidential provisions that the client is obligated to follow. TINA couches the issues that his client will not provide these documents, then says because the Division will not provide the documents insinuates there is something nefarious going on and that is inappropriate, dangerous, and offensive. The issue is that his client does not believe it has the authority to release the documents whether or not they want to because they are bound by the provision of Title 13. The legislature gave the authority to his client to investigate complaints that come under the Consumer Sales Practice Act and to strike an appropriate balance of protecting the consumers and balancing the interest of the companies. In striking that balance the legislature created Utah Code § 13-11-7 which is the confidential provision that puts forth those documents that will be public and it does not include consumer complaints. It is the Division's position that because the legislature specifically excluded consumer complaints from that provision of what is included in the public file, the client cannot turn it over.

Testimony-Petitioner

Ms. Smith addressed the Committee that Utah Code § 13-11-7 lists three documents the legislature, in Mr. Arguello's opinion, are deemed to be public and those are the only ones that are public. The list does not include citations, but those are readily disclosed by the department even though they are not listed in Title 13. Consumer complaints are not listed in Title 13, but that is not an automatic bar of disclosure as seen with the citations. She ends with stating the Division tells its own consumers on its website that it may not investigate the complaints it receives but it will screen them. Therefore a consumer complaint is not automatically an investigative record.

Testimony-Respondent

Mr. Arguello explains the Division's position is that administrative citations are a form of final judgment at the point the citation is issued after an investigation into the nature of the allegations has been completed; and his client who has the enforcement authority for the act, brings that citation that is a form of final judgment in their opinion. When there is a hearing the subject of that citation has the ability under the law to challenge that citation. In these cases the parties were able to challenge by way of the Settlement Agreement, this is another form of final judgment. The reason why consumer complaints are being discussed is because they are not being published and if the provisions of Utah Code § 13-11-7(d) mandates that his client receive and act on complaints, and then refers to Utah Code § 13-11-7(e), the complaints come under a confidentially provision. This provision indicates and mandates that his client maintain a public file and it specifically excludes consumer complaints. If the language of GRAMA is clear then under most circumstances complaints are not public. The Division investigates if there is merit, if the complainant is credible, and then at the end of an investigation the results are brought forth in any number of public fashions. When the Division investigates a complaint and allegations and it is discovered they have merit they make it public in the appropriate fashion through the appropriate adjudicative proceedings.

The Committee questions the Division's interpretation of the Utah Code § 13 -11-7(1)(e) and (1)(c) as to why it would specifically exclude consumer complaints only because

they are not written in the Code. In response, the Counsel explains his client maintains a public file and Utah Code § 13-11-7(8) lists what goes in the public file. In the Code the list does not include consumer complaints, and the position of the client is that had it been listed the legislature would have included it in the Utah Code § 13-11-7 (1)(e).

Mr. Haraldsen offers thoughts about the Division's argument. If the Division of Consumer Protection, is designed to protect the consumers why is the public not allowed to know when the Division has received complaints? Is there a threshold in place that is triggered when a certain number of complaints are submitted, at what point, if ever, does it become appropriate to tell the public that there has been filed complaints about an operation of a company. He states there may well be a flaw within the law and is probably why *Truth in Advertising Inc.*, is bringing this issue to the Committee. Mr. Haraldsen believes the Divisions interpretation of the law, not to release consumer complaints, is flawed and the legislatures should address the issue. Mr. Arguello acknowledges the concern and that there may be a legitimate discussion that should not end at the hearing and something that legislation has the ability to fix depending on whether the law is or is not flawed.

Mr. Fleming questions the status of the three companies versus the previous matter heard on Wake Up Now in November. He asks is there some finding that was published as far as these three entities that are the subject of this hearing. Counsel explains that the Division received a variety of complaints from sources about the three Utah companies. In reviewing those complaints the Division found it appropriate to bring administrative citations citing these companies. The citations were issued and the companies had the ability to challenge those citation. The three companies did engage in a challenge to those citations and were able to resolve the issues with his client and the resolutions of those issues were encompassed in a Settlement Agreement with all three companies and the Division of Consumer Protection. Certain compliance provisions within those agreements continue to be monitored. From the Divisions position, although there are settlement agreements, these are still ongoing matters that are being monitored because the companies have compliance provisions that they are mandated to do and comply with.

Closing-Petitioner

Ms. Smith responded to a few points that were raised by the Committee's questioning. First, TINA is not seeking complaints to show the state's position with respect to the company but simply to show consumer experiences with the company that is located in Utah. Second, nowhere in Title 13 does it state that the consumer complaints are not public, that is the Divisions interpretation of what the legislature must have intended when it was written. She continues to outline the documents and argue that it is the Divisions interpretation of the statute and it clearly does not stipulate the information TINA is seeking.

Closing-Respondent

Mr. Arguello responds by explaining that citations do become final judgment and are an enforcement; further the fines are an absolute final judgment unless challenged by the company that received them. In this particular case there was a challenge and a

Settlement Agreement, and had there not been a challenge the results of the investigation into the company would have been citations. The fact the companies engaged in negotiations when they received the citations, then evolved into a subsequent agreements and less a formal judgment, was not the final step in these particular cases because of challenges.

Deliberation

Ms. Holly Richardson comments on the adversarial position that the Department of Commerce has taken and is very concerned with the notion from Counsel that the legislature deliberately omitted specific items when they passed the law, and does not believe that to be the case. She continues, that having first-hand experience being in the legislature, frequently and probably almost always laws that are passed address a specific situation and not every single situation can possibly be contemplated and included or excluded in the law. She does not agree the law is clear cut and does not agree the law, as written, specifically precludes the Division from releasing the information.

The Committee agrees that it makes no sense that the legislature could anticipate by omission of certain documents the Division would be asked to disclose and therefore should not. Further, generally when the legislature wants something excluded they write it into the law.

The Committee members discuss the particular differences from this hearing from the one in November. They conclude because the governmental entity is monitoring the business and ensuring they comply with the settlement agreement, and it is an ongoing matter but it is no longer an ongoing investigation, the information is now public. Further, the application of personal privacy states that the entities' names have been released and made public record, however the person(s) who made the complaint can be redacted from the documents in accordance with Utah Code § 63G-2-302(2)(d).

Motion-A motion was made by Mr. Fleming that the request be granted with personal information of the complainants be redacted, in accordance to Utah Code § 63G-2-302(2)(d), it is the understanding of the Committee that because the entity names have been made as a matter of public record under Utah Code § 13-11-7(2). The motion was seconded by Marie Cornwall. A vote was unanimous, 6-0.

Counsel for the Division asked for clarification in the Committee's order whether or not the Committee is ordering the Division of Consumer Protection to turnover and redact copies of complaints that it received from the FTC.

Motion-A secondary motion was made by Ms. Cornwall that the complaints from the FTC are not included pursuant Utah Code § 63G-2-201(3)(b). The motion was seconded by Mr. Fleming. The motion passed 5-1. There was one abstention, Ms. Smith-Mansfield.

5 min break

The Chair introduced the parties: Mr. Jason Boren representing Jordanelle Special District (JSSD), petitioner, and Mr. Paul Tonks, Attorney General's Office, for the Office of the Utah State Auditor. Mr. David Jones, Attorney General's Office, is filling in for Mr. Tonks as the Committee's Legal Counsel and explained the hearing procedures to the parties.

III. Hearing: Jordanelle Special Service District (JSSD) vs. Office of the Utah State Auditor Opening-Petitioner

Mr. Boren is appearing on behalf of his client, Jordanelle Special Service District (JSSD). He addressed the Committee stating the question is whether a Standstill Agreement, which was negotiated between private litigants, is a protected record when it was sent by email to the Office of the State Auditor. The Auditor has stated that it is a protected record under Utah Code § 63G-2-305(16) and that the documents relate to the audit that is being conducted by the State Auditor.

Mr. Boren provides background on the JSSD explaining that it was created by Wasatch County over twenty years ago and is a separate and distinct entity in which Wasatch County is the governing body. JSSD is currently embroiled in a several lawsuits involving the creation of a special service area and the construction of certain improvements within that area. In January 2014, the Utah State Auditor's office commenced an audit into the "potential misuse of credit cards."

During the audit one of the attorneys for the private litigants suing JSSD emailed the Standstill Agreement to the State Auditor dated March 13, 2014. The attorney made representations that the Governor is on the attorney's side of the litigation as is the State Auditor. In order to obtain some of the representations and activities that took place by the private litigants and counsel for the private litigants JSSD issued a GRAMA request on July 21, 2014, to the Office of the State Auditor requesting "any and all documents and other records, including all communications between the Office of the Utah State Auditor and any other person, that relate to the "Standstill Agreement." The second part of the GRAMA request sought "any or all documents that including all communications between the Office of the Utah State Auditor and any other person, that relate to the Utah State Auditors authorization to include his name in the Standstill agreement, and finally any documents whereas the Utah State Auditor disseminated copies of the Standstill Agreement to persons outside of the Utah State Auditor's office after March 2014."

The State Auditor's response to the three records requests was denial of the first, because of the ongoing audit; however the State Auditor responded in regards to the last two requests that he never gave the authority for his name to be used in the Standstill Agreement, and never disseminated any communications regarding the Standstill Agreement to anyone outside of the office. JSSD is unsure who forwarded the Standstill Agreement to the Auditor, but the question becomes is the Standstill Agreement that was negotiated by a third party and not signed and not generated by the State Auditor's office, is it authorized to be used for the ongoing audit. It is JSSD's position that it is not.

Opening-Respondent

Mr. Tonks, Assistant Attorney General for the State of Utah, and assigned counsel for the State Auditor, introduced Ms. Leslie Larson from the Auditor's office. Mr. Tonks addresses the Committee by stating the petitioner's counsel questions whether the Standstill Agreement is a protected record. His client disagrees that this is the issue, because it has been produced therefore it is not a protected record, and it was never considered as such. The only question that the Committee has before it, is the records request that JSSD, a political entity, asked for "any and all documents and other records, including all communications between the Office of the Utah State Auditor and any other person, that relate to the "Standstill Agreement", so it is not the Standstill Agreement that is the question but any documents that are related to that Standstill Agreement.

The position of the State Auditor is that there are documents related to the Standstill Agreement that are also part of the ongoing audit that is taking place with JSSD. And as such Utah Code § 63G-2-305 is directly on point and simply states documents that are part of an ongoing audit will remain protected until the final audit is released if so classified by the State Auditor. In this case the State Auditor has classified the documents protected for the simple reason that while the audit is taking place the office needs to protect what it is they are looking at to the point of whatever communication and complaints and access to records during the ongoing audit. This is an attempt by JSSD to determine what the state auditor is looking at and maybe even find out what individuals are providing information to the state auditor. For this reason the State Auditor has also listed the records protected under Utah Code § 63G-2-305(10) which states a record should be protected when it relates to an ongoing audit and release of the record could in some ways compromise the audit.

Testimony-Petitioner

Mr. Boren explains JSSD is not seeking the documents to determine anything related to the audit. Rather these have to do with representations made by counsel to private litigants, it has to do with claims that are made by private party litigation and that misrepresentations were admittedly made as noted by the counsel stating the Auditor supported the Standstill Agreement. JSSD wants to see the communications relating to the Standstill Agreement and has no intention to interfere with the audit. JSSD argues that the underling information is very pertinent to the private party litigation and it relates to the misrepresentations that were made and there were causes of action that were between these private litigants that they are entitled to. The audit was started in January 2014 and now it is almost a year later and it is uncertain when the audit will be completed. In the mean time they have litigation that is ongoing and JSSD simply cannot wait for the audit to be completed to continue the litigation. The other issue is that although the counsel says the Standstill Agreement is clearly related to the audit, they want to know how. It has never been explained as to how the Standstill Agreement entered in by private third parties relates to the audit. If the Auditor did not authorize it, and did not have anything to do with crafting it and it was simply forwarded to the auditor on March 13, 2014, how does that relate to the audit?

Mr. Fleming asks Mr. Boren to clarify who are the private litigants without saying their names. Mr. Boren responds that the private litigants are the opposing property owners in Wasatch County that receive the benefits of improvements put in place by JSSD.

Testimony-Respondent

Mr. Tonks request that Ms. Leslie Larson be sworn in by the Chair. Ms. Larson identifies herself as the Audit Supervisor for the JSSD case and has been in communication with the Special District since January 2014. Mr. Tonks asks Ms. Larson a few questions pertaining to her position in the Auditor's office, the ongoing audit for JSSD and documents that pertain to JSSD's GRAMA request. Ms. Larson responds that she is the auditor for JSSD, and there has been an ongoing audit since January, and the documents that were requested by JSSD do relate to the Standstill Agreement. Mr. Tonks points out that the Committee was provided statements from the State Auditor and from Ms. Larson that corroborate the position the Standstill Agreement is part of the audit. The actual terms of the Standstill Agreement state the Wasatch County and the JSSD will convene an executive session in the week of March 20, 2014 to consider action to place three JSSD managerial employees on administrative leave during the term of an investigation by the State Auditor and they are to cooperate fully with the State Auditor.

The allegation JSSD makes that the Standstill Agreement was not supported by the State Auditor's office is not true in fact it was used to respond to the second and third GRAMA requests by JSSD. As for JSSD not wanting to interfere the State Auditor, they respectfully disagree with that assertion because when the GRAMA request was made it was the day before the State Auditor went out to JSSD to interview the members of the JSSD board.

It is the opinion of the State Auditor's Office, JSSD is basically attempting to find out more information on their private litigations. The reason why there is a statute like Utah Code § 63G-2-305(16) is because it provides the audit agency the ability to fully investigate and have people communicate with the Auditors' office and to have the confidence that their communications will be confidential during that time of the audit. As to whether after the audit is completed and if those answers will be given out, that is dependent on Utah Code § 643G-2-305(10), because it considers if the information is disclosed would future audits be compromised. Lastly, it is important the State Auditor has the ability to do his job, and his job is to look at governmental entities and have the full confidence that the way it has full discretion to have the protection of the statute to not disclose what is being reviewed, who is being talked to, what communications have been made with the Auditor, until the audit is released. In which those things can be made public but not until the audit is complete.

Ms. Cornwall queries that the document is curious because it is not signed by the Governor nor the State Auditor. Mr. Tonks explains that it was not created by either entity and without their consent. He does not know who actually created the document but it was sent to the Auditor by email and it is related to the Standstill Agreement and audit, and that information is substantiated by Mr. Dougall and Ms. Larson's statements.

Closing-Petitioner

Mr. Boren restates the points made by the Respondents. First, Ms. Larson did not say the Standstill Agreement was related to the audit as he understood her testimony, she stated there are documents that were responsive to the request that were related to the Standstill Agreement. There is no testimony, no evidence, nothing presented in any of the documents as to how they relate to the audit. The document was falsely presented by the property owners in a different litigation and the Auditor admits it was false representation. They have legitimate claims in the underlining litigation that JSSD needs the information for they do not believe communications relating to the Standstill Agreement have anything to do with the audit which is consideration of misuse of credit cards.

Ms. Smith-Mansfield asks how in his argument about the Standstill Agreement is not related to the audit when the Standstill Agreement states to cooperate fully with the State Auditor; and the only time one would cooperate fully with the auditor is during an audit process. She continues to reference the Standstill Agreement pointing out it mentions to “cooperate fully” to “convene an execute session...and place three JSSD managerial employees on administrative leave during the term of the investigation by the State Auditor.” Mr. Boren disputes the assertion and points to the fact a third party crafted the document and forward the communication to the State Auditor. The argument remains, is the Standstill Agreement part of the audit of reviewing the misuse of credit cards. A third party cannot simply come up and draft a nonbinding agreement and then forward that to the auditor and make these misrepresentations. Mr. Boren restates the State Auditor has not shown that they are related and request that the documents they seek be produced.

Closing-Respondent

Mr. Tonks explains that the audit is broader than only credit card misuse. In the Standstill Agreement the JSSD has three board members with administrative actions taken against their employees. The State Auditor wants to find out why, so even if it was just about credit cards the fact they have a document that says they are considering administrative action against three employees is definitely something the Auditor wants to research further. The goal of the Auditor is to protect the financial affairs of the state of Utah. As for evidence the records relate to the audit, Mr. Tonks reads Mr. Dougall’s correspondence to JSSD, quote “[c]urrently the office is conducting an audit of the JSSD. The Standstill Agreement relates to the audit and would not be subject to disclosure pursuant to Utah Code § 63G-2-305(16).” The Auditor has records but they relate to the ongoing audit and Utah Code § 63G-2-305(10) and 305(16) provide the protection to the State Auditor to be able to conduct his business as he should for the public and the state of Utah.

Deliberation

Ms. Cornwall directs her question to Mr. Tonks, and questions why the State Auditor disavows the first two lines that mention the Governor “intends to call the legislature into special session” and “encourages the parties to meet and confer to discuss potential

solutions” of the Standstill Agreement; however Counsel draws upon the paragraphs that state the JSSD will place the “three employees on administrative leave” and “will cooperate fully” to support the State Auditors position. She continues, that if the person who said the Governor and the State Auditor were involved and Counsel is stating they were not involved, then why the Committee should believe the latter is true. Mr. Tonks explains the subject matter of the Standstill Agreement still relates to the audit, the document itself is stating it is administrative action taken by employees. Even though the Auditor’s office is not party to the crafting of the document JSSD is asking for any documents that are related to the Standstill Agreement, and believe there are documents related to it and the document itself talks about things that are involved with the audit.

Motion-A motion was made by Mr. Fleming to go *in camera*. The motion was seconded by Ms. Richardson. A vote was unanimous, 6-0.

Mr. Tonks makes a request to be part of the *in camera* session. Mr. Boren objects to Mr. Tonks motion. The Committee and Legal Counsel decide to deny Mr. Tonks’ request.

In camera 11:43 a.m.

Motion-A motion made by Mr. Fleming to go back in session. The motion was seconded by Ms. Cornwall. A vote was unanimous, 6-0. Hearing resumed at 11:47 a.m.

Motion-A motion was made by Ms. Richardson that the State Auditor’s office has properly classified the documents and the appeal is denied in accordance with Utah Code § 63G-2-305(16). The motion was seconded by Mr. Fleming. The motion passed 4-2. There were two abstentions, Mr. Fleming and Mr. Haraldsen.

IV. Hearing: Nate Carlisle/Salt Lake Tribune vs. Hildale, UT

The appeals to the Records Committee was resolved and withdrawn prior to the hearing proceedings.

V. Approval of Retention Schedules:

State Agencies:

Ms. Kendra Yates presented five record series for the Department of Human Services, Division of Child and Family Services. These records comply with the Adam Walsh Act of 2006. The goal of the Act is to ensure the right people have access to information and resources needed to ensure children are not attacked or abused. The Agency is gathering this information on adults who are prospective adoptive and/or foster parents.

28594-Private adoptions-retain 1 year.

28595-Kinship background screening files-retain 5 years.

28596-Out-of-state child abuse registry check (OSCAR)-retain 5 years.

28597-Record request files from other states’ agencies-retain 6 months.

28598-Live Scan Authorization forms-retain 3 years.

Motion-A motion was made by Mr. Fleming and seconded by Ms. Richardson to approve the proposed retention schedule. A vote was unanimous, 6-0.

Utah State General Records Retention Schedule:

Ms. Rebekka Shaw briefed the Committee on three retention schedules.

Item 1-67 Animal Control Records

Item 1-68 Government records

Item 1-69 Public relations records

Motion-A motion was made by Mr. Haraldsen and seconded by Mr. Fleming to approve the proposed retention schedule. A vote was unanimous, 6-0.

VI. Approval of November 13, 2014, Minutes:

Ms. Smith-Mansfield announced that she submitted a change to page 10, paragraph 7 to remove “whatever.” A motion was made by Ms. Cornwall, to approve the November 13, 2014, Minutes with the corrections, and seconded by Mr. Fleming. The motion passed 5-0. There was one abstention, Mr. Blaine Breshears (See the attached documents on the Utah Public Notice website, [SRC Minutes November 13, 2014.pdf](#)).

VII. Report on November/December Appeals and January 8, 2014, Appeals:

The executive secretary reported that Robert Augason vs. University of Utah was postponed for January 8, 2014. The following hearings were resolved and canceled prior to the scheduled hearing: Schatz/Anderson & Associates vs. Roosevelt Police Department, Shane Johnson vs. Salt Lake City Parking Enforcement, and Karl Losee vs. Utah Department of Corrections. Mr. Isaac Lemus vs. Department of Human Services has been rescheduled for April due to schedule conflicts with his attorney. At this time there are five potential hearings scheduled for January 8, 2015 (See the attached documents on the Utah Public Notice website, [SRC Meeting Handouts December 11, 2014.pdf](#)).

VIII. Report on Cases in District Court:

Mr. Tonks briefed committee members on the cases in District Court. (See the attached documents on the Public Notice website, [SRC Meeting Handouts December 11, 2014.pdf](#)).

IX. Other Business:

The next meeting is scheduled for January 8, 2014. The executive secretary queried if there will be a quorum present for the next meeting. There are no scheduled absences except for Mr. Tonks, Legal Counsel, and he will send a replacement.

SRC Minutes December 11, 2014

The December 11, 2014, State Records Committee meeting adjourned at 12:25 p.m.

This is a true and correct copy of the December 11, 2014, SRC meeting minutes, which were approved on January 8, 2015. An audio recording of this meeting is available on the Utah Public Notice Website at <http://www.archives.state.ut.us/public-notice.html>.

X



Nova Dubovik
Executive Secretary

APPROVED