

SRC APPROVED
Date April 14, 2016
[Signature]

State Records Committee Meeting

Location: Courtyard Meeting Room, 346 S. Rio Grande Str., SLC, UT 84101
Date March 17, 2016
Time 9:00 a.m. to 12:15 p.m.

Committee Members Present:

Patricia Smith-Mansfield, Chair, Governor's Designee
Marie Cornwall, Citizen Representative
Tom Haraldsen, Media Representative

Absent: 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
Stephen Mikita, Assistant Attorney General, Department of Human Services
Edgar Frye, Petitioner
Roger Bryner, Petitioner

Others Present:

Michael Anderson, *Salt Lake Tribune*
Stuart Williams, Clearfield City Attorney
Blaine Ferguson, Assistant Attorney General
Nancy Dean, Clearfield City Recorder
Colleen Mulvey, Cedar Hills Recorder
Rae Gifford, Utah State Archives
Rebekkah Shaw, Utah State Archives

Agenda:

- Three Hearings Scheduled
- Retention Schedules, action item
- Approval of February 11, 2016, Minutes
- Report on Appeals Received
- Report on Cases in District Court
- Other Business
 - 2016 Legislative Updates
 - Next meeting scheduled for April 14, 2016, 9 a.m. to 4 p.m.

I. Call to Order:

Ms. Cindi Mansell was absent for the meeting.

The Chair, Ms. Patricia Smith-Mansfield, called the meeting to order at 9:02 a.m. The executive secretary attempted to telephonically connect the first Petitioner to the meeting, but was notified by the Department of Corrections to call back in five minutes.

The Chair called on Mr. Paul Tonks to present a brief the court cases.

II. Report on Cases in District Court:

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

Roger Bryner v. Clearfield City is in Second District Court. On March 16, 2016, Mr. Bryner filed a request for the judge to be recused because of a potential conflict of interest. The court case will be rescheduled and possibly relocated to Ogden, Utah.

Jordanelle Special Service District (JSSD) v. State Auditor, Case No. 160901401, is in Third District Court. The case may be dismissed after JSSD reviewed two boxes of records from the Auditor's Office that had not been provided since the records were received by the Auditor's Office from JSSD. The Assistant Attorney General will file an answer on behalf of the Committee by March 18, 2016.

Chad Lambourne v. Provo City, Case No. 160901346, is in Third District Court. Mr. Tonks filed an answer on behalf of the Committee on March 16, 2016. Mr. Lambourne is requesting copies of a DUI Report Form and Incident Report from Provo City Police Department, on behalf of his client.

Ramon Somoza v. Utah County Commission, Case No. 150401904, filed Dec. 10, 2015, in Fourth District Court. The Summons was received by the Executive Secretary of the Committee on March 15, 2016, and Mr. Tonks will file an answer on behalf of the Committee within 20 days. Mr. Tonks will pursue a dismissal based on an untimely filing.

Perry City v. Kurt Bailey, Case No. 150100150, in First District Court. The case was voluntarily dismissed by parties with an agreed entry that states that: (1) The Division of Archives will provide training and assist records officers with Perry City, and (2) Perry City has complied with the State Records Committee decision because no record exists that is responsive to his records request (no dash camera video).

Paul Amann v. Utah Department of Human Resources, Case No. 150904275, there is nothing to report.

Swen Heimberg v. Utah Department of Public Safety, Case No. 150904273, Mr. Tonks filed an answer on behalf of the Committee on January 19, 2016.

Utah Attorney General v. Salt Lake Tribune, Case No. 150904266, in Third District Court. Disputed records have been filed under seal with the court prior to dispositive motions being filed.

Robert Baker v. Utah Department of Corrections, Case No. 150903610, in Third District Court. Counsel for Corrections is seeking dismissal for failure to serve the parties. Mr. Baker filed late and the Committee did not receive a copy until December 31, 2015.

Utah Department of Corrections v. John Rice, Case No. 150909012, in Third District Court. The Assistant Attorney General, on behalf of the Committee, filed an answer.

Salt Lake City v. Jordan River Restoration Network, Case No. 100910873. The Jordan River Restoration Network filed an appeal on January 29, 2016, indicating an intention to have the District Court's decision reviewed by either the Utah Court of Appeals or the Utah Supreme Court.

Mr. Patrick Sullivan was telephonically connected to the meeting and the Chair, introduced the parties for the first hearing: Mr. Sullivan, Petitioner, and Mr. Blaine Ferguson, representing the Office of the Attorney General. The Chair explained procedures and asked the Committee members to introduce themselves to the parties.

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

Attorney General's Office Motion is addressed.

Request for Dismissal of Appeal and Cancellation of Hearing because Appeal is Now Moot. Mr. Ferguson, on behalf of the Attorney General's Office, stated that Mr. Sullivan filed an appeal to search Google Vault for emails. The office voluntarily searched Google Vault for responsive emails and provided a supplemental response to Mr. Sullivan based on that search. Last week, the appeal was determined moot because the Petitioner had been provided the responsive records. A CD containing the responsive emails with redactions was mailed to Mr. Sullivan; however, it just became known that the CD was returned because it was mailed in a padded envelope and the prison mailroom did not properly redirect it to the property mailroom. Therefore, Mr. Sullivan did not receive it nor have time to review the material prior to the meeting. The AGO will resend the material to Mr. Sullivan in an appropriately marked envelope.

Mr. Sullivan was aware the CD had been returned to the AGO; however he still wanted to provide testimony that the AGO did not properly search the date range specified in amended records requests. The AGO searched only the date range up to June 2015 when the original GRAMA request was submitted. Mr. Sullivan wants them to search from 2015 to the present.

Mr. Ferguson drew attention to the fact that the appeal dated January 31, 2016, addressed only the issue of the Google Vault search not the date range on the original GRAMA request and supplemental requests. Mr. Paul Tonks recommended there be a continuance since Mr. Sullivan had not had time to review the records provided on the CD.

Motion: Mr. Fleming made a motion for a continuance. The only issues before the Committee are those that were raised in the original GRAMA request. Ms. Richardson seconded the motion. The motion passed, 6-0.

The Petitioner and Respondent for the second hearing were telephonically connected to the Committee. The Chair introduced the parties: Mr. Edgar Frye, Petitioner, and Mr. Steven Mikita, representing the Department of Human Services, Division of Aging and Adult Services. The Chair explained procedures and asked the Committee members, Petitioner and Respondent to introduce themselves for the record.

IV. *Edgar Frye vs. Department of Human Services, Division of Aging and Adult Services:*
Petitioner's Opening Statement

Mr. Frye is seeking information about the investigation into his elderly sister's death and the abuse she endured prior to dying on March 25, 2015, at her residence in St. George, Utah. Mr. Frye provided details and circumstances surrounding his sister's death and his subsequent notification of the alleged abuse, at the hands of her son, to Adult Protective Services (APS). Mr. Frye is requesting information from the Department of Human Services of the action it took after he reported the abuse of his sister on or about March 18, 2015. He believes he is entitled to receive the information about the case because he is the brother and was the one who reported the abuse.

Respondent's Opening Statement

Mr. Mikita stated the APS database falls under Utah Code § 62A-3-312(3)(a) and is very restrictive as to who has access to that records. Unfortunately, Mr. Frye does not qualify under any of the three exceptions listed in the statute.

Testimony Petitioner

Mr. Frye stated he feels strongly that the verbiage on the GRAMA request form - "I am the person that submitted the record" - does apply to him and for that reason should be provided some information about the investigation of the abuse.

Testimony Respondent

Mr. Mikita stated access to records created by Adult Protective Services is restricted under Utah Code § 62A-3-312(3). The provision restricts access to the APS records to only the subjects of the vulnerable adult named in a report as a victim of abuse, person's attorney, legal guardian, or the person identified in the report as the perpetrator of the abuse. The governmental entity cannot give Mr. Frye access to those records because he does not meet those explicit exceptions in the statute. The Committee should affirm denial to access.

The Committee questioned Mr. Mikita on whether there was an independent report produced from the investigation and if Mr. Frye was provided any information. The members discussed that a concerned family member does not have access to information about what happened to their loved one. Mr. Mikita stated that there is no report produced at the end of the investigation or one that is independent of the investigator's log.

Petitioner's Closing Remarks

Mr. Frye stated he appreciates the concern expressed by Mr. Mikita; however, he feels that the statute is not clear on the matter. On the GRAMA request form he marked that he is the person who submitted the record, therefore, it would be lawful to release the records to him. He feels that the statute actually protects the guilty. Mr. Frye argued that it is only humane that APS should have provided him some information about his sister. He feels there is no transparency. In his conclusion, he knows that his sister would want him to know the information and have it released.

Respondent's Closing Remarks

Mr. Mikita stated there was nothing more to add. Based on the statute, Mr. Frye is not entitled to disclosure of the records.

The Chair questioned Mr. Mikita whether a notice of supported finding was provided to the family pursuant to Utah Code § 62A-2-311.5. Mr. Mikita responded that he was not aware whether such a notice was sent out.

Deliberation

The Committee discussed the complicated matter of access to the database pursuant to Utah Code § 63G-2-305(43) and that the statute specifically refers to Utah Code § 62A-3-311.1. The members feel that it is a cut-and-dry case that there is no resource for the family under the statute unless they meet the exceptions.

Motion: Mr. Fleming made a motion to deny access to the records, pursuant to Utah Code § 63G-2-201(6). Ms. Cornwall seconded the motion. The motion passed, 6-0.

Five-Minute Break

The Petitioner for the third hearing was telephonically connected with the Committee. The Chair introduced the parties: Mr. Roger Bryner, Petitioner, and Mr. Stuart Williams, representing Clearfield City. The Chair explained procedures and asked the Committee members, Petitioner and Respondent to introduce themselves for the record.

V. Roger Bryner vs. Clearfield City:

Petitioner's Opening Statement

Mr. Bryner stated he wants the Committee to review the disputed records *in camera* and ensure that the segregated information was correctly redacted.

Respondent's Opening Statement

Mr. Williams, on behalf of Clearfield City, does not have any objections with the Committee reviewing the disputed records *in camera* to determine if the redactions are justified pursuant to GRAMA.

Testimony Petitioner

Mr. Bryner asked that the Committee to consider the redactions and the reasons provided by Clearfield for classifying the documents private. The court records were provided to

Clearfield City; therefore, the City received and retained them from another governmental entity and should provide a copy or have a record-sharing provision.

Testimony Respondent

Mr. Williams stated that the Administrative Officer of the Courts (AOC) told Clearfield City the records were classified private. Clearfield City respected the classification and redacted all the information that Mr. Bryner was not entitled to access.

Petitioner's Closing Remarks/ Respondent's Closing Remarks

Mr. Bryner waived his closing remarks and Mr. Williams had nothing further to state. Mr. Bryner notified the Committee that if he is unavailable to reconnect telephonically to continue with the decision without him when it goes back in open session.

Motion: Mr. Fleming made a motion to go *in camera*, Ms. Richardson seconded the motion. The motion passed, 6-0.

Motion: Mr. Fleming made a motion to go back in session, Mr. Misner seconded the motion. The motion passed, 6-0.

The executive secretary attempted to reconnect Mr. Bryner telephonically but there was no answer.

Deliberation

The Committee divided the records into three groups and made motions on each.

Motion: Mr. Haraldsen made a motion that email correspondence Bate #3 was appropriately redacted. Mr. Misner seconded the motion. The motion passed, 6-0.

Motion: Mr. Fleming made a motion that email correspondence Bate #2 was properly redacted with the except for the section regarding the legislative in the last paragraph. Ms. Richardson seconded the motion. The motion passed, 6-0.

The AOC documents, Bate #1, were classified private under Utah Code § 63G-2-302(2)(a). The records should be requested through the AOC. There is no record-sharing agreement between AOC and the City. These are court records and the Committee cannot take jurisdiction.

Motion: Ms. Cornwall made a motion that the governmental entity has properly classified the records as private under the provision as specified by the Administrative Office of the Courts. Because the AOC is the original custodian and classifier of the records, and they are not subject to appeal through the Committee as stated in Utah Code § 63G-2-702(2). Mr. Fleming seconded the motion. The motion passed, 5-1. Ms. Smith-Mansfield was the dissenting vote.

VI. Approval of February 11, 2016, Minutes:

A motion was made by Mr. Haraldsen to approve the February 11, 2016, minutes, with the amendment to add, "Mr. Fleming was late and arrived at." Mr. Fleming seconded the motion. The motion passed 6-0. (See the attached documents on the Utah Public Notice Website, [SRC Minutes February 11, 2016.pdf](#)).

VII. Retention Schedules:

State Agencies: Ms. Rae Gifford presented five schedules.

Public Safety. State Bureau of Investigations. Retain 20 years.
28808-Fatal traffic accident investigation files.

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

Board of Education. Office of Education. State Charter School Board
28771-Successful charter school applications and agreements. Retain 5 years.

Board of Education. Office of Education. State Charter School Board.
28810-Unsuccessful charter school applications. Retain 5 years.

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

Department of Human Services. Division of Mental Health. State Hospital.
10304-Pharmacy inventory records. Retain 10 years.

Department of Human Services. Division of Mental Health. State Hospital.
10309-Pharmacy prescription records. Retain 10 years after separation.

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. Rebekkah Shaw presented 12 series.

(Item 14-45) Voter registration records.

The Committee discussed the voter registration records and recommend use of the word "superseded" because the interpretation of superseded is not consistent and might mislead records officers not to transfer records to the State Archives as required. **Action:** Ms. Smith-Mansfield withdrew Item 14-45, Voter registration records.

(Item 33-3) Assessment rolls records.

(Item 33-4) Deed records.

(Item 33-2) Delinquent property tax records.

(Item 33-1) Tax redemption records.

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.

(Item 1-80) Performance audit reports.

(Item 1-81) Performance audit work papers.

Motion: A motion was made by Mr. Fleming, and seconded by Mr. Haraldsen, to approve the proposed retention schedule with recommended amendment “then transfer to Archives.” A vote was unanimous, 6-0.

(Item 7-56) Audit work papers.

(Item 7-57) Financial audit reports.

Motion: A motion was made by Mr. Fleming, and seconded by Ms. Richardson, to approve the proposed retention schedule with recommended amendment “then transfer to Archives.” A vote was unanimous, 6-0.

(Item 11-62) Employment history records

(Item 11-63) Performance plans and evaluations.

The Committee discussed leaving the retentions scheduled as originally approved back in 2014.

Motion: A motion was made by Mr. Fleming, and seconded by Ms. Richardson, to reject revisions on both retention schedules. A vote was unanimous, 6-0.

VIII. Amended Approval of February 11, 2016, Minutes:

The executive secretary brought to the Committee’s attention that Mr. Fleming was on time for the February 11, 2016, meeting. No amendment is needed to the minutes. A motion was made by Mr. Haraldsen to approve the February 11, 2016, minutes, with the new amendment. Mr. Fleming seconded the motion. The motion passed 6-0. (See the attached documents on the Utah Public Notice Website, [SRC Minutes February 11, 2016.pdf](#)).

IX. Report on February and March Appeals:

The executive secretary briefed committee members on the following appeals:

- *Jeremiah Hart vs. Salt Lake County Attorney*: Incomplete
- *Patrick Sullivan vs. University of Utah, Medical Center*: Incomplete
- *Mark Kimball vs. Salt Lake County Health Department*: Incomplete
- *Edgardo Mata vs. Department of Corrections*: Incomplete
- *Tammy Halvorson, Diamond Parking Services, LLC vs. Utah State Tax*: Appeal withdrawn.
- *Joshua Peterman vs. Saratoga Springs*: Appeal withdrawn

- *Thomas Cross vs. Department of Human Services, DCFS*: Postponed
- *Sadie Schilaty vs. Department of Human Services, DCFS*: Postponed
- *Colby Frazier, Salt Lake City Weekly vs. Salt Lake City Police Department*: Appeal withdrawn.
- *Reginald Williams vs. Utah Department of Corrections*: the appeal is untimely by four days.

The Committee discussed that Mr. Williams has submitted numerous appeals in the past and he is aware of the sensitive time frames. It is possible that the prison mail system did not send his appeal out in time thus rendering it untimely. The Committee agrees it is important to allow Mr. Williams to provide evidence that his appeal was timely.

Motion: Mr. Fleming made a motion to hear Mr. Williams's appeal, Mr. Haraldsen seconded the motion. The motion passed, 6-0.

At this time, eight potential hearings are scheduled for April 14, 2016, and one is scheduled for May 12, 2016. (See the attached documents on the Utah Public Notice Website, [SRC Meeting Handouts March 17, 2016.pdf](#)).

X. Other Business:

-April 14, 2016, is the next scheduled meeting.

-2016 Legislative Updates

Ms. Smith-Mansfield briefed the Committee on the latest bills that passed that impact GRAMA.

-H.B. 63: Fees for Governmental Records Requests. This bill provides for *de novo* review of an appeal of a fee waiver request. (Amends: 63G-2-203).

-H.B. 288S03: Educational Records Protection Amendments. This bill amends provisions related to the disclosure of education records as defined under federal law Family Educational Rights and Privacy Act (FERPA); and makes technical and confirming changes. (Amends: 63G-2-107).

-H.B. 300: Body-worn Cameras for Law Enforcement Officers. This bill provides that a law enforcement agency that uses body-worn cameras worn by law enforcement officers shall have a written policy governing the use of body-worn cameras that meets or exceeds the minimum guidelines provided; minimum guidelines for the activation or use of body-worn cameras; and the prohibited uses of body-worn cameras by law enforcement officers. (Amends: 63G-2-201, and 63G-2-302).

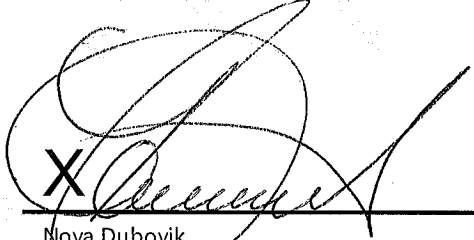
Ms. Cornwall announced she will resign from the Committee on September 1, 2016, and will be moving to Washington, D.C., to work at the National Science Foundation for one year.

SRC Minutes March 17, 2016

The executive secretary queried whether a quorum will be present for the next meeting; Mr. Haraldsen will be in attendance for the morning session only.

The March 17, 2016, State Records Committee meeting adjourned at 12:15 p.m.

This is a true and correct copy of the March 17, 2016, SRC meeting minutes, which were approved on April 14, 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>.



X
Nova Dubovik
Executive Secretary