

**State Records Committee Meeting**

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

Date April 14, 2016

Time 9:00 a.m. to 4:34 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:**

Edgardo Mata, Petitioner  
Roger Bryner, Petitioner  
Tom Butine, Witness for Utah Rivers Council  
Gabriel Lozada, Witness for Utah Rivers Council

**Others Present:**

Travis Knorr, Department of Corrections  
Emma Pennod, *Salt Lake Tribune*  
Matthew Anderson, Assistant Attorney General  
David McKnight, Assistant Attorney General  
Stephanie Weteling, Department of Technology Services  
Preston Freitas, Department of Health  
Greg Mead, Department of Technology Services  
Ryan Wood, Lehi City Attorney  
Jeralyn Zimmerman, Department of Corrections  
Cody Black, Petitioner  
Gina Proctor, Department of Corrections  
Fred Finlinson, Washington County Water Conservancy District Attorney  
Erin Preston, Attorney  
Bryan Thatcher, Petitioner  
Mary Sieweine, Utah State Archives  
Noemi Cruz, Public  
Alba Cruz, Public

Mike Green, Assistant Attorney General  
Gordon Rowe, Utah Rivers Council  
Zachary Frankel, Utah Rivers Council  
Nate Carlisle, *Salt Lake Tribune*  
Blaine Ferguson, Assistant Attorney General  
Daniel Burton, Assistant Attorney General  
Kevin Bolander, Department of Safety  
Rod Swaner, Utah State Archives  
Rebekkah Shaw, Utah State Archives  
Rosemary Cundiff, Utah State Archives

**Agenda:**

- Six Hearings Scheduled
- Retention Schedules, action item
- Approval of March 17, 2016, Minutes
- Report on Appeals Received
- Report on Cases in District Court
- Other Business
  - Discuss *Lambourne v. Provo City* Third District Court decision
  - Next meeting scheduled for May 12, 2016, 9 a.m. to 4 p.m.

**I. Call to Order:**

The Chair, Ms. Patricia Smith-Mansfield, called the meeting to order at 9:00 a.m. and introduced the parties for the first hearing: Mr. Edgardo Mata, Petitioner, and Mr. Matthew Anderson, representing the Department of Corrections. The Chair explained procedures and asked the Committee members to introduce themselves to the parties.

**II. *Edgardo Mata v. Utah Department of Corrections (UDC):***

Mr. Anderson announced the Motion for Continuance is withdrawn.

**Petitioner's Opening Statement**

Mr. Mata stated that he is not a gang member and feels that UDC is racially profiling him because of his Hispanic ethnicity. He wishes to challenge the notion that he is a gang member and needs the information contained in his security threat group (STG) file. According to FD29/04.02 D, if an offender wishes to challenge the validation of being in a gang, the offender must contest the information to the Offender Management Review Team (OMR). Mr. Mata claims it is impossible to contest the information without knowing what information the UDC has in the file.

**Respondent's Opening Statement**

Mr. Anderson, representative for the Department of Corrections, stated the record Mr. Mata is requesting is a STG File, more commonly known in the public as a criminal street gang. Members of gangs present special housing problems and difficulties for Corrections. Corrections must house these members very carefully in order to maintain a safe and secure institution for staff and inmates. Within the prisons, there are gang rivalries, retaliation, and retribution between and within the gang membership. The correctional facility must carefully monitor and be aware of the specific risks posed by combining certain gang

members, and make a concerted effort to house them accordingly. The STG file is active and is appropriately classified protected under Utah Code § 63G-2-305(11) and (13).

**Testimony Petitioner**

Mr. Mata explained that the STG file is a gang identifier and if offenders wish to contest that classification they have go through the OMR. He argued that according to FD29/04.02 D “If an offender wishes to challenge the validation, the offender addresses the contested information in their respective OMR with a member of the STG Intelligence Unit present. The final decision for the reversal of a validation rests with the STG Intelligence Unit.” He restated that Corrections is racially profiling and that he does not have tattoos as referenced in the Statement of Facts submitted by Mr. Anderson.

Caseworker Mr. Eric Ludvigson was sworn in. Mr. Mata asked Mr. Ludvigson if there were any tattoos on his hands. Mr. Ludvigson responded that Mr. Mata has no tattoos.

**Testimony Respondent**

Major Travis Knorr, Corrections Officer, was sworn in. He explained to the Committee how the STG files are used and why it is important to segregate rival gang members. Releasing the files would jeopardize the safety and security of the staff and inmates within the institutions. Major Knorr explained how gang members use information against each other. The information gathered within the institution is also used on the streets by other law enforcement.

The Chair questioned what avenue an inmate takes to challenge the information in the STG files if they are not privy to the information. Major Knorr explained that the inmate could ask for a management review from the OMR group. It does a risk assessment on whether the inmate is a gang member. He then went on to explain how the OMR process works.

Mr. Mata questioned the witness about tattoos and being designated a gang member. The Chair stopped the questioning when it no longer related to the witnesses’ testimony.

**Petitioner’s Closing Remarks**

Mr. Mata restated that the FD29 policy provides guidance to approach false classification of being a gang member. However, Corrections will not provide him an OMR hearing that leaves him no choice other than to request the STG file to challenge the assumption he is a gang member, and in his opinion, because of his ethnicity.

**Respondent’s Closing Remarks**

Mr. Anderson stated that Mr. Mata has the opportunity to meet with OMR. The FD29 policy does not require the institution to turn over information such as the confidentiality of informants or about active investigations. Releasing the information would jeopardize the life and safety of the inmates and staff at the institution. He asked the Committee uphold Correction’s classification that the record is protected.

**Deliberation**

The Committee decided not to review the records *in camera* and made the following motion.

**Motion:** Mr. Fleming made a motion the governmental entity properly classified the records and access is denied pursuant to Utah Code § 63G-2-305(10), (11) and (13). Ms. Cornwall seconded the motion. The motion passed, 7-0.

The Chair introduced the parties for the next hearing: Mr. Zachary Frankel, Petitioner, representing the Utah Rivers Council, and Mr. Fred Finlinson, representing the Washington County Water Conservation District. The Chair explained procedures and asked the Petitioner and Respondent to introduce themselves for the record.

**III. *Utah Rivers Council vs. Washington County Water Conservation District:***

**Petitioner's Opening Statement**

Mr. Frankel stated that he is the Executive Director for the Utah Rivers Council (a 501(c)(3) non-profit organization) and it has been in operation for 21 years. The Council is seeking a document regarding the Washington County Water Conservation District repayment plan for the Lake Powell pipeline project (LPPP). The document has been widely cited by the governmental entity to dispute other independent studies. The district claimed it has prepared a financial plan, which addressed the concerns of economists and specifically refutes their findings that this public works project will lead to draconian increase in water rates. The financial schedule is what the Utah Rivers Council is seeking. This is the same LLPPP financial plan that was presented to the community in 2013.

**Respondent's Opening Statement**

Mr. Finlinson stated that the repayment plan was a proposal and Washington County Water Conservancy District does not maintain the record. The decision to deny the GRAMA request, submitted by the Utah Rivers Council, cited no record exists. The District hired Jeremy Aguero from Applied Analysis to provide consultation regarding economic, fiscal, and market research to the broad endeavors of the District across the board. Lastly, he emphasized that the District contracted the consultants therefore this is a contractual issue as the consultants maintain ownership and proprietorship over the presentation. The model was not an official repayment plan or schedule.

**Testimony Petitioner**

Mr. Frankel stated that in October 2015 a group of 20 economists from the University of Utah, Utah State University, and Brigham Young University released a financial model of the LPPP. They found that by paying for the project at the current official state estimate, the cost of the project would require a 500 percent increase in water rates; raising property taxes to the maximum level in Washington County for 50 years; and increasing impact fees 120 percent. Those rates are for the cheapest cost of the project predicted at 1 billion dollars. Some speculate it might be closer to 3-4 billion dollars. The economics are essential to the decision of the LPPP because it is a question of affordability. When the economists released their study the District fired back in a series of news stories that they actually had a financial model. In October 26, 2015, the *St. George Spectrum* published an

article mentioning the model presented by Jeremy Aguero. Water district officials have represented time again that they possess a financial model. The district specifically cites a 28 cent increase. On January 15, 2016, Ron Thompson, General Manager of the District, hinted that figures that are more concrete would be released soon. Mr. Frankel continued to discuss the issues associated with the growth of the County and the cost of water to the taxpayers.

**Mr. Thomas Joseph Butine was telephonically connected and sworn in.** Mr. Butine is the President of the Citizens for Dixie Future (CDF). He summarized what took place at the November 21, 2013, Community Integrated Resource Planning Advisory Committee (CIRPAC) meeting (a subcommittee created by the WCWD). At the meeting Jeremy Aguero, presented the *Lake Powell Pipeline Preliminary Financial Modeling* analysis to the Committee. Mr. Frankel provided handouts that captured a screen shot from the posted YouTube video of the presentation on November 21, 2013. (See the attached documents on the Utah Public Notice Website, [SRC Meeting Handouts April 14, 2016.pdf](#)).

Mr. Finlinson asked the witness if he was present at any of the meetings with elected officials when the financial model was reviewed. Mr. Butine responded that he had not attended nor was aware of those other meetings because there were no public notices posted about the City Council meeting.

**Professor Gabriel Lozada was telephonically connected and sworn in.** Professor Lozada is an Associate Professor in the Economics Department of the University of Utah. He explained that in 2011, Mr. Aguero contacted him to discuss differences in the economic LPPP models. In November 2011 they both connected computers (Mr. Aguero in Las Vegas and the Professor in Salt Lake City) to show the results of Mr. Aguero's economic model. They compared results and contrasted the modeling assumptions. The information was on an Excel spreadsheet with numeric formulas. In 2015, Professor Lozada provided Mr. Aguero, by request, an updated copy of his LPPP financing model. The Professor asked if he could be provided a copy of Mr. Agureo's and was told that it was preliminary and he did not want to give it out.

Mr. Finlinson questioned Professor Lozada if Mr. Aguero indicated the reasons he would not share a copy of the model and if he knew what type of contractual agreement Mr. Aguero was under with the District. The Professor responded that he was told the model was proprietary and preliminary, and that he was not aware of the contractual requirements between the District and Mr. Aguero; however, it is known that Mr. Aguero was hired as a consultant for the District.

### **Testimony Respondent**

Mr. Finlinson stated that the matter before the Committee is whether records that were requested in December 2015 exist. The only evidence the Petitioner has provided refers to when the financial plan was discussed is on November 21, 2013, at the CIRPAC meeting. At that time, Mr. Aguero presented an interactive analytical exercise designed to garner people's input on supply, demand, and pricing considerations surrounding water resources. The minutes for the meeting are posted at <http://www.wcwc.org/news-information/cirpac/>.

WCWCD does not have a copy of the repayment plan. Until the State of Utah determines what kind of LPPP to build is yet to be determined by the federal requirements. The design and cost of the project cannot be determined and any repayment plan or schedule would be premature. Mr. Aguero presented an interactive model and was not under contract to make a deliverable schedule or document to the district.

The Committee discussed the contract and questioned whether it included deliverables. Mr. Fleming asked if a copy of the contract was available for the Committee to review and was told a copy had not been brought. The Committee also pondered whether the CIRPAC meeting fell under the Open and Public Meetings Act.

Ms. Cornwall requested clarification on what records Mr. Frankel was seeking because throughout the hearing the record was referred to as a repayment plan, schedule of payments, financial plan, and financial model. Mr. Frankel responded that he was seeking the print out of the excel spreadsheet because it is a program to build math into, and the math that is built into it has all of the answers his organization is seeking. The Chair redirected the question to Mr. Finlinson on whether the District has a copy of the Excel spreadsheet. The response was no.

#### **Petitioner's Closing Remarks**

Mr. Frankel closed by restating the District hired a consultant who prepared a financial model that was presented on November 21, 2013, at the CIRPAC meeting. The Utah Rivers Council is seeking only the Excel spreadsheet. The financial model has been cited for the last three years to dispute other independent studies that the LPPP repayment actually will cost the taxpayers considerably more than what is represented on Mr. Aguero's model. The public is at a great disadvantage because it cannot acquire the information needed to make a rational decision on whether this is the cheapest water source. Mr. Frankel requests the Committee to force the District to provide the document.

#### **Respondent's Closing Remarks**

Mr. Finlinson summarized the issue in front of the Committee by saying that on December 23, 2015, the Utah Rivers Council filed a GRAMA request asking for the repayment plan or a schedule of payment for the proposed LPPP. The district denied the request because it does not possess a copy of the record. The WCWCD has a contract with a consultant, Jeremy Aguero, to develop an integrated analytical program. The program was presented to CIRPAC on November 21, 2015, however; the District does not possess a copy of the video or a copy of the Excel file. The bottom line is that Petitioner's testimony is hearsay and the main question is whether the District had a record of repayment or financial model and that it does not.

#### **Deliberation**

The Committee discussed at length the issue of political subdivisions and contracts pursuant to Utah Code § 63G-2-309. In this particular case, the Committee questioned the contract deliverables and whether the property belongs to the consultant or the District. Mr. Fleming offered that it is clear the file exists. The only question is, is it a record of the District or not and should it be produced. The Chair also interjected the issue of whether

the CIRPAC meeting fell under the Open and Public Meetings Act. Because of uncertainty, the Committee decided it wanted to review the contract.

**Motion:** Mr. Fleming made a motion for a continuance to review the contract. Ms. Cornwall seconded the motion. The motion passed, 7-0.

### **Five-Minute Break**

The Chair introduced the parties for the next hearing: Mr. Nate Carlisle, *Salt Lake Tribune*, Petitioner, and Mr. Blaine Ferguson, representing the Attorney General's Office. The Chair explained procedures and asked the Petitioner and Respondent to introduce themselves for the record.

#### **IV. *Nate Carlisle, Salt Lake Tribune vs. Attorney General's Office:* Petitioner's Opening Statement**

Mr. Carlisle stated that 11 months ago he argued in front of the Committee for records regarding the 2014 Beaver County Sheriff Cameron Noel case. At that time the Committee overturned the Attorney General's Office decision to withhold records and partially granted the records with a couple of exceptions (See <http://www.archives.state.ut.us/src/srcappeal-2015-17.html>). This time Mr. Carlisle is requesting the Committee to order the AGO to release the actual investigative report it possess and maintains in the Beaver County Sheriff Cameron Noel case. Mr. Carlisle summarized the Beaver Case and emphasized that Sheriff Noel is an elected official and the courts are unkind towards public officials and usually lean towards releasing records. In fact, the decision by the Committee in *Lawrence v. Utah Department of Public Safety*, Case No. 12-22, was overturned in *Jeffrey B. Lawrence v. Clayton Bell, Emery County*, Case No. 2:2011cv01186 (<http://archives.utah.gov/src/caselaw.html#utdistrict>)

#### **Respondent's Opening Statement**

Mr. Ferguson stated that this is the Petitioner's second request for various records related to the Beaver County Sheriff Cameron Noel. The first GRAMA request was submitted on January 23, 2015, and the second request was submitted on December 16, 2015. Mr. Ferguson summarized and compared the two GRAMA request to demonstrate the duplications. The office denied the second request for being duplicate to the previous one submitted in January 2015. If the Committee is not swayed by that argument then the records are classified protected pursuant to Utah Code § 63G-2-305(10)(a-c) and Utah Code § 63G-2-302(2d)(1)(b).

Mr. Ferguson referenced the Affidavit of Michelle W. Pickens, the Supervisory Special Agent of the Public Corruption/Civil Rights Squad in Salt Lake City, Utah, which states that the Salt Lake City Office of the FBI has an open and ongoing Civil Rights investigation of Beaver County Sheriff Cameron Noel. The AGO cannot disclose the records because there is an ongoing investigation pursuant to Utah Code § 63G-2-305(18).

### **Testimony Petitioner**

Mr. Carlisle first addressed the affidavit and stated that he is not asking for the FBI records. He is asking for the Millard County investigation and additional investigation reports that were performed by the AGO. He argued that disclosing the records would not reasonably interfere with an ongoing investigation. Mr. Carlisle summarized the case and referred the Committee to *Deseret News Publishing Company v. Salt Lake County*, 2008 UT 26, 8, 182 P.3d 372, as support to release the records. The case makes a clear distinction between cases in open investigation and closed investigation status. He is not asking for attorney work products or any private information (Utah Code § 63G-2-305(18) and Utah Code § 63G-2-302), only investigative reports. If there is private and/or protected information it can be surgically redacted.

### **Testimony Respondent**

Mr. Ferguson first addressed the issue of duplication records request. GRAMA does not say the governmental entity has to fulfil a request if it has already provided the record; instead it says the governmental entity is not required to fulfil the request 'if the request unreasonably duplicates prior records requests from that person' pursuant to Utah Code § 63G-2-201(8)(a)(iv). The issue is whether the two requests duplicate each other. To demonstrate Mr. Ferguson read both requests and compared the language.

Mr. Ferguson then addressed the investigative records classified as protected under Utah Code § 63G-2-305(10)(a-b). Referring to the sworn Affidavit of Michelle W. Pickens, Supervisory Special Agent of the Public Corruption/Civil Rights Squad in Salt Lake City, Utah, Mr. Ferguson stated that the FBI has an open and ongoing Civil Rights investigation of Beaver County Sheriff Cameron Noel. If the information was to be disclosed it would significantly risk and jeopardize the integrity of the investigation. The FBI does not want the AGO to release the records. In addition the records also contain private information and medical information that, if disclosed, would be "a clearly unwarranted invasion of personal privacy" pursuant to Utah Code § 63G-2-302(2)(d). Mr. Ferguson then summarized and refuted the three records Committee decisions that Mr. Carlisle cited pertaining to the argument that public officials are held at a higher level of transparency: *Robert Gehrke, Salt Lake Tribune v. Utah Attorney General's Office*, Case No's. 15-34 and 13-10; and *Eric Peterson, City Weekly v. Utah Attorney General's Office*, Case No. 13-13.

### **Petitioner's Closing Remarks**

Mr. Carlisle commented on *Utah Attorney General's Office v. Salt Lake Tribune*, filed June 24, 2015, in Third District Court, Case No. 150904266, and a judicial review of the Committee's decision for Case No. 15-17. At this time the court has not ruled in favor of the AGO to not disclose the records. With respect to the alleged duplicative records requests, the records that are responsive to the current GRAMA request are different from the previous one. The records that were responsive to his previous request constitute a little section of the bigger collection of records and are vastly different this time. In regard to the ongoing investigation, the AGO has not filed charges and the FBI investigation was not brought up at the previous hearing. Mr. Carlisle then addressed the three cases he cited and focused on *Robert Gehrke, Salt Lake Tribune*, Case No. 15-34, in which the



investigation case was closed and the AGO still did not provide the records. Mr. Carlisle believes all the records for this case should be made public unless there some very specific privacy concerns that can be redacted. The alternative to disclosing the records today would be for the Committee to uphold the denials only pursuant to Utah Code § 63G-2-305(10)(a-c). This would allow him the opportunity in the future to file a GRAMA request and receive the records.

**Respondent's Closing Remarks**

Mr. Ferguson agreed that an appropriate resolution would be for the Committee to refer the denial to access records pursuant to Utah Code § 63G-2-305(10)(a-c). It would be a good solution because Mr. Carlisle could then request records later after the investigation was closed. The AGO recognizes that the *Deseret News Publishing Company v. Salt Lake County* case established a clear opinion of the courts that in some cases the prior practice of agencies asserting the interference with investigations of proceedings could not be practiced. The reference pertains only to that particular investigation and when that investigation is closed the agency can no longer claim Utah Code § 63G-2-305(10)(a-c).

**Motion:** Mr. Fleming made a motion to go *in camera*, Mr. Haraldsen seconded it. The motion passed, 7-0.

**Motion:** Ms. Richardson made a motion to go back in session, Mr. Fleming seconded it. The motion passed, 7-0

**Deliberation**

The Committee discussed whether the records request duplicates the one made in January 2015, and whether to make a motion for a Continuance because of the voluminous in camera records. Furthermore, it was determined that the records under litigation were intermixed and would need to be marked and not considered during the *in camera* review. The executive secretary was tasked to mark the litigation records for Committee members.

**Motion:** Ms. Richardson made a motion that it was not an unreasonable duplicate records request pursuant to Utah Code § 63G-2-201(8)(a)(iv). Mr. Fleming seconded the motion. The motion passed, 7-0.

**Motion:** Mr. Fleming made a motion for continuance to review the records *in camera*. Ms. Richardson seconded the motion. The motion passed, 7-0.

Mr. Tom Haraldsen left the meeting at 12:45 p.m.

**15-Minute break**

The Chair introduced the parties for the next hearing: Mr. Cody Black, Petitioner, and Ryan V. Wood, Lehi City Attorney. The Chair explained procedures and asked the Petitioner and Respondent to introduce themselves for the record

**V. *Cody Black vs. Lehi City Police Department:*  
Petitioner's Opening Statement**

Mr. Black decided to become a police officer and started his career as a volunteer police officer at Lehi City. He later attended the Police Academy, returned to Lehi City and served as a reserve police officer (part time position). In the past, the City's hiring practice has been to hire only full-time positions from the reserve pool, which he was a part of at the time. He became the senior reserve officer in February 2015, and was told that a new hiring policy was adopted which would not guarantee him a full time position although he had seniority. In June 2015, another full-time position, came available and that is when he discovered that there was no new hiring policy. Mr. Black confronted and questioned supervision about the past and current hiring policy. In October 2015, he applied and, again, was denied the transfer to a full-time position. Mr. Black seeks the records of the policies and procedures for hiring and promoting police officers in Lehi City. The Lehi City Human Resource Manager did provide some responsive records to the GRAMA request.

**Respondent's Opening Statement**

Mr. Wood stated that Mr. Black is requesting records from seven different hiring positions in 2015. The City gathered every record it possessed that pertained to the hiring process and noted there are two categories of documents--score sheets and notes. The interviewer took notes during the interview of each candidate and wrote in the margins of the score sheets. The City's concern is that the personal notes really represent people's thoughts, impressions, conclusions, and observations. If those are defined as records the implications for the City would be troubling. He listed a multitude of different scenarios in which employees take notes, not kept as records, but as personal thoughts and impressions. However, if these fall into the definition of a record there are concerns of retaining the records (sticky notes, memo books, and pads) and disclosing the records could have potential to harm relationships and moral.

**Testimony Petitioner**

Mr. Black explained, from his understanding, the process consists of a multitude of scored items. A potential candidate is scored on interview, physical, and written test. The points are combined and the person with highest points or the top ten go on for a chief's interview. In October 2015, he was not selected. On November 3, 2015, he visited the lieutenant and was told he scored the lowest of all the candidates; although he was not shown the score sheet. The purpose for the GRAMA request is to validate the integrity of the process. He wants the score sheets with the list of questions and the interviewer's notes. Mr. Black was questioned by the Committee what records he had already received from Lehi City. He has received other candidate's scoring sheets but not his own.

**Testimony Respondent**

Mr. Wood stated that Mr. Black was not supposed to be provided other candidate's score sheets. Although the City made a mistake by providing the records, it does not mean it should release more records of a similar nature. The problem with releasing the records is that there are handwritten notes and, in some cases, other candidate's scores and information. The notes are defined as "not a record," therefore the score sheets would not

be disclosed. Mr. Wood summarized the definition of a record and what is not a record pursuant to Utah Code § 63G-2-103(22)(b)(i) and (ix) and argued that the notes written on the score sheet are personal notes. If the Committee rules the notes are records then the City acknowledges, as the subject of the notes, Mr. Black has the right to those but other employee records would be designated as private under Utah Code § 63G-2-302(2)(a).

Ms. Cornwall commented that if the notes were on a standardized form it would not be a personalized note it would be a record. Mr. Wood responded that the numbers on the scoring sheets are not notes, but the notes written by the interviewer are pursuant to Utah Code § 63G-2-103(22)(b). The Chair commented that the score sheets along with the notes are turned in to Human Resource Management; therefore, it is not a personal note. The City made the notes records by submitting them to Human Resource Management where they are maintained in the applicant's file.

#### **Petitioner's Closing Remarks**

Mr. Black does not believe the records are properly classified and feels that the inexperience of the City's new administration might be a contributing factor to why he received other candidate's score sheets but not his own. He does not believe the records he is seeking are properly classified.

#### **Respondent's Closing Remarks**

Mr. Wood accepts that the Committee will decide if the records are properly classified. He believes that other employee's records are properly classified as private under Utah Code § 63G-2-302(2)(a).

#### **Deliberation**

The Committee discussed at length whether the notes are records. The notes cease to be personal when they are maintained as a government record.

**Motion:** Mr. Misner made a motion that the personal notes kept for the hiring process are a record pursuant to the conduct of public business and not a temporary draft (Utah Code § 63G-2-103(22)(b)(2)). Ms. Mansell seconded the motion. The motion passed, 6-0.

**Motion:** Ms. Cornwall made a motion that the records are appropriately classified pursuant to Utah Code § 63G-2-302(2)(a) but that the petitioner is entitled to them pursuant to Utah Code § 63G-2-202(1)(a) and Utah Code § 63G-2-308. Ms. Mansell seconded the motion.

**The motion did not pass.**

**Amended Motion:** Mr. Fleming made a motion that the records were properly classified as private records under Utah Code § 63G-2-302(2)(a), and that the petitioner is entitled to information for which he is the subject of the records under Utah Code § 63G-2-202(1)(a); however under Utah Code § 63G-2-308 the records contain public and private information under Utah Code § 63G-2-202(2)(a) and that the government needs to redact pursuant to Utah Code § 63G-2-308. Mr. Misner seconded the motion. Motion passed, 6-0.

#### **Five-Minute Break**

Ms. Richardson disclosed that Ms. Erin Preston, representing Mr. Bryan Thatcher, and she are social friends. Mr. Tonks asked Ms. Richardson if she would be able to be unbiased in the case. Her answer was yes. Mr. Bolander, representing the Utah Department of Public Safety, did not object to Ms. Richardson's participation in the hearing.

The Chair introduced the parties for the next hearing: Ms. Erin Preston, on behalf of Bryan Thatcher, Petitioner, and Mr. Kevin Bolander, Assistant Attorney General. The Chair explained procedures and asked the Petitioner and Respondent to introduce themselves for the record.

**VI. *Bryan Thatcher vs. Utah Department of Public Safety (DPS):***

**Petitioner's Opening Statement**

Ms. Preston is appealing the GRAMA denial by the Department of Public Safety (DPS) of Mr. Thatcher's Internal Affairs (IA) report. The IA investigative report was the basis for Mr. Thatcher's demotion. She is seeking the full report, witness statements, and the communications between DPS staff regarding the substance of the DPS IA investigation. There are three reasons for the request. First, Mr. Thatcher is the subject of the records, the internal affairs investigation is complete and disciplined has been handed down, and the appeals time has passed. The records should be classified as public under Utah Code § 63G-2-301(3)(o). Lastly, under the balancing test, Mr. Thatcher's need for the public records outweighs DPS and any public policy interest in protection of the IA files and the witnesses against Mr. Thatcher. The Petitioner asked the Committee to provide access to the requested records.

**Respondent's Opening Statement**

Mr. Bolander stated the investigative files are difficult because, as the governmental entity, its obligation is to uphold what is in the public interest. Within that public interest are subsets of interests and interests in the privacy of the people who participated in the investigation, the interest of the Department maintaining the integrity of the investigations, and the interest of the public knowing about allegations of wrongdoing by public employees. DPS believed its response to the petitioner's records request best meets that balancing of all the interests within the provisions of GRAMA. Mr. Bolander discussed the protected records that were requested: the IA report, personal handwritten notes, and emails between DPS and the Department of Human Resource Management staff or legal counsel under Utah Code § 63G-2-305(17) and (18). This is a very unique case and DPS's primary concern is that the records are properly classified private and protected. He further offered that if the Committee is inclined to disclose the records to the Petitioner that the decision not be generalized in a way that does not reflect the unique facts in this case. Instead, consider if the entity properly classified the records, and despite weighing of the interest, does the Petitioner have an interest even though they are properly classified.

**Testimony Petitioner**

Ms. Preston argued that Mr. Thatcher is the subject of the records under Utah Code § 63G-2-201(1), and that Mr. Thatcher is the only person being investigated in the report. The governmental entity argued that the disclosure of the records would constitute an invasion

of personal privacy under Utah Code § 63G-2-302(2)(d). However, since Mr. Thatcher is the primary subject of the record the privacy invasion would be his and he is asking that to be waived. In addition, in the *American Family Insurance v. Gregory and Emery Kemp*, all parties involved could support Mr. Thatcher's testimony, and the testimony is public. There is no unwarranted invasion of privacy for the witnesses. Ms. Preston summarized DPS's Statement of Facts and argued that no witnesses were told they would have confidentiality by providing testimony. Ms. Preston also argued the investigation is closed and any protection of the records is now negated by the exhaustion of the administrative appeals and should be reclassified under Utah Code § 63G-2-301(3)(o).

Mr. Thatcher addressed the Committee and explained the IA investigation resulted in an administrative demotion and reclassification under the retirement system; nevertheless, he is still working under the same job position, although he no longer carries a weapon or is categorized as a law enforcement officer. To have disclosure of the records would provide information for potential employers and provide evidence to prove the discrepancies in the investigation that led to his demotion.

#### **Testimony Respondent**

Lieutenant Jimmy Higgs is sworn in.

Mr. Kevin Bolander discussed each record that was not released to the Petitioner, and the reason behind not releasing the record. The personal handwritten notes and emails between legal counsel are properly classified private and protected under Utah Code § 63G-2-302(2)(d) and Utah Code § 63G-2-305(17) and (18). He then focused on the IA file. There are multiple documents, the most critical being the IA report. Mr. Bolander summarized what the report contained and why it should not be released.

Lt. Jimmy Higgs, a veteran of 19 years on the force, offered further testimony of the importance of administrative investigations, not only for the agency but also for the community. The people it serves hold police officers to a higher standard of ethics and professionalism. These types of administrative investigations help ensure that those standards are maintained. In his experience, approximately 15-20 percent of the IA investigations involve situations of personal misconduct, whether it be a relationship conflict or extra marital affairs, are investigated. In these types of investigations, the agency relies on private citizens to volunteer information. If DPS released witness information and testimony, future investigations that rely on volunteer testimony would be hindered if the witness knew the testimony could be released to the public. The Chair interjected that the specifics in this case are known. Mr. Bolander added that the Petitioner does not know the majority of the witnesses.

Mr. Thatcher questioned Lt. Higgs about whether he investigated the case, if there were allegations of adultery, and if he thought Mr. Thatcher would retaliate against co-workers. Lt. Higgs's response was no for the first two questions. Lt. Higgs had just met Mr. Thatcher and could not respond to the last question about retaliation against co-workers.

**Petitioner's Closing Remarks**

Ms. Preston seeks the DPS IA report and notes because they are relevant to the findings in the case. Additionally they are asking for the witness audio and statements. The Petitioner knows who the witnesses are and it is known they are not current DPS employees. The Petitioner also seeks communication in regard to the investigation because it is relevant to how the disciplinary actions were reached. Ms. Preston requested the Committee to grant Mr. Thatcher the records because they will impact his future career success.

**Respondent's Closing Remarks**

Mr. Bolander explained that witness privacy is important and that is why DPS did not release the entire IA file. Just because the Petitioner knows the witnesses does not mean the public knows, therefore the records are properly classified as private and protected records under Utah Code § 63G-2-305(10)(d) and Utah Code § 63G-2-302(2)(d). If the Committee believes that the Petitioner's interest outweighs the privacy interest of the other witnesses in this matter; DPS requests that the Committee compose the Order in a way that DPS properly classified the documents as private and protected but, in this particular case, consider ruling under Utah Code § 63G-2-403(11).

**Deliberation**

The Chair discussed a previous case, which the Petitioner provided as support, *Erin Alberty, Salt Lake Tribune v. Utah Department of Public Safety*, Case No. 12-20, and finds the two cases very similar. In both of these cases administrative proceedings are closed. The Chair does not have interest in reviewing the records *in camera* and believes the records should be released to the Petitioner. The Committee discussed at length whether to go *in camera* or release all records requested to the Petitioner.

**Motion:** Mr. Fleming made a motion to go *in camera*. Ms. Cornwall seconded the motion. The motion passed, 5-1. Ms. Smith-Mansfield dissented.

**Motion:** Mr. Fleming made a motion for a continuance to review the records *in camera*. Ms. Cornwall seconded the motion. The motion passed, 6-0.

**Five-Minute Break**

The Chair introduced the parties for the next hearing: Mr. Roger Bryner, Petitioner, and Mr. David McKnight, Assistant Attorney General. The Chair explained procedures and made clear to all parties that, according to the Utah Uniform Mediation Act (Utah Code § 78B-10-104), all communications (either verbal or written) are confidential and cannot be used in administrative proceedings. The Chair asked the Committee, Petitioner, and Respondent to introduce themselves for the record.

**VII. Roger Bryner vs. Utah Department of Health:  
Petitioner's Opening Statement**

Mr. Bryner stated that the hearing is about a final toxicology report in response to a previous GRAMA request. Since receiving the report (paper format) despite asking, nobody has explained to him where the record came from or how it was prepared. He was

also granted a fee waiver for the paper copy of the final toxicology report. The second GRAMA request was for the original electronic source file maintained by the Department of Health pursuant to Utah Code § 63G-2-201(11) and (12). The Department of Health has unreasonably hindered inspection and access to the electronic records and is estimating 20 hours of work at the cost of \$1,400.00. Mr. Bryner is requesting a fee waiver because he is the subject to the record and qualifies as impecunious under Utah Code § 63G-2-203(4)(b)(c). He asked the Committee to find that the electronic records must be provided without fee just as the paper ones were provided.

### **Respondent's Opening Statement**

Mr. David McKnight, Assistant Attorney General, represents the Department of Health. Sitting next to him is Mr. Michael Green, Assistant Attorney General, representing the Department of Technology Services. Mr. Green stated for the record that he used to represent Ms. Richardson when she was a client in the Governor's Office for Energy Development.

Mr. McKnight stated that part of the problem in front of the Committee is under Utah Code § 63G-2-103(22)(b)(iv), (v), and (x) defines what is not a record: copyright material, proprietary software, and vendor owed copyrights of computer programs. Mr. Bryner is not requesting a record as defined under GRAMA. The software is for the purpose to process, analyze, handle, and maintain blood alcohol test data, and results. In addition, it would be disclosing proprietary software that contains protected information and the agency has an interest in protecting itself from security breaches. Mr. Bryner submitted an updated GRAMA request for unprocessed data files from the computer and the agency responded by providing a program generated record. Mr. Bryner thought the record was incomplete and filed an appeal to the chief administrative officer asking for every record he was the subject of that the Department of Health maintained. It is a broad request and lacks specificity. Mr. Bryner is requesting the sub data and information stored in the core data file, and if that information were provided it would compromise the proprietary software. The agency can provide the electronic records but would need to manually search through the software programs to extract the raw data and remove any proprietary information. Mr. McKnight addressed the fee waiver request stating that although Mr. Bryner has claimed impecuniosity and that his legal rights are implicated; he nevertheless has not provided anything to substantiate the claim.

### **Testimony Petitioner**

Mr. Bryner explained there is a form letter produced by the Crystal Reports from a Microsoft Excel database. He argued that the Department of Health could release his row of data contained in the system by performing a filtered search. He disputed the Department's 20-hour estimate to gather the raw data from the program and feels it is being dishonest in its estimate of time and cost to search the data. The Chair asked him to explain how it implicates his legal rights and the claim of impecunious. Mr. Bryner stated that it affects his legal rights because it is evidence. In regards to impecunious, he makes less than poverty level and receives public assistance.

The Chair stated that the department is claiming that the system underneath the program is proprietary. These systems generally are designed to have an output and the department provided him that electronic output. Mr. Bryner argued that the Department provided a .PDF copy of a scanned report not an electronic output. He is seeking the electronic source from which the output was generated. The Crystal Reports generates a form letter that is pulling information from a database.

### **Testimony Respondent**

Mr. McKnight stated that the agency has responded to Mr. Bryner's GRAMA request and provided him the generated report. What Mr. Bryner currently is asking for is different from the original GRAMA request. He is now seeking all electronic source documents from the core files and, in Mr. Bryner's opinion, only should take 15 minutes to extract this information from the computer programs. If it takes only 15 minutes, and not 20-hours, to pull the information then the Department will not charge him the extra time. The Department denied the fee waiver because there is no proof of impecuniosity. In regard to his legal rights, Mr. Bryner has already received the computer program generated report. To explain how the department estimated the 20 hours, Mr. Preston Freitas, Department of Health, is called as a witness.

Mr. Freitas is sworn in. He explained that the blood alcohol report normally is more than sufficient to answer a typical GRAMA request. What Mr. Bryner is asking for now would require the Department to access the collection of tables within the database. There are several hundred tables containing columns or fields that the technician would need to go through and check to collect the data. Mr. Bryner's information does not reside in one table, it is located in several tables that generate the end report. Four labs that enter a variety of patient lab results share the computer program and that data would need to be segregated before disclosure. Mr. Freitas explained the process to search for the data, ensure the data is correct, and associate the data with the proper batches and samples.

Mr. Bryner was granted the ability to question the witness, Mr. Freitas, on current testimony. Mr. Bryner asked if it was true the blood alcohol testing data is not linked to any other database. Mr. Freitas responded that the blood alcohol data resides in an enormous multi-use table and contains other patient lab results. The blood alcohol data would have to be segregated from other patient information. Mr. Bryner stated the response contradicts what Mr. Freitas told him earlier. The Chair warned Mr. Bryner not to disclose information obtained through mediation and to be specific to the current testimony. Mr. Bryner spoke an expletive and disconnected telephonically from the hearing.

### **Petitioner's Closing Remarks**

The Petitioner was not available to provide closing remarks.

### **Respondent's Closing Remarks**

Mr. McKnight stated the agency feels it has complied with the actual GRAMA request and provided the database-generated record. To respond to the supplemental request it would cost the department time and money to compile, format, and manipulate the information.



According to the statute the agency has the right to charge a fee pursuant to Utah Code § 63G-2-203(2)(a)(iii).

**Deliberation**

None.

**Motion:** Ms. Richardson made a motion to deny the request for the fee waiver and allow the governmental entity to charge the full amount prior to fulfilling the request pursuant to Utah Code § 63G-2-203(2)(a)(iii). Mr. Fleming seconded the motion. The motion passed, 6-0.

**VII. Retention Schedule:**

Ms. Rebekkah Shaw presented one records series:

(Item 1-24) Child Protective Services Investigation Case Files.

**Motion:** A motion was made by Ms. Cornwall, and seconded by Ms. Richardson, to approve the proposed retention schedule. The motion passed, 5-0. Mr. Fleming abstained.

**VIII. Approval of March 17, 2016, Minutes:**

A motion was made by Ms. Richardson to approve the March 17, 2016, minutes. Mr. Fleming seconded the motion. The motion passed 6-0. (See the attached documents on the Utah Public Notice Website, [SRC Minutes March 17, 2016.pdf](#)).

**IX. Report on Cases in District Court:**

Mr. Tonks provided a handout to Committee members but did not brief them on the court cases because of a lack of time. However, Mr. Tonks discussed the *Chad Lambourne v. Provo City*, Case No. 160901346, court ruling. He stated that it was dismissed by the court after finding that the appeal filed with the State Records Committee was untimely. The Court found that Provo City “properly preserved” the objection before the Committee. (See the attached documents on the Utah Public Notice Website, [SRC Meeting Handouts April 14, 2016.pdf](#)).

**X. Report on March and April Appeals:**

There were no denials to brief the committee members. The executive secretary mentioned ten potential hearings are scheduled for May 12, 2016, and two are scheduled for June 9, 2016. (See the attached documents on the Utah Public Notice Website, [SRC Meeting Handouts April 14, 2016.pdf](#)).

The Chair asked if anyone would be willing to have an intermediate hearing for the Continuances. The Committee members were agreeable to the suggestion and the executive secretary was asked to schedule a date for an intermediate hearing and have the members review the pertinent records *in camera* beforehand.

**XI. Other Business:**

**-May 12, 2016, is the next scheduled meeting.**

SRC Minutes April 14, 2016

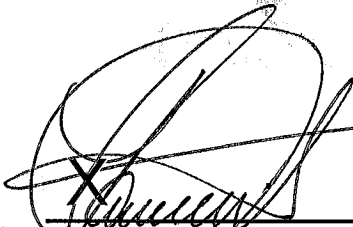
**-Discuss Lambourne vs. Provo City Court ruling**

See Report on Cases in District Court

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

The April 14, 2016, State Records Committee meeting adjourned at 4:34 p.m.

**This is a true and correct copy of the April 14, 2016, SRC meeting minutes, which were approved on May 12, 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