

SPC APPROVED
Date Feb 11, 2016 [Signature]

State Records Committee Meeting

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

Date: January 14, 2016

Time 9:00 a.m. to 1:34 p.m.

Committee Members Present:

Patricia Smith-Mansfield, Chair, Governor's Designee

Marie Cornwall, Citizen Representative

Tom Haraldsen, Media Representative

Cindi Mansell, Political Subdivision Representative

Doug Misner, History Designee

Holly Richardson, Citizen Representative

David Fleming, *Chair Pro Tem*, Private Sector Records Manager

Legal Counsel:

Paul Tonks, Attorney General's Office

Nicole Alder, Paralegal, Attorney General's Office

Executive Secretary: Nova Dubovik, Utah State Archives

Telephonic Attendance:

Patrick Sullivan, Petitioner

Others Present:

Leslie Larsen, State Auditor's Office

Laura Lockhart, Attorney General's Office

Lana Taylor, Attorney General's Office

Angela Galbraith, Provo City Police Department

Becky Gurr, Provo City Police Department

Mark R. Gaylord, Jordanelle Special Service District

Zaven Sargsian, Jordanelle Special Service District

Michael Kohler, Jordanelle Special Service District

Stephen Capson, Jordanelle Special Service District

Camille Stilson Williams, Provo City Attorney

Parker Douglas, Attorney General's Office

Todd Grossgebauer, Provo City Police Department

Van Christensen, Office of the Utah State Auditor

Janene Weiss, Provo City Police Department

Rae Gifford, Utah State Archives

Rebekkah Shaw, Utah State Archives

Rosemary Cundiff, Utah Government Records Ombudsman

Kendra Yates, Utah State Archives

Marianna Siewenie, Utah State Archives

Agenda:

- Four Hearings Scheduled
- Retention Schedules, action item
- Approval of December 10, 2015, Minutes
- Report on Appeals Received
- Report on Cases in District Court
- Other Business
 - Review 2016 State Records Committee meeting dates
 - Review 2015 Annual Report (draft)
 - Appoint executive secretary
 - Next meeting scheduled for February 11, 2016, 9 a.m. to 4 p.m.

I. Call to Order:

Ms. Holly Richardson and Mr. David Fleming were absent at the start of the meeting. Mr. Fleming arrived at 9:03 a.m. and Ms. Richardson arrived at 9:15 a.m.

The Chair, Ms. Patricia Smith-Mansfield, called the meeting to order 9:00 a.m. and announced that the Utah Department of Corrections would be calling the Committee at 9:05 to connect Mr. Patrick Sullivan to the meeting. It was also announced that *BuzzFeed v. Utah Department of Corrections* resolved the records dispute at 4:30 p.m. on January 13, 2016. In the meantime, the Committee went over Other Business items.

II. Other Business:

Review 2016 State Records Committee meeting dates.

Motion: A motion was made by Mr. Misner, and seconded by Mr. Haraldsen, to adopt the 2016 State Records Committee meeting dates. The motion passed, 5-0. Mr. Fleming and Ms. Richardson were absent for the vote.

Appointment of the executive secretary.

Motion: A motion was made by Ms. Cornwall, and seconded by Mr. Haraldsen, to nominate Ms. Nova Dubovik as the 2016 State Records Committee executive secretary. The motion passed, 5-0. Mr. Fleming and Ms. Richardson were absent for the vote.

Review 2015 Annual Report (draft).

Ms. Dubovik provided a short brief of the contents and interesting statistic from the 2015 Annual Report. The Chair asked Committee members to review the annual report and provide feedback to Ms. Dubovik.

The Utah Department of Corrections telephonically connected at 9:05 a.m. Ms. Smith-Mansfield introduced the parties: Mr. Patrick Sullivan, Petitioner, and Ms. Laura Lockhart, representing the Attorney General's Office and standing in for Mr. Blaine Ferguson. The Chair explained the hearing procedures to the parties and asked all participants to introduce themselves.

III. *Patrick Sullivan vs. Attorney General's Office (AGO).*

The Chair expressed she would like the parties to focus on the fact that the governmental entity sent the records to the petitioner. Ms. Lockhart acknowledged that the Attorney General's Office did respond to the petitioner, which included records response and denials.

Opening Petitioner

Mr. Sullivan stated he submitted two GRAMA requests #15-89 and #15-98, and has received responses to both of the GRAMA requests. The only issue at this point is GRAMA request #15-89. Mr. Sullivan specifically requested the office to search Google Vault for the responsive records. The Attorney General's Office declined to perform a Google Vault search; furthermore, the AGO declined to provide several records because the records are maintained by another entity. He intends to address both issues during the testimony period.

Opening Respondent

Ms. Lockhart explained the only matter in front of the Committee is the appeal on the extension. On January 5, 2016, the AGO GRAMA counsel did provide a response, which included responsive records, redacted records, and declamations. That matter has not yet been appealed to the Attorney General's Office, and under GRAMA the AGO is allowed to review a matter before it comes to the Committee. This includes the Google Vault matter, which was addressed for the first time in the January 5, 2016, response to Mr. Sullivan. At this time, the appeal is moot and the Petitioner is welcomed to file an appeal that is appropriate to the January 5, 2016, decision. At this point the only item that could be appealed is the extension, and that is a completed matter because the AGO has responded.

Ms. Lockhart added that the office is not pleased with the amount of extensions that it had to claim. The AGO has had a 250 percent increase in GRAMA requests in the last couple of years, and is struggling to respond in a timely manner. To accommodate the increase people have been reassigned and the AGO is working with the legislature for new employees.

Testimony Petitioner

Mr. Sullivan responded to the AGO claim that the only issue on appeal is the extension and not Google Vault. When he filed the Notice of Appeal to the Committee it was to dispute the extraordinary circumstances claim by the AGO, and access denial to the records. Mr. Sullivan points out that the original GRAMA request was received on June 29, 2015. The records he requested were received on January 5, 2016; it took the AGO six months to respond. In addition, he amended his GRAMA request adding he would like Google Vault searched instead of the individual user's account for responsive records. On September 18, 2015, Mr. Ferguson responded, claimed extraordinary circumstances, and extended the response deadline. The letter sent by Mr. Ferguson gave Mr. Sullivan the impression that because Google Vault would be searched the AGO needed an extension. If he had known this was not the AGO's intent, to search Google Vault, he would have appealed immediately to the chief administrative officer.

Lastly, Mr. Sullivan addressed the response from Mr. Ferguson regarding several email attachments sent to the AGO by Adult Probation and Parole and the Utah Insurance Department. Mr. Sullivan quoted Utah Code § 63G-2-103(22)(a) and Utah Code § 63G-2-204(2)(a) and used it as evidence that the AGO should provide those records because it received the records from those governmental entities, and they are now retained by the AGO in Google Vault or someone's account. In conclusion, under GRAMA the AGO should be required to produce the records.

The Chair explained to the Committee that Google Vault is a service to Google's email product. Generally, Google Vault is provided by the Utah Department of Technology Services and is used if the agency is prone to litigation for discovery. It saves all emails of an individual, independent for 10 years from the account user's email, and it does not matter if the user deletes because Google Vault preserves all emails intact.

The Committee discussed with Ms. Lockhart whether the AGO initially should have initially started the responsive records search through Google Vault. Ms. Lockhart does not speak to Google Vault and the AGO process because the issue has not been appealed through the AGO chief administrative officer.

Testimony Respondent

Ms. Lockhart argued the matter is a procedural issue because the only decision made by the chief administrative officer was on the extension, which was extended to January 6, 2016. On January 5, 2016, the AGO provided Mr. Sullivan the responsive records and he has not appealed that decision, therefore the appeal in front of the Committee is moot. The appropriate step in the appeal process is for Mr. Sullivan to appeal the January 5, 2016, decision to the chief administrative officer or designee. Ms. Lockhart stated the statute provides for these provisions.

Closing-Petitioner

Mr. Sullivan stated that the employee he seeks records from does have a Google Vault account. The account was verified through the Department of Technology Services spokesperson. In his appeal to Mr. Parker Douglas, the AGO chief administrative officer, Google Vault was addressed and requested to be searched for the responsive records. Mr. Douglas did not respond to the appeal within the five business days, which is equivalent to a denial. Mr. Sullivan does acknowledge that he did not address the Google Vault issue in the Notice of Appeal to the Committee, at the time it was not part of the relief sought. He was led to believe, by the AGO's response in September 2015, that Google Vault was to be searched and thus agreed to the extension for November 10, 2015. It took the AGO over six months to respond to the requests. On January 5, 2016, the responsive records were provided. Up until now, the AGO did not tell him until January 5, 2016, that it declined to search Google Vault. If he had known this in September, it would have been in the Notice of Appeal to the Committee.

Closing Respondent:

Ms. Lockhart agreed that Mr. Sullivan's appeal to the Committee did include complaints about Google Vault but it came before any decision about Google Vault. The only appeal he could make in November 2015 was on the extension, because the AGO had not made a decision about Google Vault until January 5, 2016. The matter before the Committee is moot because the records have been provided.

Deliberation:

The Committee discussed Google Vault at length-about its application and agency records search procedures. The Chair stated that Google Vault is a collection of records and if the AGO has the vault it is its responsibility to search it. Whether the petitioner amended the initial request and asked for the Vault to be searched, it should have been part of the initial search. The other matter discussed by the Committee was the issue that the January 5, 2016, decision had not been appealed. Mr. Sullivan needs to appeal the chief administrative officer's January 5, 2016, decision, as a procedural issue. The appeal for the extension is moot because the AGO provided the records.

Motion: Mr. Fleming made a motion that the issue of denial of access to records is not properly before the Committee, because the Petitioner has not argued that he has been denied access to the records initially in the appeal, and there has not been an appeal made to the chief administrative officer of the Attorney General's Office. Ms. Mansell seconded the motion. The motion passed, 4-2. There was two dissents, Mr. Haraldsen and Ms. Smith-Mansfield, and one abstention Ms. Richardson.

Five-Minute Break

Ms. Lana Taylor, Assistant Attorney General, replaced Mr. Paul Tonks as the Committee's representative for the *Jordanelle Special Service District vs. Utah State Auditor's Office* hearing.

The Chair introduced the parties for the next hearing: Mr. Mark Gaylord, representing the Jordanelle Special Service District, and Mr. Douglas Parker, representing the Utah State Auditor's Office. The Chair explained the procedures of the hearing and addressed that the State Auditor's Office requested to bring a representative sampling of the potentially responsive records to the hearing. Administrative Rule R35-1-2(6). Mr. Gaylord asked for clarification from the Chair if the State Auditor's Office brought the disputed records. The procedures under R35-1-2(6) were explained to Mr. Gaylord.

IV. *Jordanelle Special Service District (JSSD) vs. Office of the Utah State Auditor:*

Opening-Petitioner

Mr. Gaylord, the representative for JSSD, stated JSSD was the subject of an audit by the Office of the Utah State "Auditor" that was finalized on April 16, 2015. On June 8, 2015, Jordanelle Special Service District filed a GRAMA request seeking all files related to the JSSD audit. The Auditor has refused to turn over all of records in its possession regarding the audit. Mr. Gaylord argued that the appeal was made because JSSD is entitled to all information and documents that the Auditor reviewed and considered in

reaching its conclusions on the audit. In addition, Mr. Gaylord questioned whether the Auditor properly classified the records, and if the records provided for the audit were received under the condition of anonymity.

Opening by Respondent

Mr. Parker Douglas, the representative for the Utah State Auditor, argued that the appeal is not properly before the Committee. Jordanelle Special Service District is a governmental entity and as such should use the shared records provision under Utah Code § 63G-2-206. JSSD is not a “*person*” for the purposes of GRAMA, and therefore it would be appropriate to go through the records sharing procedures.

Mr. Douglas addressed the dispute over classification of records and redactions, stated the necessary redactions were made in response to the Whistleblower Law. If that information had not been redacted the Whistleblower provision would be jeopardized. The law has protections in place for a reason, which allow people to come forth with anonymity and without reprisal. The law has a records sharing provision to accommodate records sharing between agencies. Mr. Douglas summarized the two issues before the Committee: the JSSD appeal is not properly before the Committee, and the disclosures and redactions were for a good reason in regard to the Whistleblower Law.

Mr. Fleming directed the Committee’s attention to the procedural issue. The Chair instructed the testimony to be specific to the procedural issue on whether JSSD is a “*person*” qualified to make an appeal under GRAMA.

Testimony-Petitioner

Mr. Gaylord argued that the records sought by JSSD are public and Utah Code § 63G-2-206 addresses only private, protected, or controlled classification of records. He encouraged the Committee to review the documents and determine, first, if the Auditor properly classified the records under Utah Code § 63G-2-302, -304, and -305. He believes the records JSSD seeks do not fall under those classifications in the statute. JSSD is seeking information provided to the Auditor by informants. The Auditor promised after the audit was finalized it would share information. Instead the Auditor refused to turn over the records pursuant to Utah Code § 63G-2-305(10)(d).

Ms. Lana Taylor, acting Committee Counsel, instructed the Committee to refer to Utah Code § 67-3-1(15)(d) and Utah Code § 63G-2-502(1)(d), statutes referenced by both parties in their statements of facts. There is language to the fact that when there is a records dispute that the Auditor may submit records to the Committee for determination. The Chair requested Mr. Gaylord to address the issue of defining whether JSSD is a “*governmental entity*” or a “*person*” as defined under Utah Code § 63G-2-103(11) and (17); furthermore, in Utah Code § 63G-2-401 it defines a requester as a “*person*” in a party of interests.

Mr. Gaylord stated the Auditor has not sought the determination of the classification of the records which is the reason why it has not brought it to the Committee under Utah

Code § 67-3-1(15)(d) and Utah Code § 63G-2-502(1)(d). In that regard, the Auditor did not advance the discussion when JSSD asked for the records.

Lastly, Mr. Gaylord addressed the Chair's question on whether JSSD is a "*governmental entity*" or a "*person*" under Utah Code § 63G-2-103. JSSD is not just a government entity to the extent that it operates like the Attorney General's Office or the Governor's Office. It is in the business of providing sewer and water to its community. For public purposes it incurs debt, can be sued and can sue. It is a business entity because it charges for services provided to the public. Under the definition in GRAMA JSSD is "*other type of business organization*." Mr. Gaylord also addressed the Whistleblower Law, that it was not applicable, and that the identity of the person(s) should be provided. Mr. Gaylord believed GRAMA was the proper vehicle to request the records.

Testimony-Respondent

Mr. Douglas responded that the idea that one would disclose an identity of a Whistleblower, for the purposes to determine if there is a Whistleblower, to the very entity being examined, defeats the purpose of the public protecting the Whistleblower. He then addressed the definition of a person and disputed Mr. Gaylord's definition that JSSD is "*other type of business organization*" because it takes on debt and therefore defined as a person under GRAMA. Mr. Douglas argued that other state and local governments take on debt, which makes JSSD's argument invalid. JSSD either is a governmental entity or is not. Mr. Douglas emphasized that JSSD does not meet the definition of person. He concluded that the issue of whether or not the Auditor's Office properly classified the records is jurisdictional. It must first be determined whether JSSD is a governmental entity or a business organization under Utah Code § 63G-2-103.

Closing-Petitioner

Mr. Gaylord stated that the Auditor's office waived its opposition whether JSSD is a person, because it has been previously been before the Committee, *JSSD v. Office of the Utah State Auditor*, Case No. 14-21. It is argued that JSSD has the right to seek a GRAMA request. Sharing records under Utah Code § 63G-2-206 does not apply because the records sought are public not private, protected, or controlled as stated under the shared records provision.

Closing-Respondent

Mr. Douglas responded that Utah Code § 67-3-15(d) allows the Auditor to bring records of dispute to the Committee. The Auditor is not before the Committee, JSSD is before the Committee, and the determination is whether it has the right to appeal. Is JSSD a person under GRAMA or a governmental entity? The Auditor does not believe JSSD is a person and contends it is a stretch to say JSSD is another business organization.

Deliberation:

The Committee discussed the definitions of governmental entity and person under GRAMA and the context of how it is used within the law (Utah Code § 63G-2-103(11)(b)(ii) and Utah Code § 63G-2-103(17)). The members agreed the ruling would set precedence. A question was raised on how governmental entities work out records

access disputes and it was determined governmental entities must go to court if there is a dispute.

Motion: Ms. Richardson made a motion that the Petitioner is not a “person” as defined by Utah Code § 63G-2-103(17), rather, the Petitioner is a governmental entity as defined by Utah Code § 63G-2-103(11)(b)(ii). As such, the Committee does not have jurisdiction over the matter, and cannot properly hear the appeal of the Petitioner. Mr. Fleming seconded the motion. The motion passed, 7-0.

Five-Minute Break

III. *Chris McDaniel, BuzzFeed, Inc., vs. Department of Corrections (UDC):*

BuzzFeed, Inc., and the Department of Corrections came to a resolution prior to the hearing and the appeal was withdrawn on January 13, 2016, at 4:30 p.m.

The Chair introduced the parties for the next hearing: Mr. Chad Lambourne, Petitioner, and Ms. Camille Williams, Assistant Attorney representing Provo City Police Department. The Chair explained procedures of the hearing and the procedural motion that will be addressed by both parties. Each party is provided five minutes to argue its position.

IV. *Chad Lambourne vs. Provo City Police Department:*

Provo City Police Department Procedural Motion is addressed.

Motion to Dismiss Appeal as Untimely and Supporting Memorandum:

Ms. Williams, on behalf of Provo City Police Department, addressed the motion stating that Mr. Lambourne filed the Notice of Appeal to the executive secretary on the 31st day the decision was issued by the chief administrative officer. The Mayor’s decision was sent via email to Mr. Lambourne on September 15, 2015, at 5:25 p.m. The Mayor signed his decision on September 15, 2015, but wrote the date September 16, 2015, on the document, a day after the email was sent. Mr. Lambourne’s appeal to the Committee was filed with the executive secretary on October 16, 2015, which is the 31st day after the Mayor’s appeal decision was issued and sent to Mr. Lambourne. Ms. Williams addressed the question whether the signature date on the decision is controlling, and argued it is not controlling and there is case law to support the argument. *Dusty’s, Inc. v. Utah State Tax Commission*, 842 P.2d 868 (Utah 1992), the court found that the appeal period began on the “date of issuance and not receipt.” *Perez*, 2013 UT. Therefore, the appeal to the Committee is untimely.

Mr. Lambourne responded that he received the email on October 15, 2015, after business hours and did not see it until October 16, 2015. He looked at the date the document was signed not when it was sent. He also finds it interesting that the date of issuance for Provo City is the date it sent it out (October 15, 2015), but the date of filing with the executive secretary is not the date he sent it out (October 14, 2015). However, Provo City argued it is the date received (October 16, 2015) by the Committee.

The Committee discussed dates on official correspondence, close-of-business hours, and postmark rules. Questions were posed to Mr. Tonks to clarify the legal process and procedures for filing appeals to courts, and (in this case) the executive secretary.

Motion: Mr. Fleming made a motion that the appeal was timely based on the response date from the governmental entity, and the postmark date from the Petitioner when filing the appeal to the executive secretary. Ms. Cornwall seconded the motion. The motion passed, 7-0.

Opening-Petitioner

Mr. Lambourne requested from Provo City Police Department a list of records he believed it held: video, audio, DUI summons and citation, DUI report, initial report, vehicle impound form, intoxilyzer report, and other applicable items. The GRAMA request was denied and appealed to the chief administrative officer. His argument is that Provo City misclassified the requested records as protected, and it can provide no convincing reason for doing so. GRAMA states that governmental entities should evaluate every request and then assign a classification at that time. The Committee has ruled on cases identical to this case and found the requested records in the case to be public and subject to disclosure under GRAMA. Provo City cannot place a blanket protection classification to all records. Records are presumably public unless otherwise stated.

Opening by Respondent

Ms. Williams stated that the Petitioner did request a number of documents that were denied in whole or in part. The Petitioner was told the public records were available upon payment. He chose not to pay the fee and thus did not receive the records. In terms of the classification of the records, when the GRAMA request was received the records requested were classified as protected. Specifically, he was told he could receive the police synopsis that is generated from the Spillman database, which is the first report that is written by the police officer. As outlined in the GRAMA statute it is a general report of the action officers take when they receive a report that needs to be investigated. Mr. Lambourne could have received that had he chosen to pay the reasonable fee. The issue in Mr. Lambourne's view is that Provo City cannot choose to classify reports made after that initial report as anything other than public. Ms. Williams continued to explain that Mr. Lambourne disputes the legislative intent concerning initial reports and follow up reports under Utah Code § 63G-2-103(14)(a)(b). The follow-up reports were not released to Mr. Lambourne at that time because they contained protected information. Provo City believes it was a correct classification.

The Chair clarified that the synopsis is the initial contact report, and was offered to Mr. Lambourne for a fee but he refused it.

Testimony-Petitioner

Mr. Lambourne, spoke to what was offered to him in the beginning of the process. His intention was to get through the GRAMA process and receive all the records at once before paying for the initial records that were offered. He explained that the first issue is

the designation and the classification of the records. Provo City has designated all police reports, including dash and body camera videos, as protected. The statute is clear that the governmental entities designate the records series; however, a governmental entity is not required to classify a particular record until it is requested. When a GRAMA request is received the record must be evaluated and classified at that time (Utah Code § 63G-2-307 and *Deseret New Publishing Co., v. Salt Lake Co.*, 2008 UT 26).

The second issue is whether a police report is public or protected. The Provo Police Department reporting software creates a very short synopsis of the case. Provo City defines this synopsis as the initial contact report. The remainder of the report is entitled "supplemental." Provo City claimed that the "synopsis for the incident" satisfied the meaning of the initial contact report as described in Utah Code § 63G-2-103(14). He believes this is incorrect based on his personal experience. Unfortunately, there is no case law to support his argument of when a case is active or closed.

Lastly, Mr. Lambourne discussed the criteria when a case is active or a completed investigation. He argued that once a police department hands over the case to the prosecuting agency, and that prosecuting agency files formal charges in a court of law, the case is closed to the police department. Provo City claimed when the GRAMA request was submitted that the investigation was open. The chief administrative officer's reason for denial was that the investigation "remains open until the case is resolved." This would lead one to believe that records will not be available until the case is resolved, meaning until the case is fully adjudicated.

Mr. Fleming asked Mr. Lambourne to cite the statutes that support his arguments. In addition to the three issues addressed in the initial testimony, Mr. Lambourne also raised the issue of GRAMA and discovery (Utah Code § 63G-2-207). He stated that throughout the chief administrative officer's denial, Provo City delved into the issue of requests for records held by a governmental entity pursuant to GRAMA and those requested pursuant to the Utah Rules of Criminal Procedure and/or the Utah Rules of Civil Procedure 26. This is a non-issue and should not detract from the material issues at hand. He referenced, in support of the argument, to a Committee ruling *Phillips v. West Jordan Police Department*, Case No. 14-04.

Ms. Cornwall asked if he is insinuating that Provo City is using the designations to hide information and not follow standard police department policy. Mr. Lambourne clarified his position that Provo City is using department policy to deny and be more restrictive than other police departments he has worked with. In his experience other police departments have provided to him what is in the supplemental reports per Utah Code § 63G-2-103)(14)(b).

Ms. Mansell asked if the person Mr. Lambourne represents provided him authorization to receive the records. Mr. Lambourne responded that his client did sign an authorized waiver for him to receive restricted records.

Testimony-Respondent

Ms. Williams introduced the records officers who examined, classified the records, and issued a partial denial of the request as witnesses.

Angela Galbraith and Becky Gurr, Provo City Police Department, were sworn in.

Ms. Gurr stated she followed the state retention guidelines of designating the case reports as a protected document for the first five years. Once the GRAMA request is received by the office, the records officer checks the statutes of the case. The case is considered an open, active investigation if it has been referred to the city or county attorney. Once a plea has been made to the courts, the city considers it a closed investigation and, at that time, the records would be released (Utah Code § 63G-2-305(9)). Spillman is a countywide system and the synopsis is considered the initial contact report and released as specified under Utah Code § 63G-2-103(14). At the time Mr. Lambourne made the GRAMA request the case had been referred but the plea had not been made. Therefore, the officer's supplemental reports were denied, however the synopsis was offered for a fee.

Ms. Williams asked Ms. Galbraith to respond to the allegation that Provo City withholds records whereas most police departments release all records.

Ms. Galbraith stated that she contacted the agencies Mr. Lambourne identified and discovered two that have a different policy than Provo City, and do release the records immediately. In a neighboring city, the police department actually waits for adjudication and the 30-day appeals process before it releases any cases. It was also noted that the police officers there write their first report on laptops or tablets in their cars. The report has the who, what, where, when, and why and is accessible to anyone in local government or media. The officers are provided a brief time period to do a follow up of their entire investigation at the end of their shift. The basis for classifying the records protected, until the investigation is closed, is to not jeopardize the case and provide protection to the alleged victims and perpetrators.

The Committee questioned and discussed the Provo City process of denying and classifying records protected until the investigation is closed. The members also discussed the issue of why Provo City did not provide the records even though Mr. Lambourne had an authorization waiver signed by the subject of the records.

Mr. Lambourne questioned the witnesses about how the police department classified records protected and whom it is protecting. Ms. Gurr answered that the records are classified protected because it is an active investigation, and the defendant has not made a plea in court. By not releasing it, and classifying the record protected, the city is protecting any victims, witnesses, and the subject of the records.

Closing-Petitioner

The Chair asked the Petitioner what record has been denied, since Provo City has offered to provide all requested records. What record is still the subject of the denial in the hearing?

Mr. Lambourne responded that the initial denial included the DUI and police report. He considered the police report the initial contact report. Since the case now has been adjudicated the city is offering all the records for a fee. However, that is moot, because the issue before the Committee is the initial denial and the classification of the records. Provo City classified the entire police report as protected but he believes it is public. He had an authorization waiver and city should have honored it. The office could have segregated information that was not releasable to the subject of the record under Utah Code § 63G-2-308. Once the police department turned the records over to the prosecution, the case is considered closed. The main argument is that the initial contact report and any supplemental reports all should have all been released to him at the time of the GRAMA request, because they were public and if they are not public, they still should be released because he had an authorization waiver signed by the subject of the records. Utah Code § 63G-2-202(1)(a) and (4)(b).

Closing-Respondent

Ms. Williams responded that access to protected records requires a power of attorney from all governmental entities or whose interests were sought to be protected by the classification pursuant to Utah Code § 63G-2-202(4)(a). Part of the case was a co-defendant who was prosecuted by the county attorney, and the county does not necessarily give parameters to the city. The county considered the case an open investigation and classified the files as protected, and would not release the records in the matter of the initial contact report. The initial report was not denied. The main problem is the terminology being used by the Petitioner and the City is different. The City refers to the initial report as a synopsis. The synopsis has all the information required by statute under Utah Code § 63G-2-103(14)(a).

Deliberation:

The Chair summarized the hearing problem. The issues with Utah Code § 63G-2-305(10) are difficult because it depends on the period in order to evaluate the instances. Investigative records, primarily if released, will do one of the five things stated in the statute under Utah Code § 63G-2-305(10). This is a difficult situation to evaluate, because one cannot go back in time and determine if there was an unfair trial. It is a moot point at this time. The Committee cannot determine if the records were properly classified at the time because they have been provided to the Petitioner.

Motion: A motion was made by Mr. Fleming to deny the request because the records were properly classified as protected under Utah Code § 63G-2-305(10) recognizing that the records are now being made available because the proceedings are complete. Ms. Cornwall seconded the motion. The motion passed, 4-3. Three members dissented: Ms. Smith-Mansfield, Mr. Haraldsen, and Ms. Mansell.

Ms. Richardson left the meeting at 12:30 p.m.

15-Minute Break

V. Retention Schedules:

State Agencies: Ms. Kendra Yates and Ms. Rae Gifford presented three schedules for the Department of Commerce, Division of Consumer Protection, and Governor, Utah Commission Criminal Justice.

Governor. Commission on Criminal and Juvenile Justice. Retain 10 years.
25349-Criminal justice surveys.

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

84706-Crime victim reparation case files. Retain 99 years.

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

28773- Immigration consultant registration records. Retain 10 years.

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.

Utah State General Records Retention Schedule: Ms. Rebekkah Shaw presented two series for County Sheriff Records and Motor Maintenance and Operations Records.

(Item 16-58) Evidence tracking records

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

(Item 9-14) Vehicle maintenance records

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

V. Approval of December 10, 2015, Minutes:

A motion was made by Mr. Haraldsen to approve the December 10, 2015, minutes. Mr. Misner seconded the motion. The motion passed 5-0. One member abstained, Ms. Cornwall. (See the attached documents on the Utah Public Notice Website, [SRC Minutes December 10, 2015.pdf](#)).

VI. Report on November and December Appeals:

The executive secretary briefed committee members on the following appeals:

- *William Sherratt vs. Board of Pardons and Parole:* On January 4, 2016, Mr. Sherratt appealed to the Department of Administrative Services, Director Kimberly Hood, for reconsideration. The reconsideration was denied.

-*Lee Davidson, Salt Lake Tribune vs. Utah Governor's Office of Economic Development (GOED)*: Appeal withdrawn.

-*Lee Davidson, Salt Lake Tribune vs. Utah Office of the Governor*: Appeal withdrawn.

-*Elizabeth Hunt vs. Saratoga Springs Police Department*: Appeal withdrawn.

-*Roger Bryner vs. Utah Department of Health, Utah Public Health Laboratory, Forensic Toxicology Program*: Appeal withdrawn.

-*Tracy Heun, Hogan & Associates Construction vs. Washington County School District*: Appeal withdrawn.

-*Robert Baker vs. Utah Department of Corrections*: Mr. Baker served a summons on the Committee and the Department of Corrections.

-*Sadie Schilaty vs. Utah Department of Human Services and Michael Clara vs. Utah Transit Authority*: Incomplete appeal.

-*Chris McDaniel, BuzzFeed, Inc., vs. Department of Corrections*: Appeal withdrawn.

At this time, ten potential hearings are scheduled for February 11, 2016, and two scheduled for March 17, 2016. (See the attached documents on the Utah Public Notice Website, [SRC Meeting Handouts January 14, 2016.pdf](#)).

VII. Report on Cases in District Court:

Mr. Tonks briefed Committee members on the following district court cases:

Perry City v. Kurt Bailey, Case No. 150100150, is in First District Court. An appeal from the Committee's decision regarding release of dash camera video from a Perry City police vehicle.

Roger Bryner v. City of Clearfield, Case No. 150701062, is in Second District Court. A Motion to Dismiss was filed by Clearfield to state a claim upon which relief could be granted has been filed arguing that the fee has already been waived; no issue is left before the Court.

Robert Baker v. Utah Department of Corrections, Case No. 150903610, is in Third District Court. Mr. Baker has not yet served a copy of the Complaint on the Committee. The Committee first became aware of case when a copy of the Complaint was sent by mail to the Committee, received December 31, 2015. Counsel for Corrections is seeking dismissal for failure to serve the parties.

Counsel is waiting for more information on *John Rice v. Utah Department of Corrections* and *Robert Gehrke v. Attorney General's Office*.

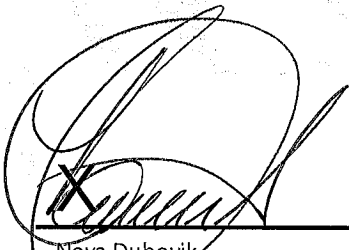
VIII. Other Business:

-February 11, 2016, is the next scheduled meeting.

The executive secretary queried whether there a quorum will be present for the next meeting; all members will be present.

The January 14, 2016, State Records Committee meeting adjourned at 1:34 p.m.

This is a true and correct copy of the January 14, 2016, SRC meeting minutes, which were approved on February 11, 2016. An audio recording of this meeting is available on the Utah Public Notice Website at <http://www.archives.state.ut.us/public-notice.html>.


Nova Dubovik
Executive Secretary