

## STATE RECORDS COMMITTEE MEETING

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

Date: February 12, 2015

Time: 9:05 a.m. to 10:59 a.m.

### **Committee Members Present:**

Patricia Smith-Mansfield, Chair, Governor's Designee

Marie Cornwall, Citizen Representative

Tom Haraldsen, Media Representative

Blaine Breshears, Elected Official Representative

Doug Misner, History Designee

David Fleming, Private Sector Records Manager

**(Absent)** Holly Richardson, Citizen Representative

### **Legal Counsel:**

Paul Tonks, Attorney General's Office

Nicole Alder, Paralegal, Attorney General's Office

### **Executive Secretary:**

Nova Dubovik, Utah State Archives

### **Telephonic Attendance:** None

### **Others Present:**

Lorianne Ouderkirk, Archives staff

Kendra Yates, Archives staff

Blaine Ferguson, Attorney General's Office

Cameron Mansen, Archives staff

Rebekkah Shaw, Archives staff

**Agenda:**

- One Hearing 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 9:05 a.m. by the Chair, Ms. Patricia Smith-Mansfield. The scheduled hearing, Robert Augason vs. University of Utah, was resolved through government records ombudsman mediation and withdrawn by the petitioner on February 11, 2015.

**II. Approval of Retention Schedules:**

**Utah State General Records Retention Schedule:**

Ms. Rebekkah Shaw presented three series for Administrative Records and one for Human Resource Records.

(Item 1-70) Official policy and procedures records (Administrative Records)

(Item 1-71) Operational policy and procedures records (Administrative Records)

The Committee discussed extensively the definition of policy and procedure. Ms. Marie Cornwall stated there is no organizational history if the copy of the policy and procedures is destroyed when a new one supersedes. Mr. David Fleming expanded the discussion by stating the decisions are made by the policy in affect and if that policy is no longer in affect and a decision becomes an issue later after the policy has been superseded there can be negative repercussions. The superseded policy should be available as a historical component to reference previous employer policy. Nonetheless, the words policy and procedure are synonymously used together in organizations and it is unnecessary to add official and operational in the language. After further debate the Committee decided to remove the word "Official" from Item 1-70 and reject Item 1-71.

**Motion-**A motion was made by Ms. Cornwall to modify and change the name from "official policy" to "policy and procedure records," accept the retention schedule and not make a distinction between an official and operational policy. Therefore reject the proposed operational policy and procedures records (Item 1-71). The motion was seconded by Mr. Fleming to approve the proposed retention schedule. The motion passed 5-1, with Ms. Smith-Mansfield dissenting.

(Item 1-72) Vital records (Administrative Records)

**Motion-**A motion was made by Mr. Doug Misner and seconded by Mr. Breshears to approve the proposed retention schedule. A vote was unanimous, 6-0.

(Item 11-64) Grievance and discipline records (Department of Human Resource)

Ms. Shaw explained this is initial documentation responding to complaints that result in any type of investigation and possible disciplinary action. It is meant to be for unsubstantiated cases. The retention was seven years but it has been changed to seven years after employment at the request of the attorney general's office. The purpose is to document the history of any repeat offenses or a trends documenting any prior disciplinary actions. The request is for seven years after employment which has changed from seven years from when a case is closed.

The Committee discussed extensively the implications to maintain the documentation the full length of time during employment versus removal after seven years of unsubstantiated findings. The debate continued on whether the employer needs to maintain the documentation for seven years after the period of employment for possible litigations, which litigation is the driving factor for the new retention schedule. Mr. Fleming has a problem with it being part of the employee's record when the case is closed and it is unsubstantiated.

The Committee queried what the Department of Human Resources Management's (DHRM) perspective is on this retention schedule. Ms. Shaw explains that DHRM has their own schedule (less than seven years) and they are ambivalent to what is done with the general schedule because they intend to maintain a separate retention schedule. Ms. Smith-Mansfield finds a conflict with the inconsistency between DHRM and the Department of Human Resource schedules. The Committee tabled the action until the representative from the Attorney General's (AG) Office arrived.

Committee moves on to other business until Mr. Blaine Ferguson, AG, arrives.

**State Agencies:**

Ms. Lorianne Ouderkirk presented two series for the Health Department, Center for Health Data and Informatics, Office of Vital Records and Statistics.

81489-Certified record and research requests-retain 6 months.

16766-Monthly report of informed consent material use-retain 1 year.

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

**III. Approval of January 8, 2015, Minutes:**

Ms. Smith-Mansfield submitted wordsmith changes, requested more detail as to why the two January hearings were canceled and resolved, and to expand on why the Committee discussed Mr. Paul Amann's second GRAMA request. Mr. Fleming submitted wordsmith changes on p. 6, 9, and 13. A motion was made by Mr. Fleming to approve the January 8, 2015, minutes with the corrections, and seconded by Ms. Cornwall. The motion passed 6-0 (see the attached documents on the Utah Public Notice Website, [SRC Minutes January 8, 2015.pdf](#)).

#### **IV. Report on January and February Appeals:**

The executive secretary reported that the following hearings were resolved and canceled prior to the hearing: Robert Augason vs. University of Utah was resolved through ombudsman mediation and Dan Harrie, Salt Lake Tribune vs. SLC Police Civilian Review Board was resolved by both parties. Scott Gollaher vs Division of Child and Family Services hearing denied by the Chair and another committee member due to untimely appeal to the Records Committee and Scott Gollaher vs. Weber County Sheriff's Office hearing denied because Weber County Sheriff's Office referred Mr. Gollaher to Morgan County Sheriff's Office. At this time there are three potential hearings scheduled for March 19, 2015 (see the attached documents on the Utah Public Notice Website, [SRC Meeting Handouts February 12, 2015.pdf](#)).

#### **V. Report on Cases in District Court:**

Mr. Tonks briefed committee members about the cases in District Court & Appellate Court Cases. He explains that Daniel Rivera vs. Utah Department of Human Services, Division of Child and Family Services, it was appealed to District Court. Mr. Tonks explains that Mr. Rivera has not completed the service on the Committee and the time is about to expire. The case Jordanelle Special Service District vs. the Utah State Auditor's Office the complaint was filed in court on January 20, 2015, an answer was filed for the Committee by Mr. Jacob Franklin. Mr. Franklin will be representing the Committee on the case and Mr. Tonks will be representing the Utah State Auditor's Office. At this time nothing else has been filed from Alex Campbell, *Buzzfeed, Inc.* vs. Utah Department of Corrections, Mr. Tonks believes that it will not go any further because the exposé has already been published. No other information is available on the other cases listed (see the attached documents on the Utah Public Notice Website, [SRC Meeting Handouts February 12, 2015.pdf](#)).

#### **5-Minute Break**

#### **VI. Other Business:**

Mr. Tonks provided the annual State Records Committee Training (see the attached document on the Utah Public Notice Website, [SRC OPMA Training February 2015.pdf](#)). The training encompassed the Utah Open & Public Meeting Act (OPMA); Utah Code 52-4-102, the law as it pertains to the state and local entities and how the State Records Committee operates within the perimeters of the statute. At the end of the training Mr. Tonks fielded questions from the committee members.

#### **5-Minute Break**

#### **VII. Resume Utah State General Records Retention Schedule Discussion:**

Ms. Smith-Mansfield readdresses the concern that DHRM covers all employees and that the current proposal is a local government and special districts schedule which provides a huge inconsistency of retention and it would not apply to any state employment records. Mr. Fleming expresses his concern that it includes records of investigation that found no

wrong doing. He finds seven years for a record that found the person innocent or that there was no wrong doing is long enough to maintain; substantiated and unsubstantiated disciplinary findings should be separate from this requirement. The Chair introduces Mr. Blaine Ferguson, Attorney General's Office, and asks him to explain the AG's office position on Item 11-64, grievance and discipline records retention schedule.

Mr. Ferguson responds to the first concern of the Committee stating not all state employees are all under DHRM, most are but not all. Reason for the having the trigger when employment is over, not just when the matter is closed, fundamentally any employee grievance or discipline action an employee's entire record is relevant. He suspects that more often than not a record will show insufficient evidence to find wrong doing and will not be pursued further. That is where all the records can be relevant one never knows when some additional evidence or a pattern appears. There may be a situation when the employer concludes there was some misconduct by the employee but it was minor in nature and decided not to take a discipline action. However, later another episode happens of similar conduct and then there is a pattern and if the records had to be destroyed because of a shorter retention schedule then at the end of employment the employer will not have all the relevant information. From the perspective of the employment attorneys, there needs to be an ability to defend state actions of all the employees to the best of their ability and also in the best interest of the employee to have full record to show what happened. On the same note, if there is a shorter retention period and they are not destroyed and then they take an action, the employee can say you can't use that information against them, even though it exists. Those are unintended consequence of having to destroy records during the time the employee is still working for the state employer. For that reason the Attorney General's office believes it is important to have a full picture of all the records during the employment.

The Committee does not come to a viable conclusion on the proposed retention schedule and would like a collaboration of committee members, records analyst, and the AG office to rewrite the language.

**Motion**-No motion made. Mr. Fleming and Mr. Breshears agreed to assist Ms. Shaw with writing different language that will be more in line with the law.

#### **VIII. Resume Other Business:**

Ms. Smith-Mansfield briefed the committee members on which bills at the 2014 General Session of the Utah Legislature would affect the State Records Committee processes and GRAMA (see the attached document on the Utah Public Notice Website, [SRC Meeting Handouts February, 2015b.pdf](#)).

There are substantial changes to H.B. 306 Fees for Government Records Requests and H.B. 157 Government Records Access and management Act. The H.B. 157 will essentially eliminates the process of appealing the denial of a record request directly from a denial of a record request from a chief administrative officer to the district court. The language now requires all chief administrative officer denials to go through the Records

Committee. In addition, counties, municipalities, special service districts, and school districts will no longer be able to have their own GRAMA appeal ordinances.

The Committee discussed the increased workload and the problem it will create if there is more than one hearing date scheduled a month to accommodate the voluminous appeals. The Committee is made up of volunteers who are provided permission from their employees to perform the duty; however if the bill passes and adds more volunteer hours some members might not be able to break away from their jobs to perform the committee function.

Ms. Smith-Mansfield stated that there is uneven support for the bill and if it does go through the Committee could request a one year assessment period to provide feedback on the workability of the increased workload. She explained the suggestions to increase the time frame for scheduling hearings has been forwarded to the attorney. Other members raised concern and expressed reducing the presentation time from 20 minutes to 15 or 10 minutes. A concern about the number of hearings scheduled per month and if the committee could have language added that would allow for continuances if it was inundated with more than ten hearings. Ms. Smith-Mansfield requested assistance from Counsel writing the language to represent the Committee's suggestion for an option of continuance.

The next meeting is scheduled for March 19, 2015. The executive secretary queried if there will be a quorum present for the next meeting, there are no scheduled absences.

The February 12, 2015 State Records Committee meeting adjourned at 10:59 a.m.

**This is a true and correct copy of the February 12, 2015, SRC meeting minutes, which were approved on March 19, 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