

State Records Committee Meeting

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

Date: July 14, 2016

Time: 9:07 a.m. -1:45 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:

Roger Bryner, Petitioner
Daniel Ortiz, Petitioner

Others Present:

Mark Allen, Petitioner for Protect & Preserve American Fork Canyon
Gina Proctor, Utah Department of Corrections
Jeralyn Zimmerman, Utah Department of Corrections
Sean Baker, SAC
Ryan Jolley, SAC
Catherine Brabson, Salt Lake City Corporation
Greg Mead, Utah Department of Technology Services
Lonny Pehrson, Utah Attorney General's Office
Stephanie Weteling, Utah Department of Technology Services
Jerrold Jensen, Assistant Attorney General
Paul Jones, Utah County Attorney
Angela Elmore, Utah Legal Clinic Attorney
Bakhan Barzangy [sic], Utah Legal Clinic
Matthew Slawson, Utah Department of Health
Bryan Nalder, Assistant Attorney General
David McKnight, Assistant Attorney General
Mike Green, Assistant Attorney General
Noemi Cruz, Public
Renée Wilson, Utah State Archives
Rosemary Cundiff, Utah State Archives
Rae Gifford, Utah State Archives

Agenda:

- Five Hearings Scheduled
- Retention Schedules, action item
- Approval of June 9, 2016, Minutes
- Report on Appeals Received
- Report on Cases in District Court
- Other Business
 - Next meeting scheduled for August 11, 2016, 9 a.m. to 4 p.m.

I. Call to Order:

Ms. Holly Robinson is connected telephonically until she physically arrives to the meeting. The Chair, Ms. Patricia Smith-Mansfield, called the meeting to order at 9:07 a.m. and introduced the parties for the continuance: Ms. Angela Elmore, on behalf of Trenton Mellen, Petitioner, and Ms. Catherine Brabson, representing Salt Lake City Corporation.

Ms. Cindi Mansell (Salt Lake City Recorder) recused herself from the proceedings.

II. *Angela H. Elmore, on behalf of Trenton Mellen vs. Salt Lake City Corporation Continuance*
Deliberation: The Committee decided to re-review the records *in camera*.

Motion: Mr. Misner made a motion to go *in camera*, Mr. Haraldsen seconded it, and the motion passed, 6-0.

Ms. Smith-Mansfield, Mr. Fleming, Ms. Cornwall, Mr. Misner, Mr. Haraldsen, and Ms. Richardson voted yea.
Ms. Mansell was recused

Ms. Richardson arrived to the meeting at 9:16 a.m.

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

Ms. Smith-Mansfield, Mr. Fleming, Ms. Cornwall, Mr. Misner, Mr. Haraldsen, and Ms. Richardson voted yea.
Ms. Mansell was recused.

Deliberation: The Committee after having reviewed the records *in camera* made a motion. The Chair stated she would be voting against the motion, because although a large portion of the records is classified protected, portions of communications about the internal office workings are public. She could not go into detail without revealing the essence of the records. Mr. Fleming voted for the motion and stated that he believes there is merit to the Chair's argument although, in his opinion, those communications were related to the case and therefore protected.

Motion: Ms. Richardson made a motion that the records are properly classified as protected under Utah Code § 63G-2-305(17) and (18). Mr. Fleming seconded the motion. The motion failed, 3-3.

Mr. Fleming, Ms. Cornwall, and Ms. Richardson voted yea.
Mr. Haraldsen, Ms. Smith-Mansfield, and Mr. Misner voted nay.
Ms. Mansell was recused.

Deliberation: Mr. Misner explained why he voted against the motion, mainly because he believed elements of the communications were not protected. The Committee's legal counsel asked members if the documents whether were Bates stamped and they could discern which specific documents were classified protected and public. The records had not been Bates stamped and the Committee determined it needed to go back *in camera* to review the records in detail.

Motion: Mr. Fleming made a motion to go *in camera*, Mr. Misner seconded it, and the motion passed, 6-0.

Ms. Smith-Mansfield, Mr. Fleming, Ms. Cornwall, Mr. Misner, Mr. Haraldsen, and Ms. Richardson voted yea.

Ms. Mansell was recused.

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

Ms. Smith-Mansfield, Mr. Fleming, Ms. Cornwall, Mr. Misner, Mr. Haraldsen, and Ms. Richardson voted yea.

Ms. Mansell was recused.

Deliberation: The Committee discussed the possibility of segregating out the information from the protected information provided enough context and substance was left of the record to be relevant. Individual members commented that it did not seem possible to be able to segregate the information because it would lose the context of the subject and it would be unclear what the communications were about or to whom.

Motion: Mr. Fleming made a motion that the records are properly classified as protected Utah Code § 63G-2-305(17) and (18). Ms. Cornwall seconded the motion. The motion passed, 5-1.

Mr. Fleming, Ms. Cornwall, Mr. Misner, Mr. Haraldsen, and Ms. Richardson voted yea.

Ms. Smith-Mansfield provided the nay vote.

Ms. Mansell was recused.

Ms. Richardson disclosed the fact that she knows the petitioner, Mr. Mark Allen, and had discussed the matter prior to the hearing, but not in relation to the specific appeal to be heard by the Committee. She has also written an article about the case. She stated she could be unbiased. The Chair asked whether both parties agreed that Ms. Richardson could deliberate on the appeal. Mr. Allen, Petitioner, and Paul Jones, representing Utah County, did not oppose.

The Chair introduced the parties for the next hearing: Mr. Mark Allen, Petitioner, and Paul Jones, representing Utah County Commission. The Chair explained procedures and asked the Petitioner and Respondent to introduce themselves for the record.

III. *Mark Allen vs. Utah County Commission*

Petitioner's Opening Statement

Mr. Allen, representing the Facebook group Protect and Preserve American Fork Canyon, stated that this hearing would both set a precedent and set the state of Utah back 50 years for open and transparent processes. On the other hand, it could help the state move forward and garner public support and trust. He continued to explain that research led to finding that five-elected official's email accounts had been deleted. The common bond, the officials all have ties to Snowbird Ski Resort which paid for trips to Switzerland for the officials and their wives. One particular document

discovered during his research of government emails had a passenger list of ten people who went to the Snowbird Ski Resort it also detailed that Snowbird Ski Resort had bought eighteen hundred acres of land in American Fork Canyon that is not on the County books. Mr. Allen demonstrated that an email is a public record by showing his ability to access Governor Herbert's direct business email address. He emphasized he is not seeking private emails, only government emails. Mr. Allen concluded that this could and "will set Utah back to Russia-like policies if we do not allow open and transparent processes."

Respondent's Opening Statement

Mr. Paul Jones, Utah County Attorney's Office, stated the question before the Committee is whether a direct email address for government employees is public or private. He continued to frame the narrative that government emails are private and the government is only required to provide a business email address, which does not include direct email addresses of employees. Mr. Jones quoted and interpreted the following sections and subsections in GRAMA in regard to the County's legal argument to not disclose the records: Utah Code § 63G-2-301(1)(b); Utah Code § 63G-2-301(2)(a) and (b); and lastly, Utah Code § 63G-2-302(2)(a).

Testimony Petitioner

Mr. Allen stated that the County has misread of the intent of the law. He read, in support of his position, Utah County Commissioner William C. Lee's dissenting opinion regarding the County Commission's misinterpretation of the Utah's Government Records Access and Management Act (GRAMA) statute: "[T]he Legislator's [sic] intent is to "favor public access when, in the application of this act, countervailing interests are of equal weight." Utah Code § 63G-2-102(3)(e). "Except where a disclosure is forbidden by law, my votes is always for more openness and transparency." Mr. Allen continued to quote from the two-page dissenting opinion dated March 28, 2016, from Utah County Commissioner William C. Lee, that argued that "the appellant [Mr. Mark Allen] is entitled to receive the names of all Utah County employees as well as the individual government email addresses of all Utah County employees." Mr. Allen expanded his argument that only records specified in Sections 63G-2-302, 63G-2-303, 63G-2-304, and 63G-2-305 may be classified private, controlled, or protected.

The present appeal pertains to obtaining records from Utah County surrounding another Snowbird related issue. It was brought to Mr. Allen's attention that Snowbird had provided free ski passes to Utah County Commissioner Greg Graves, which he distributed to county employees at a county Christmas party. Mr. Allen's efforts to identify who received these and the value of the passes has been road blocked and his request for the email addresses of county employees was denied.

Ms. Cornwall asked for clarification on what records Mr. Allen was seeking. Did he want a list of who attended the Christmas party and the recipients of Snowbird gifts? Mr. Allen stated he was only seeking the Utah County employee email addresses.

Testimony Respondent

Mr. Jones responded to the dissenting opinion by Utah County Commissioner William C. Lee. Stating that the dissent does not address the statutory framework of GRAMA. It does not explain why Subsection 63G-2-301(2)(a) does not make governmental email addresses private documents. The dissent oversimplifies the analysis of Section 63G-2-302, by performing a search for the word "email" and mischaracterizes the private classification. This approach has failed to capture the full meaning of Section 63G-2-302, especially in how it concerns employees' direct email address.

Mr. Jones continued to argue, that governmental records that concern employees are private unless listed in Subsection 63G-2-301(2)(b). If the public wants to know what government employees are

communicating to each other then the request should be for email records not email addresses. It is unclear how receiving an email address will satisfy a public interest. Adding further weight to his argument, Mr. Jones introduced the Committee's appeal decision 2010-18, *Tab L. Uno v. Salt Lake City School District*, <http://archives.utah.gov/src/srcappeal-2010-18.html>, and explained how the case was similar to the one currently before the Committee.

Mr. Jones added that the private classification of government email addresses could prevent harmful, unfettered, unfiltered, direct communication from disgruntled, threatening individuals, and criminal defendants to prosecutors, arrestees to law enforcement, or other unprofessional, non-governmental communications creating inefficiencies in operation. GRAMA was enacted to facilitate the disclosure of records that demonstrate the conduct of the public's business; it was not enacted to facilitate communication with governmental employees. By providing a "business email address," the governmental entity can control and disseminate the public to the right person(s) who need to respond.

The Chair asked how governmental employees assigned email addresses are used. Mr. Jones responded that there is internal and external communication among employees and directly with the public. If there is a hostile person(s), then the generic governmental email address could be used to protect the governmental employee's privacy. The Chair responded that it seems as though the county is picking and choosing, based on some internal criteria, whether the record is public or private. If the record is appropriately classified as private, it is a Class B Misdemeanor to release the email addresses. Therefore, not all employees could use their assigned email addresses to correspond with the public.

Ms. Mansell questioned if the Respondent's argument is that the one generic county email address meets the intent of the law. Mr. Jones stated yes, that business email addresses have a specific definition under Utah Code § 63G-2-301(1)(b). That is defined as a single email address for a governmental entity. The other items listed under that Subsection are not specifically defined separately in another portion of the law, as is the business email address. If the Committee decides that direct email addresses are public, the next logical step is that direct phone numbers and direct office locations would be public. Based on the law the governmental entity is required to provide only a single business email address and phone number to the public.

Petitioner's Closing Remarks

Mr. Allen stated that Utah really has done some remarkable things concerning transparency. However, by not disclosing email addresses it would hinder the media from accessing information. If email addresses were precluded, then phone numbers would be precluded as well. This would leave no available way for the governmental entity to communicate with the public. Mr. Allen discussed that if the public misuses a governmental entity email address, the government has protections under Offenses Against Public Order and Decency, Utah Code § 76-9-201.

Mr. Allen concluded with the following statement, "Are we going to set Utah back to 50 years and be more like Russia, be more like Hillary Clinton's email servers [that had] accounts deleted" or even the Utah County public official's email accounts that were deleted. What would happen if the media lacks access to email address? It would hinder the ability to sleuth. He finished with the hope the Committee will continue the progression of openness and transparency by requiring Utah County to release the direct email addresses.

Respondents Closing Remarks

Mr. Jones stated that the wording in GRAMA could not be clearer. Records concerning an employee such as the direct email address are private. The business email address is public. The

statutory framework is very clear, and the scope of the appeal is whether all direct email addresses are public or private. GRAMA makes it very clear they are private.

Deliberation

The Committee discussed that having a governmental email address is public and in order to conduct public business the emails must be public. The members believe the Respondent has misinterpreted the legislature's intent. However, Ms. Cornwall argued that maybe in some cases they should be private to protect female employees from electronic harassment. The way she interprets the law the direct emails should be private and only the business email address is public. Mr. Fleming interjected that it is the content of the email that is classified not the email address. He went on to explain even in the private sector businesses provide an email address and it is explicitly clear that employees do not have the right to privacy.

Motion: Mr. Fleming made a motion that the email addresses of county employees are public with the exception of any email addresses subject to the restrictions under Utah Code § 63G-2-301(2)(b). Ms. Richardson seconded the motion. The motion passed, 6-1.

Mr. Fleming, Mr. Misner, Mr. Haraldsen, Ms. Smith-Mansfield, Ms. Mansell, and Ms. Richardson voted yea.

Ms. Cornwall provided the nay vote.

5-Minute Break

The Chair introduced the parties for the next hearing: Mr. Daniel Ortiz, Petitioner, and Mr. Jerrold Jensen, representing the Utah Department of Corrections. The Chair explained procedures and asked the Committee, Petitioner, and Respondent to introduce themselves for the record.

IV. Daniel Ortiz vs. Utah Department of Corrections (UDC)

Petitioner's Opening Statement

Mr. Daniel Ortiz explained that he is incarcerated at the Utah State Prison and is petitioning the Committee for a fee waiver under Utah Code § 63G-2-203(4)(b). He originally requested a waiver of fees for the records under the Utah Department of Corrections policy, DIOGO ACR 28/03.08 C. (2)(b), because he is the subject of the records, and believes he should be entitled to receive them at a reduced or waived fee. The UDC policy allows records officers to reduce or waive fees on a case-by-case basis. In the past, he has filed eight other GRAMA requests and has paid for all the records received and feels that this time there should be a reduced fee or fee waiver.

Respondent's Opening Statement

Mr. Jerrold Jensen, on behalf of Matthew Anderson, is representing the UDC. The UDC policy on GRAMA requests allows indigent inmates to request up to 100 pages of records without cost. Mr. Ortiz is not requesting under the basis of being indigent, but under the basis that he is the subject of the record. The Department of Corrections, because it hosts a certain number of agitated customers, has made it a policy not to grant fee waivers even though the inmate maybe the subject of the records. It is a discretionary matter under the UDC policy. If Corrections were to allow 6,300 inmates the ability to make a request for all records in their file, it becomes a burden with covering the costs. He stated that this matter closely resembles the appeals in *Sullivan v. UDC*, Case No. 15-19, and *Johnson v. UDC*, Case No. 15-23, both of which the Committee decided last year. In both matters, the inmates requested fee waivers for records requests solely on the ground that they were the subject of the records. Under those circumstances, the Committee determined that UDC's denial of fee waivers to these inmates was not unreasonable. (<http://archives.utah.gov/src/srcappeal-2015-19.html> and <http://archives.utah.gov/src/srcappeal-2015-23.html>)

Testimony Petitioner

Mr. Ortiz stated that he has filed eight other GRAMA requests and he did not ask for a fee reduction or fee waiver. He is not a burden on the taxpayer by requesting a fee waiver for the records. Family members, who are taxpayers and deposit money in his account, are being charged double by the state when he requests records. Mr. Ortiz explained he is not employed and does not have any other income other than what his family sends. He is simply asking for a reduction of fees or a fee waiver for the \$9.25 charge.

Testimony Respondent

Mr. Jensen stated that argument borders on the argument of being impecunious but Mr. Ortiz has not made the request for records under impecuniosity. Instead, he is arguing under the fee waiver that he is the subject of the record. The fact is that when Mr. Ortiz made the request in February 2016, he had money in his account to cover the \$9.25. The statute encourages the agency to produce records when the person is the subject of the record but it also allows the agency to have discretion in how it handles the process and applies the fees.

Ms. Gina Proctor was sworn in. She explained that when an inmate's account falls below \$9.00 for 45 consecutive days they are considered indigent. Ms. Proctor went on to explain the appraisal process of applying fee waivers to the subject of the records at different decision levels. She explained that for medical records, because inmates have constitutional rights to adequate medical care, there usually is a fee waiver. The incident report, which is what Mr. Ortiz is seeking, is not typically waived because it does not meet the same criteria as an inmate's medical records or financial statements.

Mr. Ortiz asked Ms. Proctor why he did not receive a fee waiver when he requested medical records in a previous GRAMA request. The Chair redirected the Petitioner to ask questions about the current appeal. Mr. Ortiz stated that he was simply trying to convey to the Committee that he did not receive a fee waiver for medical records, as it was alluded to when Ms. Proctor outlined the Prison policy. Ms. Proctor explained to Mr. Ortiz the discretionary process at each level of decision-making, and asked if he appealed the fee waiver denial for the medical records to the UDC Deputy Director, Mr. Mike Haddon. Mr. Ortiz stated no, that he paid for the records. Ms. Proctor expanded the discussion that because he did not request a fee waiver there was no denial.

Petitioner's Closing Remarks

Mr. Ortiz believes the fee should be waived based on the Utah Department of Corrections policy, DIOGO ACR 28/03.08 C (2)(b), because records officers are encouraged to waive the fees on a case-by-case basis. He has paid for other records and just this one time would like a fee waiver. He has the right to know what the incident report states and why he was moved to maximum security.

Respondents Closing Remarks

Mr. Jensen referred the Committee to *Johnson v. UDC*, Case No. 15-23, and stated the only difference is the number of pages and the costs. He read the Committee's written opinion on the case and explained the same policy applies now as it did last year. Mr. Ortiz's fee waiver denial is similar to the 2015 case and is not unreasonable.

The Chair reminded the Committee the law changed in 2016, and reviewing fee waivers is *de novo* based on the merits of the case under Utah Code § 63G-2-203(6)(b).

Deliberation: The Committee and legal counsel discussed the new provision in GRAMA and its applicability to Mr. Ortiz's case.

Motion: Mr. Fleming made a motion to deny the fee waiver request because governmental entity's policy is reasonable. Ms. Mansell seconded the motion. The motion passed, 7-0.

Mr. Fleming, Ms. Cornwall, Mr. Misner, Mr. Haraldsen, Ms. Smith-Mansfield, Ms. Mansell, and Ms. Richardson voted yea.

V. Approval of June 9, 2016, Minutes:

A motion was made by Mr. Haraldsen to approve the June 9, 2016, minutes. Ms. Mansell seconded the motion. The motion passed 6-0. Ms. Smith-Mansfield abstained. (See the attached documents on the Utah Public Notice Website, [SRC Minutes June 9, 2016.pdf](#)).

Mr. Fleming, Ms. Cornwall, Mr. Misner, Mr. Haraldsen, Ms. Mansell, and Ms. Richardson voted yea.
Ms. Smith-Mansfield abstained.

The Chair introduced the parties for the next hearing: Mr. Roger Bryner, Petitioner, and Mr. David McKnight, representing the Department of Health. The Chair explained the procedures and asked the Committee, Petitioner, and Respondent to introduce themselves for the record.

**VI. Roger Bryner vs. Utah Department of Health (DOH)
Petitioner's Opening Statement**

Mr. Bryner stated there were approximately 3,000 to 6,000 blood alcohol reports generated by the Department of Health in 2015. The information is easily accessible from a database by running a SQL query. He continued that the Department stated in previous emails that the data he seeks would be very easy to provide; however, the Department originally stated that it does not maintain the records and it would cost \$1300.00 to retrieve the data. In response, he narrowed the request to just his data and asked the Department to work for 15 minutes, and claimed that it was able to produce the raw numbers from his report in less than 15 minutes.

In addition to the SQL query, he is also seeking the Agilent .D files, which are standards, or sample numbers. Those numbers should be disclosed as a whole without any danger of linking with individual people.

Respondent's Opening Statement

Mr. David McKnight, representing the Department of Health, stated that DOH it has to respond to Mr. Bryner's request and not read between the lines. In this request, he is asking for copies of the results of all blood alcohol tests performed in 2015 for the purpose of a statistical analysis of all outcomes. That request is what the Department has responded to. The request was denied because all blood alcohol tests performed in 2015 are private under Utah Code § 63G-2-302(1)(b). The Department would have to manipulate, tailor, and redact names and that would place an unreasonable burden on the lab and interfere with duties. Mr. Bryner also asked for a fee waiver and it was denied because he is not the subject of the records.

Testimony Petitioner

Mr. Bryner expressed his dissatisfaction with the administrative proceedings, the Department of Health's response to his GRAMA request, and the state of Utah.

Testimony Respondent

The Chair asked the Respondent whether DOH ever produced statistical reports based on the number of DUIs. Mr. McKnight responded that the Department of Public Safety (DPS) has people who

request and do research with the very same data Mr. Bryner is requesting for statistical analysis that is published in the Thirteenth Annual DUI Report to the Utah Legislature, 2015. (See the attached documents on the Utah Public Notice Website, SRC Meeting Handouts July 14, 2016 02.pdf).

Mr. Matt Slawson was sworn in and explained that the lab does not compile statistical summaries; however, there is an annual report that is filed with the Utah Legislature by the Utah Commission on Criminal and Juvenile Justice that every year compiles a statistical summary of all DUI related in the state of Utah. It is publically available.

He continued to explain that the lab analyzes approximately 7,000 law enforcement cases for drugs, drinking and driving. It is a conservative estimate that 3,500 are specifically alcohol related. To go through each individual alcohol report and redact the name to provide a copy to Mr. Bryner would be an enormous undertaking. The alternative would be to retrieve summary data out of the laboratory computer system. To obtain the data the office would have to run a query, extract the numbers, and compile it into a spreadsheet. To perform this alternative process would require the lab to commission assistance from the Department of Technology Services to write a query. This would take a lot of time and effort to ensure the data queried was being transferred to a spreadsheet accurately. It can be done, but due to the amount of time and work involved, the Department could not offer a fee waiver. Another reason for the fee denial is that records do not directly relate to Mr. Bryner. All the records that relate to Mr. Bryner's specific case have already been provided and the fee waiver granted.

The Chair clarified that the Department of Health can provide the statistical data but would have to commission the Department of Technology Services to assist in writing a query to extract the data. The time to run the full query would take 3-4 hours at \$35.00-\$75.00 an hour. Mr. Slawson provided a detailed description of how the testing equipment interacts with the computer program to produce a record.

Mr. Bryner asked the witness about the information contained in the database, the ease of identifying personal information, and the process of entering information. Mr. Slawson stated personal identity could be compromised if certain information is not properly redacted, and that the agency calibrates the equipment to ensure it is working properly prior to inputting an individual's data.

Mr. Bryner stated that he "needed to drop off" the line and for the Committee to continue the two scheduled hearings without his participation: the Department of Health and the Department of Technology Services.

Petitioner's Closing Remarks

On his own accord, Mr. Bryner disconnected telephonically from the Committee meeting.

Respondents Closing Remarks

Mr. McKnight concluded that the governmental entity based its response to Mr. Bryner on the original GRAMA request. There are two options for providing the records by either printing and redacting private, protected, and controlled information or writing a computer program, with assistance from the Department of Technology Services. The latter would filter out the restricted content that Mr. Bryner is not entitled to because he is not the subject of the records. In addition, because he is not the subject of the records, and it is burdensome on the agency to compile these records the governmental entity would like the Committee to uphold the fee waiver denial.

Deliberation

The Committee discussed at length the definition and differences of summary data and raw data that Mr. Bryner is requesting, and whether, after the redactions, any public information would be remaining. Ms. Cornwall expressed that if only the blood alcohol level is provided the information is useless for the research Mr. Bryner intends to do with the data. The Committee decided to separate the request making a motion on the classification of the requested records and the fee waiver.

Motion: Mr. Fleming made a motion that the primary classification of the records is private but the Committee acknowledges there is very limited information the records contain that could be considered public; for example blood alcohol percentages that cannot be tied to an individual under Utah Code § 63G-2-302(1)(b). Ms. Mansell seconded the motion. Motion passed, 6-1.

Mr. Fleming, Ms. Cornwall, Mr. Misner, Mr. Haraldsen, Ms. Mansell, and Ms. Richardson voted
yea
Ms. Smith-Mansfield provided the nay vote.

Motion: Mr. Haraldsen made the motion that if the records as requested were provided with redactions the fee waiver denial is not unreasonable because it does not meet the criteria under Utah Code § 63G-2-203(4). Ms. Cornwall seconded the motion. The motion passed, 7-0.

Mr. Fleming, Ms. Cornwall, Mr. Misner, Mr. Haraldsen, Ms. Smith-Mansfield, Ms. Mansell, and Ms. Richardson voted yea.

The Chair introduced the parties for the next hearing and explained that Mr. Bryner, the petitioner, had agreed not to participate: Mr. Michael Green, representing the Utah Department of Technology Services. The Chair explained procedures and asked the Respondent to introduce himself for the record.

**VII. Roger Bryner vs. Utah Department of Technology Services (DTS):
Petitioner's Opening Statement**

On his own accord, Mr. Bryner earlier disconnected telephonically from the Committee meeting.

Respondent's Opening, Testimony, and Closed Statements

Mr. Michael Green, representing the Department of Technology Services, stated that Mr. Bryner's request for a fee waiver was unreasonable because Mr. Bryner provided no information to support his contention that the information that he seeks will directly implicate his legal rights and that he is impecunious. Mr. Bryner has not filed an affidavit to the contrary.

The other issue is that DTS appropriately denied Mr. Bryner access to the Department of Health's records because DTS merely is the custodian of the electronic records, and not an owner, preparer or retainer of the records under Utah Code § 63G-2-204. DTS does not have the authority to release another state agency's records under Administrative Rule R895-1-4(1) and (3).

Deliberation: The Chair stated that DTS is not the custodian of the records but stores the records on behalf of the governmental entity. The owning governmental entity is the one which has the authority to provide access to its records not DTS.

Motion: Mr. Fleming made a motion that the governmental entity is not the owner of non-departmental records and therefore is not authorized to release the record pursuant to Administrative

Rule R895-1-4(1) and (3), and Utah Code § 63G-2-103(22)(a)(i). Ms. Cornwall seconded the motion. The motion passed, 7-0.

Mr. Fleming, Ms. Cornwall, Mr. Misner, Mr. Haraldsen, Ms. Smith-Mansfield, Ms. Mansell, and Ms. Richardson voted yea.

Mr. Green stated that he and Ms. Richardson previous had worked together. The Chair recognized that the claim was brought up at a previous hearing.

Motion: Mr. Fleming made a motion that the fee waiver denial was not only reasonable but is moot because the governmental entity does not have ownership of the records. Ms. Cornwall seconded the motion. The motion passed, 7-0.

Mr. Fleming, Ms. Cornwall, Mr. Misner, Mr. Haraldsen, Ms. Smith-Mansfield, Ms. Mansell, and Ms. Richardson voted yea.

VIII. Retention Schedule:

State Agencies: Ms. Rae Gifford presented three retention schedules.

Department of Alcoholic Beverage Commission. Alcoholic Beverage Control.
9155 Licensee violation files. Retain 75 years after final action.

Motion: A motion was made by Mr. Fleming, and seconded by Ms. Cornwall, to approve the proposed retention schedule. The motion passed, 7-0.

Mr. Fleming, Ms. Cornwall, Mr. Misner, Mr. Haraldsen, Ms. Smith-Mansfield, Ms. Mansell, and Ms. Richardson voted yea.

Department of Administrative Services. Division of Archives and Records Service.
7338 Reformatting. Retain 7 years.

Motion: A motion was made by Mr. Fleming, and seconded by Ms. Cornwall, to approve the proposed retention schedule. The motion passed, 7-0.

Mr. Fleming, Ms. Cornwall, Mr. Misner, Mr. Haraldsen, Ms. Smith-Mansfield, Ms. Mansell, and Ms. Richardson voted yea.

Department of Technology Services (DTS).
83970 Policies and procedures manuals. Retain until superseded.

Ms. Mansell stated there already is a policy and procedure for records classification in the general schedule; therefore, DTS should not receive its own classification. Ms. Gifford explained that DTS required a unique schedule because the record is being transferred to the Clearfield repository. In order for the Archives to store the records, a series number is required. In addition, the General Schedule states a different time frame (3 yrs.) and DTS did not want to keep the record that long. Ms. Mansell raised the concern that counties and municipalities are not allowed to request a unique series for a time frame if one already exists under the General Schedules.

The Committee continued to debate the time frame and reason for the unique schedule and ultimately decided to relook at the General Schedule.

Motion: A motion was made by Mr. Fleming to deny approval and require the review of the General Schedule. Ms. Mansell seconded the motion. The motion passed, 7-0.

Mr. Fleming, Ms. Cornwall, Mr. Misner, Mr. Haraldsen, Ms. Smith-Mansfield, Ms. Mansell, and Ms. Richardson voted yea.

Department of Workforce Services

28897 Administrative services grant and contract records. Retain 5 years after final action.

The review was cancelled prior to the meeting by the agency.

Utah State General Records Retention Schedule: Ms. Rae Gifford presented two County Clerk Records schedules.

(Item 14-46) Petition Signature Records

(Item 14-47) Submitted Petition Records

Deliberation: The question was posed to change the disposition to “permanent” and “may transfer to Archives 5 years after resolution.” Ms. Mansell asked whether the state schedule would be amended also. The Chair agreed the retention should be consistent and universal for state, counties, and municipalities. The motion was approved but the Committee directed the record analyst to bring the state schedule for review at a later date.

Motion: A motion was made by Mr. Fleming, and seconded by Ms. Cornwall, to approve Item 14-46 as written, and approve Item 14-47 with the suggested revision. The motion passed, 7-0.

Mr. Fleming, Ms. Cornwall, Mr. Misner, Mr. Haraldsen, Ms. Smith-Mansfield, Ms. Mansell, and Ms. Richardson voted yea.

IX. Report on June and July Appeals:

Two denials were briefed to the Committee members.

Al Coggeshell vs. Utah Department of Corrections (UDC): On June 29, 2016, Mr. Coggeshell requested a Motion of Reconsideration. There is no provision for the Committee to reconsider a decision and/or order per U.C. 63G-2-104 and U.C. 63G-4-102(2)(p). On July 1, 2016, the executive secretary sent out the response. On July 8, 2016, the executive secretary received another letter from Mr. Coggeshell, dated July 1, 2016, stating that he did not receive a response to the Motion of Reconsideration and requested a filing extension for a separate appeal that was due to the Committee on July 3, 2016. On July 8, 2016, the executive secretary resent the July 1, 2016, response and follow-up response. In the follow-up response, the petitioner was advised that his request would be reported to the Committee for a final decision on whether to grant an extension per R35-2-2(6) and (7).

The Committee did not grant the Petitioner a hearing because the law is very specific about filing a notice of appeal with the executive secretary, and it being filed no later than 30 days after the date of issuance of the decision being appealed (U.C. 63G-2-403(1)). There is no provision in GRAMA for the Committee to grant such a waiver.

Matthew Piper, Salt Lake Tribune vs. Brigham Young University Police: Mr. Piper is appealing access denial to emails between the agency and university staff. Brigham Young University Police is a private entity and does not fall under U.C. 63G-2. The *Salt Lake Tribune* did not send a reconsideration letter.

The Committee discussed whether the university police department was a governmental entity. Mr. Tonks cited GRAMA stating the university is a private institution and therefore the police department is private and outside the Committee's jurisdiction. The question remains if the BYU Police is separate from the university. The *Salt Lake Tribune* has filed an appeal in district court on the matter.

The executive secretary mentioned that ten potential hearings are scheduled for August, and eight in September. (See the attached documents on the Utah Public Notice Website, [SRC Meeting Handouts July 14, 2016.pdf](#)).

X. Report on Cases in District Court:

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

Salt Lake Tribune v. Utah State Records Committee, Case No. 160904365, Third District Court, filed July 12, 2016. The *Salt Lake Tribune* filed an appeal with the Committee against Brigham Young University (BYU) Police. The appeal was dismissed because BYU Police is not considered a "governmental entity" under GRAMA. The *Tribune* filed in Court alleging that BYU Police is subject to GRAMA.

Bryan Thatcher vs. Utah Department of Public Safety, Case No. 160903244, Third District Court, filed June 20, 2016. The Committee has filed an answer and is waiting response.

William Sherratt v. Utah Department of Corrections, Case No. 140600023, Sixth District Court, filed April 23, 2014. A decision from the Utah Court of Appeals (2016 UT App 68) on April 7, 2016, reversing decision of trial court improperly dismissing appeal filed by Mr. Sherratt from a decision by the Committee to not hold a hearing.

(See the attached documents on the Utah Public Notice Website, [SRC Meeting Handouts July 14, 2016.pdf](#)).

XI. Other Business:

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

The executive secretary queried whether a quorum will be present for the next meeting. All will be present except for Ms. Cornwall. This is Ms. Cornwall's last meeting. The Committee thanked her for bringing a fresh perspective, insight, and a lot of humor to the hearings. Committee members' wished her the best of luck in Washington, D.C.

The July 14, 2016, State Records Committee meeting adjourned at 1:45 p.m.

This is a true and correct copy of the July 14, 2016, SRC meeting minutes, which were approved on August 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

APPROVED