

State Records Committee Meeting

Division of Archives
Courtyard Meeting Room
April 10, 2014
Salt Lake City, Utah

SRC APPROVED
Date SLM
May 8, 2014

Members Present: Lex Hemphill, Chair, Media Representative
Doug Misner, History Designee
Ernest Rowley, Elected Official Representative
Patricia Smith-Mansfield, Governor's Designee
Holly Richardson, Citizen Representative
David Fleming, Private Sector Records Manager

Member Excused: Marie Cornwall, Citizen Representative

Legal Counsel: Paul Tonks, Attorney General's Office
Chiarina Bautista, Attorney General's Office

Executive Secretary: Susan Mumford, Utah State Archives

Others Attending: Jennifer Allen, Observer
Sam Allen, Petitioner
Jeremy Cook, Attorney, Eagle Mountain City
Ken Cromar, Cedar Hills, observer
Fionnuala Kofoed, City Recorder, Eagle Mountain City
Lorianne Ouder Kirk, Archives staff
Rebekkah Shaw, Archives staff
Renée Wilson, Archives staff
Kendra Yates, Archives staff

Hearing – Sam Allen vs. City of Eagle Mountain

Mr. Hemphill welcomed the parties for the first hearing at 9:07 a.m. He explained the procedures to the parties. Jeremy Cook, attorney for Eagle Mountain, introduced himself. He also introduced Fionnuala Kofoed, City Recorder for Eagle Mountain City. Sam Allen, the petitioner, a resident of Eagle Mountain City, introduced himself and his wife, Jennifer Allen, who accompanied him but would not be testifying.

Opening – petitioner

Mr. Allen said he had been a resident of Eagle Mountain City for five and one-half years. The city had been in the news with a long line of mayors and various scandals. He said he is a concerned citizen who filed a GRAMA request for records when his utility rates were increased. He was told he would have to prepay \$400 in order to get the records. The total he had paid was over \$1100 and he still did not have all the records he had requested. Eagle Mountain had assessed fees for providing records as a result of his GRAMA request higher than the law allowed. He said his request was in the public interest and should qualify for a fee waiver.

Opening – respondent

Mr. Cook thanked the committee for hearing the issue. He said a governmental entity could charge the actual cost for providing a record and a reasonable fee for fulfilling GRAMA requests. A governmental entity could provide a record free of charge and was encouraged to do so when the information was in the public interest. He said the discretionary nature of the law allowed the governmental entity to weigh the issues. The request was for a number of credit card statements and would take time for the city to fulfill. Mr. Cook said that Mr. Allen had represented himself as serving the public interests because the information would be published on his website: www.eagleshare.org. His website provides his views on city policy. He states on the website that every elected official in the city should be replaced and that the city recorder committed election fraud. He requested that the State Auditor's Office do a full audit of the city based on his accusations of wasteful spending. The city spent a considerable amount of time responding to the audit. If Mr. Allen wants to continue to pursue the records requests, he should pay for the records.

Testimony – petitioner

Mr. Allen said the credit card statements he had received were copied into a spread sheet so he could see how the city had spent taxpayers' money. He had chosen 50 of the statements to present to the committee. He reviewed a number of the charges spent on meals at restaurants that were not official city business. Sometimes a quorum of public officials got together for dinners. These were private events paid for with taxpayers' money. Sometimes developers were included along with public officials. Economic development matters and safety were given as reasons for the meals. Clothing is another expenditure that is listed on the credit card receipts. Transactions include shirts for employees, shirts for the mayor and council members, belt buckles, dry cleaning of shirts, gifts, gift cards, cinema tickets, rodeo tickets, and guns from Cabella's. Mr. Hemphill said the committee's concern was for the fees charged rather than the details of the records. Mr. Allen responded that the nature of the information in the records was the justification for a public interest claim and the reason he felt a fee waiver was appropriate. He continued, saying that sharing of credit cards among employees was common. Expenses related to departments were sometimes paid for with credit cards issued to an individual staff member. Mr. Allen said he had received 730 credit card statements and 1,074 pages of supporting documents. He had been required to prepay for the records. Response to his request had been delayed by the absence of an employee and by a claim of extraordinary circumstances. Ten days is the limit to respond to a GRAMA request. He had requested four years of credit card receipts but, when he went to pick up the records, only two years of receipts were ready. He was asked to pay an additional \$85 to take those. He asked for staff directories for city employees so he could match receipts to the job titles. The city said directories were not available. He said huge problems of spending existed in the city. He waited for the rest of the records to be produced but had to appeal for the other two years' worth. An additional \$625 was due for the other two years' worth of records. Missing statements were explained by saying when no charges were made no statement was generated. July is the beginning of the fiscal year. A statement from that month would show purchases when the city had a lot of cash. Mr. Allen wondered about meetings held at city hall and if food was provided for those meetings. When he inquired, he was told the city had a COSTCO credit card through Capitol One bank and it was used to purchase food. No statements or receipts were given to him for that account. The finance director did not seem to know the difference between a credit account and a credit card. Mr. Allen said he had formerly

worked as an accountant and a journalist. He said he had strong opinions and wanted to disseminate the information he had uncovered. Ms. Smith-Mansfield asked Mr. Allen how many subscribers there were to his website. He replied that he had accumulated over one hundred email addresses. Limited health and resources made it impossible for him to maintain the website full time but he tried to be accurate and thorough in the information he posted on the website. He said people in the city had responded positively to his reporting but he was the only writer. Ms. Richardson said she understood the State Auditor's Office had cleared the city of any wrongdoing. Mr. Allen said that after his first report into the city's finances, John Dougall, the State Auditor, looked into the records of the city. The report said none of the activities rose to the level of criminal activity but there were irregularities in the records. The State Auditor's Office is investigating more of the city's records and another audit is pending on the credit card statements.

Testimony – respondent

Mr. Cook said the city disagreed with Mr. Allen's characterization of Eagle Mountain's financial affairs. The State Auditor thoroughly examined the city's records. Mr. Allen disagrees with the spending patterns or productiveness of city workers. The issue under discussion is the fees charged for the records. Backup documents for the credit card statements were provided with no charge. Mr. Allen's request took a lot of city time. The 33 hours were the actual time spent to retrieve the documents, remove the staples, copy, and refile the records. The city has had no objection to releasing the records to Mr. Allen. Ms. Smith-Mansfield asked if the bank sent a monthly statement whether or not there were charges. Mr. Cook said they did not. Ms. Kofoed said the city did have a COSTCO credit card but Mr. Allen had not specifically asked for the COSTCO credit card statements. She said it was an oversight not to have provided those records. Mr. Cook said that if you look at Mr. Allen's website, it is clear he wants to overthrow the city's elected officials. It is a political website to support specific candidates and publish Mr. Allen's opinion of how the city should spend money. He does not post information that goes against his personal opinions. Cities routinely charge newspaper organizations for records requests. Mr. Hemphill referenced Utah Code 63G-2-103(12) to show that salaries are just one component of gross compensation. The charge to Mr. Allen for the time of a clerk making \$18.27 was calculated at \$31.15 an hour. This included benefits. Mr. Cook said the city had asked the government records ombudsman for advice and was told other cities do calculate fees using gross compensation. Ms. Smith-Mansfield said there is not a definitive statement on calculating fees in GRAMA. Some entities do base fees on gross compensation. She said public benefit was defined in GRAMA as any person who requests information to use in a story for publication or broadcast to the general public. It was not restricted to media. An individual watchdog could fall under that definition. Mr. Cook said the fee was based on the city's understanding of how fees should be calculated. Charging a fee or waiving a fee was discretionary. It was not in the best interest of the city to allow unlimited requests when the requester wanted to use the information against the city.

Closing – petitioner

Mr. Allen said he had been injured and could not work full time. He and his wife existed on three part-time jobs. They were very careful about their finances. He researched the cost of requesting records from Zion's Bank or going through the city to obtain the records. He talked with Paul Jerome, the city's finance director, in November of 2013. Paul Jerome quoted an hourly charge

of \$16 to produce the requested records. Mr. Jerome said the charge included the employee's benefits. This was a phone conversation and no documentation of the conversation exists. Removing staples and copying documents could be done by the lowest paid employee. The actual charge was \$31.15 an hour. Mr. Allen said he still wanted Mayor Jackson's credit card statements for the month of July 2011 and 2012. He felt those were significant months when expenditures would be high. He said he would pay for those records if necessary.

Closing –respondent

Mr. Cook said the city would check for any missing statements and would supply them with no charge. He said the policy of the city was to charge fees based on the gross compensation of the employee capable of doing the work. It is expensive to respond to GRAMA requests and the fees do not fully cover the cost to the city. It was reasonable to charge Mr. Allen a fee. The cost Mr. Allen was billed is not the full cost to the city of providing the records. There was a public interest in not committing excessive employee time to the effort and still supplying Mr. Allen with the records.

Deliberation

The committee discussed the public benefit issue. Utah Code 63G-2-203(4) defines when a fee may be waived. A governmental entity may fulfill a record request without charge and is encouraged to do so when it determines that release of the records primarily benefits the public rather than a person. There was a discussion about the role a public watchdog plays in current affairs and to what extent the website of Mr. Allen could be said to represent the public interests. The committee members determined that the lowest paid individual in the recorder's office at the time of the request was paid about \$18.27 an hour. Ms. Smith-Mansfield made a motion that pursuant to Utah Code 63G-2-203(2)(b) a governmental entity may charge an hourly charge, minus the first quarter hour, not to exceed the salary of the lowest paid employee capable of doing the work. The salary is part of the gross compensation as defined in Utah Code 63G-2-103(12). The other direct costs of copying may be charged. Mr. Rowley seconded the motion. In this case the salary of \$18.27 rather than \$31.15 is a reasonable hourly charge. A vote was taken. The vote was unanimous in favor of the motion. Ms. Richardson made a motion that the city was within its rights and did not unreasonably deny a fee waiver. The motion was seconded by Mr. Fleming. A vote was taken. Ms. Smith-Mansfield voted against the motion. Mr. Hemphill, Mr. Misner, Mr. Fleming, Mr. Rowley, and Ms. Richardson voted in favor of the motion. Mr. Hemphill said the parties would receive an order within seven business days. He thanked them for their attendance at the meeting.

Approval of Minutes of March 19, 2014

A correction was made in a citation of Utah Code 63G-2-305(12). It should read "jeopardizing the security of government property." Another correction was the adjournment of the meeting occurred at 2:15 p.m. rather than 4:15 p.m. Paul Tonks and David Jones both served as counsel to the committee. The minutes should indicate which hearings each served. Ms. Smith-Mansfield made a motion to approve the minutes with those corrections. Mr. Misner seconded the motion. A vote was unanimous in favor of the motion.

Retention Schedules

Ms. Shaw presented three general retention schedules for correspondence. Changes were made to all three schedules by adding “mode of transmission” after the word “format”. For Executive Correspondence, 1-61, the words “or other internal administrator as identified by the executive officer” were added at the end of the description. For Transitory Correspondence, 1-62, the word “substantive” was replaced with “final” and the words “does not impact agency function” were added to the description. With these changes, the committee voted to review the schedules and have them available to the public for another month before approving them. See the attached documents.

SRC Appeals

Ms. Mumford distributed the current list of appeals to the State Records Committee. See the attached document.

District Court Cases

Mr. Tonks distributed the list of current appeals of SRC decisions to District Court and reported on them. See the attached document.

Other Business

Mr. Hemphill said the Administrative Rules are due for a five-year review. Ms. Smith-Mansfield said that any changes can also be made at this point and submitted for public review. Mr. Hemphill suggested one possible procedural change is limiting the testimony time to twenty minutes. The government records ombudsman position at the Archives is newly created by the legislature and needs to be accounted for in the administrative rules. Mr. Tonks said a new handbook is being prepared by the Attorney General’s Office and will be available soon. It lists all the cases before the State Records Committee and the outcomes.

11:40 Motion to Adjourn

A motion to adjourn was made and the meeting adjourned at 11:40 a.m.

STATE RECORDS COMMITTEE MEETING
Thursday April 10, 2014
9:00 a.m.

Utah State Archives Building
346 S. Rio Grande St.
Salt Lake City, UT 84101

AGENDA

HEARINGS

Sam Allen vs. Eagle Mountain City. Mr. Allen is appealing the denial of a fee waiver for records received from the City.

BUSINESS

Approval of March 19, 2014 SRC Minutes, action item

Retention Schedules, action item

SRC appeals received

Cases in District Court

Other Business

SCHEDULE 1
ADMINISTRATIVE RECORDS

ADMINISTRATIVE CORRESPONDENCE (Item 1-63)

Incoming and outgoing business-related correspondence, regardless of format, created in the course of administering agency functions and programs. Administrative correspondence documents work accomplished, transactions made, or actions taken. This correspondence documents the implementation of agency functions rather than the creation of functions or policies.

Business-related correspondence that is related to a core function with an associated retention schedule should follow the associated schedule.

RETENTION

3 years and then destroy.

SUGGESTED PRIMARY DESIGNATION

Public.

EXECUTIVE CORRESPONDENCE (Item 1-61)

Incoming and outgoing business-related correspondence, regardless of format, that provides unique information relating to the functions, policies, procedures or programs of an agency. These records document executive decisions made regarding agency interests. Executive decision makers may include the Director, Chief Administrative Officer, Public Information Officer or other internal administrators.

RETENTION

Permanent. May be transferred to the State Archives.

SUGGESTED PRIMARY DESIGNATION

Public.

TRANSITORY CORRESPONDENCE (Item 1-62)

Incoming and outgoing correspondence related to matters of short term interest. Transmittal correspondence, regardless of format, between individuals, departments or external parties containing no substantive contractual, financial or policy information. When resolved, there is no further use or purpose.

RETENTION

Retain until administrative need ends and then destroy.

SUGGESTED PRIMARY DESIGNATION

Public.

SCHEDULE 1
ADMINISTRATIVE RECORDS

SCHEDULE
ADMINISTRATIVE RECORDS

ADMINISTRATIVE CORRESPONDENCE (Item 1-63)

Incoming and outgoing business-related correspondence, regardless of format or mode of transmission, created in the course of administering agency functions and programs. Administrative correspondence documents work accomplished, transactions made, or actions taken. This correspondence documents the implementation of agency functions rather than the creation of functions or policies. Business-related correspondence that is related to a core function with an associated retention schedule should follow the associated schedule.

RETENTION

Retain for 7 years and then destroy.

SUGGESTED PRIMARY CLASSIFICATION

Public.

EXECUTIVE CORRESPONDENCE (Item 1-61)

Incoming and outgoing business-related correspondence, regardless of format or mode of transmission, that provides unique information relating to the functions, policies, procedures or programs of an agency. These records document executive decisions made regarding agency interests. Executive decision makers may include the Director, Chief Administrative Officer, Public Information Officer or other internal administrators as identified by the executive office.

RETENTION

Permanent. May be transferred to the State Archives.

SUGGESTED PRIMARY CLASSIFICATION

Public.

SCHEDULE
ADMINISTRATIVE RECORDS

TRANSITORY CORRESPONDENCE

(Item 1-62)

Incoming and outgoing correspondence, regardless of format or mode of transmission, related to matters of short term interest. Transmittal correspondence between individuals, departments or external parties containing no final contractual, financial or policy information. This correspondence does not impact agency functions. When resolved, there is no further use or purpose.

RETENTION

Retain until administrative need ends and then destroy.

SUGGESTED PRIMARY CLASSIFICATION

Public.

**SRC Appeals Received
April 2014**

1. **14-19 Matthew Piper, Salt Lake Tribune vs. University of Utah.** Mr. Piper is appealing the denial of records of the investigation of Thomas Ray Lippett, a former employee of the University. Hearing canceled.
2. **14-20 Sam Allen vs. Eagle Mountain.** Mr. Allen is appealing the denial of a fee waiver for records. Hearing scheduled for April
3. **14-21 Ken Cromar vs. Cedar Hills.** Hearing canceled
4. **14-22 William Sherratt vs. UDC.** Mr. Sherratt is appealing the denial of records of his housing moves within the prison. He is also appealing denial of a fee waiver but has been asked to first use his 100 free pages. The committee has heard the issue of records of moves within the prison and has ruled the records protected. The free 100 pages are available to an inmate before he requests a fee waiver. Hearing denied based on previous SRC orders: Michael Luesse vs. Utah Department of Corrections 12-23; and Jesse Fruhwirth vs. Utah Department of Corrections 11-02.
5. **14-24 Chad Lambourne vs. West Jordan.** Mr. Lambourne is appealing the denial of the initial contact report including any audio and video reports for his client Zachary Olson. Hearing scheduled for May.
6. **14-25 Stephen Wale vs. Utah Risk Management Mutual Association. (URMMA)** Mr. Wale is appealing the denial of URMMA general liability, property and auto physical damage policies. Hearing scheduled for May canceled.
7. **14-26 Jack Jessop vs. Corrections.** Mr. Jessop is appealing the denial of prescription medication information sheets including side effects of drugs issued to him. Hearing scheduled for May.
8. **Justin Crosbie vs. Corrections.** Mr. Crosbie is appealing the denial of a Warrant Request and Parole Violation Report; all emails regarding him between a parole officer, treatment center, and the Board of Pardons; progress reports; polygraph results; and notes taken by his parole agent. Hearing scheduled for May

April 2014 Records Committee Case Updates

District Court Cases

Firstwest Benefit Solutions LLC v. Orem City, 4th Judicial District, Utah County, Case No. 140400007, Judge McVey, filed January 2, 2014.

Current Disposition: Oral argument held on March 31, 2014 in Provo for Orem City and Committee's motions to dismiss. Court granted the motions but gave Firstwest Benefit Solutions leave to file an amended answer including Morgan Fife as a party. Answer needs to be filed on behalf of the Committee.

Salt Lake City v. Jordan River Restoration Network, 3rd Judicial District, Salt Lake County, Case No. 100910873, Judge Stone, filed June 18, 2010.

Current Disposition: Parties have filed answers to interrogatories and discovery period continuing.

Appellate Court Cases

Attorney General Office. v. Schroeder, Court of Appeals Case No. 20121057.

Current Disposition: Case has been transferred and certified to the Utah Supreme Court as of January 31, 2014. Appellee (Attorney General Office) appellate brief is due to be filed on March 10, 2014.

Salt Lake City Corp. v. Mark Haik, Court of Appeals Case No. 20130383.

Current Disposition: Oral argument set for June 30, 2014.