

State Records Committee Meeting

Date: November 16, 2023

Time: 9:00 a.m. – 4:00 p.m.

Committee Members Present:

Marie Cornwall, Citizen Representative
Kenneth Williams, Chair, State Archivist Designee
Nancy Dean, Chair pro tem, Political Subdivision Representative
Nova Dubovik, Citizen Representative
Ed Biehler, Electronic Records Representative
Linda Petersen, Media Representative

Committee Members Not Present:

Mark Buchanan, Private Sector Records Manager

Legal Counsel:

Brian Swan, Assistant Attorney General
Michelle Adams, paralegal

Executive Secretary:

Rebekkah Shaw

Others Present:

Michael Rowley
Melanie Marlowe
Shanna Earl
Rich Anderson
Bri Murphy
Amber Lindsey
Jeff Kummer
Tim Bereece
Terra Rosland
Rosemary Sage
MW B
Mark Kittrell
Jessica Atkinson
Lonny Pehrson
Mohammad Adbullahi

Blaine Hansen
Jacob Franklin
Lilly Stonecipher
Chad Lloyd
Jann Farris
Eric Peterson
Elliot Clark
Keith Reynolds
Shanna Kummer
Alicia Carlton
Mandy McClellan
Craig Carlston
Cade Douglas

Agenda:

- Office of State Treasurer v. Brady Eames (2023-V1)
- Jared Kummer v. Sevier School District (2023-83)
- Michael Clara v. Salt Lake City (2023-85)
- Luis Sanchez v. Dept. of Public Safety (2023-88)
- Michael Rowley v. Dept. of Workforce Services (2023-103)

Call to Order

The Chair called the meeting to order at 9:05.

Business 1 of 2

Approval of October 19, 2023 SRC Minutes, action item

Motion by Ms. Dean to approve the meeting minutes from October. Seconded by Dr. Cornwall.

Vote: 6 Yes. 0 Nay. Mr. Biehler, Ms. Dubovik, Ms. Petersen, Mr. Williams, Ms. Dean, Dr. Cornwall voted in favor of the motion.

Election appeal breakdown and holding election appeals in abeyance, action item

Motion by Ms. Dean to hold the election appeals in abeyance until the related court case resolves. Seconded by Dr. Cornwall.

Vote: 6 Yes. 0 Nay. Mr. Biehler, Ms. Dubovik, Ms. Petersen, Mr. Williams, Ms. Dean, Dr. Cornwall voted in favor of the motion.

Adding a meeting in January and/or February, action item

Motion by Ms. Dean to add an additional meeting to January on January 4th. Seconded by Mr. Williams.

Vote: 6 Yes. 0 Nay. Mr. Biehler, Ms. Dubovik, Ms. Petersen, Mr. Williams, Ms. Dean, Dr. Cornwall voted in favor of the motion.

SRC appeals received and declined, notices of compliance, and related action items

Ms. Shaw reviewed appeals received with the Committee.

2023-158	Randy Andrus (for Michelle Valdez) v. Salt Lake Valley Emergency Communications Center	Denied	Requesting access to all records related to a specific UPD case. Denied per R35-2-2(2)(e) because records were destroyed according to a retention schedule. Also the respondent referred the requester to UPD for the existing records.	--
2023-155	Greg Fiorez v. Unified Police Dept	Incomplete Denied	10/10/23 appeal was for records for 17 cases. 11/2/23 appeal. 17 cases provided with one exception. The appeal to the SRC is requesting a case be closed and a "letter stating it is closed the prosecutor has had plenty of time to prosecute." Initially incomplete. The appeal only had a statement of appeal asking for the records before October 16th for an evidentiary hearing. Denied because the relief sought is not in the Committee's jurisdiction. The appeal is also incomplete again. Missing the initial request, initial denial, and CAO appeal.	--
2023-102	Jeffrey Oakes v. Jordan School District	Denied	Requesting access to correspondence.	11/16/2023 WITHDRAWN after mediation
2023-112	Amanda Oakes v. Jordan School	Approved	Requesting access to investigation records where she is the subject of the	12/21/2023 WITHDRAWN

	District		record.	after mediation
2023-99	Eric Olson (law firm) v. Public Safety	Approved	Requesting access to records related to a fatal accident.	11/16/2023 WITHDRAWN due to Mediation
2023-150	Steven Onysko v. Division of Risk Mgmt (DGO)	Denied	Requesting access to email sending invoices for two accounts from January 2019 to the date of the request. Also requesting access to an unredacted email from December 2020. Denied due to lack of jurisdiction because this request is already in district court (case #230901821).	--

Committee members' attendance polled for next meeting

A quorum was confirmed for the December 21, 2023 meeting.

The Committee sauntered as they waited for the respondent for the first hearing to arrive.

1. Office of State Treasurer v. Brady Eames (2023-V1)

Petitioner Statement:

Mr. Pieper stated the decision before the Committee is not difficult, but he understands it is unpleasant to make. He stated this remedy is being used as a last resort and his client does not take it lightly. He stated the Legislature recognizes rights can be abused.

He reviewed the number of requests per Utah Code 63G-2-209(9)(b)(i). He referenced the Committee's recent annual report. He stated this is the fourth time he's been before the Committee this year. He stated over a dozen requests are pending.

Mr. Pieper referenced an affidavit provided by Ms. Griffin stating that the requests are convoluted and difficult to work through. The nature of the requests make it more challenging. He stated communications outside of the requests are constantly sent to his client and other entities related to various things. He stated he has received 250 emails since February. Some are requests and some are not. He stated many are aggressive and some in response to this appeal.

Mr. Pieper stated Ms. Griffin's affidavit stated Mr. Eames has a practice of submitting requests, then withdrawing them after significant resources have been used. He stated this includes appeals before the Committee.

Mr. Pieper stated he filed an affidavit before the August hearing and submitted again for this appeal because it provides a snapshot of 4-5 months of the day to day impact of responding to these requests. He stated it has a significant impact on the Treasurer's Office. He stated many times Ms. Griffin asks for clarification and tries to understand the request. He stated the Treasurer's Office believes he isn't interested in using the information he gets for the public good. He stated there are human impacts to answering Mr. Eames record requests.

Mr. Pieper stated he believed the public would be outraged if they knew about the resources going into answering the requests. He stated the Committee can safeguard the public trust. He stated the relief sought is the maximum available, which is a year. He stated that would allow the Treasurer's Office to focus on their core mission and other requests and signal to Mr. Eames that his requests are an abuse of his right to access records.

Questions from the Committee:

The Committee asked how many requests are pending. Mr. Pieper stated they have answered two of the twenty-five received since August. The Committee asked if they're asking that the relief apply to the requests in the queue. Mr. Pieper stated they are.

The Committee asked about the substantial time and resources not covered by fees as mentioned in Exhibit A. Ms. Griffin stated this includes time spent reading emails, discussing with staff what Mr. Eames is actually looking for, and what may be responsive. She reviewed which requests they normally charge a fee for. She stated that until 2021 they granted a fee waiver, but it became a significant burden on staff and resources.

Respondent Statement:

Mr. Eames read from a prepared statement. He stated nothing in the constitution prevents him from protesting, petitioning, or communicating his thoughts and opinions daily, weekly, monthly or yearly regarding an employee of the government. He stated GRAMA guarantees the right of the public to access information concerning the public's business.

Mr. Eames stated the Treasurer's Office is seeking a gag order and restricting his access to public records including oaths of office, fidelity surety bonds, deposit and investment reports, statements of account, lists of qualified depository institutions, resolutions, and financial reports.

Mr. Eames stated that as a citizen of Utah, he has the right to learn the conduct of his business by the State Treasurer on a daily, weekly, and monthly basis. He stated that the respondent should have Rules regarding fees and limitations of communications. He stated that the petitioner has not told him when or where he can inspect records for free.

Mr. Eames stated he does not know how many pages fall under each record series, but of the forty categories listed on the Archives website, only two are available online, which is unacceptable. He stated his requests fall under five of the record series.

Mr. Eames stated he is not required to explain why he is requesting the records. He stated he has a right to use the records to benefit himself and not the public at large. He stated entities must quote a fee before doing the work to provide records responsive to a request.

He asked the Committee not to penalize him for being inquisitive. He stated he has been a watchdog since 2015. He stated he needs to be able to access records to learn if Treasurer Oaks, Mr. Slauch, and Mr. Pieper are doing their duties with fidelity. He stated he wants to learn about the conduct of the people's business.

Mr. Eames stated he cannot be vexatious and denied further records if Ms. Griffin is not working as a full time record officer answering his requests. He stated he is being discriminated against because he wants to learn too much about the public's business. He stated it is not his fault that Ms. Griffin cannot handle the workload he causes.

Petitioner Closing:

Mr. Pieper stated Ms. Griffin is a model record officer and works tirelessly. He stated it is rare to find a record officer who is a full time record officer. He stated taxpayers cover the cost of legal advice and time spent by counsel which is not recoverable.

Mr. Pieper stated the costs of internal appeals to the Chief Administrative Officer are not recoverable. He stated access to records under GRAMA is not unlimited. He expressed gratitude for the Legislature recognizing a need for this remedy and urged for the maximum time.

Questions from the Committee:

The Committee asked Ms. Griffin what other duties she has outside of being the record officer. She stated she works with the media. She works with the Legislature on policy issues and crafting legislation. She stated She helps Treasurer Oaks prepare presentations. She stated time spent on Mr. Eames' requests is time she's not working with the rest of the public and the

media. The Committee asked what Ms. Griffin's title was. She stated she is the Policy and Communications Deputy.

Respondent Closing:

Mr. Eames stated there are 98 participants in the Public Treasurer Investment Fund (PTIF) which is misreported. He stated the reports are not online. He stated it is not his fault Ms. Griffin is not compensated to work full time as a record officer.

Mr. Eames stated he is zealous in exercising his right regarding public funds that are not in certified repositories.

Questions from the Committee:

The Committee asked what he does to share the information he gets. He stated he emails legislators and other agencies to let them know there are red flags. He stated he is ignored. The Committee asked what his response is to how costly his requests and emails are. Mr. Eames stated he is doing what others should be doing. He stated the red flag that got him started was an audit from the State Auditor regarding banks getting external and internal public funds mixed up.

The Committee asked if the PTIF is the subject of his interest or if it's broader. Mr. Eames stated he is trying to reveal what is going on with the money the Treasurer is investing. He stated he has been advised to request them from every participant rather than the Treasurer.

The Committee asked Ms. Griffin how many hours she works as the record officer. Ms. Griffin stated it depends on how close they are to a hearing before the Committee. She stated it can be close to 10 hours a week on Mr. Eames requests and appeals.

Deliberation:

The Committee reviewed Exhibit A showing a timeline of requests and time spent on Mr. Eames. The Committee reviewed what is already available on the Treasurer's website.

Ms. Dubovik stated she would like more evidence of the communications between the respondent and the petitioner.

Mr. Williams stated one request can have multiple parts that should be counted as separate requests. He stated public employees get emails with abusive language, but an abuse of the system has a cost for other citizens.

Motion to go into closed session. Seconded by Dr. Cornwall.

Vote: 6 Yes. 0 Nay. Mr. Biehler, Ms. Dubovik, Ms. Petersen, Mr. Williams, Ms. Dean, Dr. Cornwall voted in favor of the motion.

The Committee discussed Utah Code 63G-2-209(9). Ms. Dean commended the Treasurer's Office for their website and the information already available. The Committee reviewed Exhibit A noting the number of emails each person listed received.

The Committee discussed Utah Code 63G-2-201(8)(a) and (b). Ms. Dean stated to both parties that to take someone's rights away for any amount of time is very serious and the Committee does not take it lightly. This is the first appeal under this statute and a difficult process.

Ms. Petersen stated Mr. Eames does not exist in a vacuum and surrounded by others who share the same constitutional rights. She stated it is an abuse of the right to not do his own legwork. She stated she is worried he has become a lazy citizen by not using the knowledge he has gained from records he already received to significantly tailor and trim his requests to get what he needs. She stated citizens need to be responsible with their government resources. She stated his right to access records is important and so is his responsibility. She stated government is made of citizens.

Motion by Dr. Cornwall to grant the petitioner relief by allowing them not to fulfill the requests in the queue and determining Mr. Eames cannot submit any more requests for seven months.

Dr. Cornwall stated the Committee is trying to change behavior. Mr. Eames has a right to be a watchdog and they want to help him do that better. With nothing in the queue, he can work on how to best make his requests in seven months.

Ms. Dean stated the Committee cannot bring what they know from previous hearings to make the decision and there is a lack of examples of how Mr. Eames allegedly weaponized GRAMA. Ms. Dubovik agreed what was submitted felt incomplete and the whole picture was not provided.

Motion by Ms. Dean to grant the petitioner relief by allowing them not to fulfill the 19 requests in the queue and determining Mr. Eames cannot submit any more requests for seven months. Seconded by Mr. Biehler.

The Committee discussed the amount of time.

Ms. Petersen stated the vexatious requester provision was added because entities went to the Legislature because requests were paralyzing their office. She stated rights include responsibilities. She stated she thought seven months was too long, but will vote yes.

Ms. Dubovik stated she wanted more evidence. She stated she believes Mr. Eames is vexatious but a better case needs to be made.

Vote: 5 Yes. 1 Nay. Mr. Biehler, Ms. Petersen, Mr. Williams, Ms. Dean, Dr. Cornwall voted in favor of the motion. Ms. Dubovik voted against the motion.

2. Jared Kummer v. Sevier County School District (2023-83)

Petitioner Statement:

Mr. Kummer stated children have endured significant injustices as a result of the multi-year program of endurance days. He stated that endurance days were used as punishments.

He asked the Committee to review the redactions in the provided records. He stated that he does not want to see any employee medical information or personal information. He stated he is seeking information about the investigation into endurance days.

Mr. Kummer stated he wants a copy of a 2021 video which is the same video his wife requested. He stated he and his wife are different people with different objectives. He stated he is willing to pay to redact the other children so the video can be public. He stated it has taken months to know what was redacted. He stated the respondent said there are no meeting minutes, written statements, and there is a coverup to hide what they have done from parents.

Mr. Kummer asked for all FERPA information to be removed so it's a public record. He stated the Committee has the authority to make that decision. He stated he has a right to inspect the record under FERPA.

Mr. Kummer stated he wants the incident report and it should be provided because the subject of the record is his daughter. He reviewed a letter the superintendent sent to staff regarding endurance days. He argued for the public interest in parents' right to care for their children.

Respondent Statement:

Mr. Garlock stated the Committee is aware of the background due to a previous hearing. He stated the community is small. He stated the school acted swiftly and decisively. He stated there is not an incident report because there is an investigation report which is available for the

Committee to review in camera. He stated this is the second of six appeals from the Kummings and one was already appealed to court. He stated the Kummings notified the school about their concerns and an investigation was launched. He stated there were no findings of policy violations for current employees. A former employee received a written warning.

Mr. Garlock stated some materials fall under Utah Code 63G-2-103(25)(b)(ii) and are not records. The personal notes were used to help investigators remind themselves about something as they were gathering information. He stated there are text messages responsive with personal communications redacted.

Mr. Garlock stated a private employee record is not confined to the personnel file. He stated portions of the letter from the district to the principal are an employee record. He reviewed Utah Code 63G-2-301(3)(o) and 63G-2-302(2)(d). He asked the Committee to review the records in camera and uphold the classification.

Mr. Garlock stated the District considers this request duplicative because it was already requested by Mrs. Kummer, appealed to the Committee and the court. He stated the Committee should make the same decision and this appeal would be joined to the other appeal in court.

Mr. Garlock stated the records are governed by FERPA which protects records related to students. He stated anything maintained by the institution is about a student. He stated there is enough information in the record that someone in the community will know who the record is referring to. He stated FERPA provides board discretion to the institution. He stated that discretion should not be taken from the school.

Petitioner Closing:

Mr. Kummer stated he has lived in the community for three years and they are outsiders, which gives him the courage to speak up about this. He read the report from the Division of Child and Family Services. He stated he has audio confirming the endurance day was punishment. He stated the district is hiding information from the parents.

Respondent Closing:

Mr. Garlock stated the Committee has already seen the video and knows it was not an abusive environment. He stated the students were reminded they can pause for a drink at any time, do modified push-ups. He stated this is not an evidentiary hearing about the endurance day. He asked the Committee to focus on the records. He stated the petitioner talked about the video

from November, but that was not provided because it was not requested. He stated the request was for evidence for the investigation.

Mr. Garlock stated there are more than 70 pages of responsive records.

Question from the Committee:

The Committee asked Mr. Garlock for clarification about the personal notes being used for personal use and not in capacity of doing the investigation. Mr. Garlock stated the notes are from the principal as she was investigating, or district administration. He stated they are maintained in personal files of the employees.

Deliberation:

Motion by Ms. Dean to go in camera to review the records. Seconded by Dr. Cornwall.

Vote: 6 Yes. 0 Nay. Mr. Biehler, Ms. Dubovik, Ms. Petersen, Mr. Williams, Ms. Dean, Dr. Cornwall voted in favor of the motion.

Motion to grant the appeal for the video only. The record is properly classified under FERPA and redactions should be made. The rest of the appeal to be continued to review the records in camera. Seconded by Ms. Petersen.

Vote: 6 Yes. 0 Nay. Mr. Biehler, Ms. Dubovik, Ms. Petersen, Mr. Williams, Ms. Dean, Dr. Cornwall voted in favor of the motion.

3. Michael Clara v. Salt Lake City (2023-85)

This appeal was resolved and withdrawn while the Committee was in closed session.

4. Luis Sanchez v. Dept. of Public Safety (2023-88)

Petitioner Statement:

Mr. Sanchez stated the records relate to an incident from a while ago when an officer damaged public property and public trust. He stated the record is an accident report and will not jeopardize the criminal case. He stated the case was already in the news.

Mr. Sanchez stated the public interest outweighs the classification. He stated public interest in law enforcement and the justice system shows these types of records are crucial. He asked that the record be released.

Respondent Statement:

Mr. Mooers-Putzer stated the records are in relation to an investigation of Officer Cardon who is criminally charged in Third District Court. He stated the case is ongoing and the records are protected out of respect for that process.

Mr. Mooers-Putzer stated they contacted the district attorney's office four times to verify the records should be withheld. Once when they got the request, when it was appealed to the Chief Administrative Officer, when it was first appealed to the Committee and again yesterday. He stated release should be delayed until the case is resolved.

Mr. Mooers-Putzer reviewed Utah Code 41-6a-404 and 63G-2-305(38). He stated other records related to the case fall under Utah Code 63G-2-305(10). He stated the records can be provided when the case is completed.

Questions from the Committee:

The Committee asked clarifying questions about the district attorney's involvement. He provided examples but said they are not his client so he is unsure. The Committee asked for a status of the case. Mr. Mooers-Putzer stated charges were filed and there is a scheduling conference in December.

Petitioner Closing:

Mr. Sanchez stated the trial and Committee are separate processes and responsibilities. He reviewed the Committee's order 22-23. He stated the Committee should release the records.

Respondent Closing:

Mr. Mooers-Putzer stated there is always public interest in material related to criminal investigations, but that will be satisfied after the case is done. He stated Mr. Sanchez could attend the court proceedings for more information.

Deliberation:

The Committee discussed Utah Code 63G-2-305(10).

Motion by Ms. Dean to deny the appeal because the records are properly classified under Utah Code 63G-2-305(10)(c). Releasing the records would deprive a person the right to a fair trial. Seconded by Mr. Biehler.

Mr. Biehler stated the respondent has shown good faith in checking four times to see where the case is. Ms. Dean stated the request is about more than the accident report, but the investigation.

Vote: 6 Yes. 0 Nay. Mr. Biehler, Ms. Dubovik, Ms. Petersen, Mr. Williams, Ms. Dean, Dr. Cornwall voted in favor of the motion.

5. Michael Rowley v Dept. of Workforce Services (2023-103)

Petitioner Statement:

Mr. Rowley stated everything he wants to say is in the submitted materials.

Questions from the Committee:

The Committee asked if he was willing to speak in an open meeting about the need for the records for an insurance matter. Mr. Rowley explained he does not believe the reason he was released from his job. He explained why he needed the records.

Respondent Statement:

Ms. Thompson stated the records fall under Utah Code 35A-4-312 which protects the records. She stated the statute states they cannot be used in a proceeding. She stated the requester's purpose for the records is not in that statute. She asked the Committee to deny the appeal.

Questions from the Committee:

The Committee asked for clarification about the statute. Ms. Thompson elaborated. The Committee asked what avenues the requester has to get the information he needs to provide insurance. She stated he needs to ask for a court order. She stated there are three records in question: a log, a form completed by the employer with the reason for termination, and text messages showing the employer tried to help him find employment. She stated the text messages were not provided because Mr. Rowley already has them, and all three fall under the department's statute.

Deliberation:

Ms. Dubovik stated the requester should not have to go to court, but the statute is not specific. The Committee discussed Utah Code 35A-4-312(4)(a) and (5).

Motion by Ms. Dean to deny the appeal per Utah Code 63G-2-107(1). Disclosure is governed by court rule or another statute. The governing statute is Utah Code 35A-4-312(4) and (5).
Seconded by Mr. Williams.

The Committee expressed frustration with the limitations of the statute and compassion for the requester. Mr. Williams stated the Committee is reluctantly voting aye.

Vote: 6 Yes. 0 Nay. Mr. Biehler, Ms. Dubovik, Ms. Petersen, Mr. Williams, Ms. Dean, Dr. Cornwall voted in favor of the motion.

The meeting was adjourned.

APPROVED