

## State Records Committee Meeting

Date: December 21, 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  
Mark Buchanan, Private Sector Records Manager

### Legal Counsel:

Brian Swan, Assistant Attorney General  
Michelle Adams, paralegal

### Executive Secretary:

Rebekkah Shaw

### Others Present:

Jake Garlock, Assistant Attorney General, Sevier School District  
Jared Kummer  
Lynn David  
Shelby Thurgood, Wasatch County  
Michael Clara  
Ashley Biehl, Assistant Attorney General, Board of Education  
Joseph McAllister, Counsel for Hughes General Contractors  
Jared Anderson, Counsel for Wasatch County School District  
Jason Robinson, Counsel for Hughes General Contractors  
Kendall, Hughes General Contractors

### Agenda:

- Jared Kummer v. Sevier School District (2023-83)
- Aaron Dodd v. Salt Lake City (2023-114)
- Lynn David v. Wasatch County (2023-101)
- Michael Clara v. Board of Education (2023-113, 2023-137)

- Hughes General Contractors v. Wasatch County School District (2023-58)

### **Call to Order**

The Chair called the meeting to order.

### **1. Jared Kummer v. Sevier School District (2023-83 Continuance)**

#### **Deliberation:**

**Motion** by Ms. Dean to go in camera to review the records. Seconded by Ms. Dubovik.

**Vote:** 7 Aye. 0 Nay. Ms. Dean, Ms. Dubovik, Mr. Buchanan, Mr. Bieher, Dr. Cornwall, Ms. Petersen, and Mr. Williams voted in favor of the motion.

The Committee mentioned there were discrepancies in how some records were classified.

**Motion** by Ms. Dean to grant the appeal in part and deny the appeal in part.

- A. Pages 1-9 redactions are classified correctly.
- B. Page 10 is a handwritten note. It is public under Utah Code 63G-2-301(3)(k). It shall be released because it was used in the investigation.
- C. Page 11 is public and should be released.
- D. Pages 12-23 shall be released with redactions. The redactions from the governmental entity are correct.
- E. Pages 14-15, the final sentence of the first paragraph shall be unredacted because it is public. The bullet point for "Item 5" shall be unredacted per Utah Code 63G-2-301(3)(o) because the charges were substantiated.
- F. Pages 16-19 are classified correctly.
- G. Pages 20-40 are correctly withheld under FERPA. The Committee checked if it could be redacted and released. The information left would be subject to Utah Code 63G-2-302(1)(b) and 63G-2-302(2)(d) so it will not be released.
- H. Pages 41-45 shall be provided unredacted except for medical information under Utah Code 63G-2-302(1)(b).
- I. Pages 45-56 are public and shall be released.
- J. Pages 57-67 are personal notes from the investigation. They are improperly classified as non-records. They are about the people's business. They are classified as drafts used in the investigation under Utah Code 63G-2-301(3)(k). Only the part related to substantiated charges under Utah Code 63G-2-301(3)(o) shall be released.
- K. Pages 68-69 are public and should be released.
- L. Pages 70-77 are an investigative report. The parts referring to substantiated charges shall be released under Utah Code 63G-2-301(3)(o).

Seconded by Mr. Biehler

**Vote:** 5 Aye. 1 Nay. 1 Abstain. Ms. Dean, Ms. Dubovik, Mr. Bieher, Ms. Petersen, and Mr. Williams voted in favor of the motion. Dr. Cornwall voted against the motion. Mr. Buchanan abstained.

## **2. Lynn David v. Wasatch County (2023-101)**

### **Petitioner Statement:**

Mr. David stated he did not get a copy of the statement of facts from the respondent. He stated he requested complaints and asked for a fee waiver when he was charged \$8,581 before the respondent would begin processing the request. He reviewed Utah Code 63G-2-203(4) stating the complaints will be provided to the public and explained the public benefit.

Mr. David stated the county has no information about their complaint process. He stated he is willing to reduce the time frame of his request. He stated he is only interested in citizen-written complaints regarding county employee actions affecting citizens. He disputed the estimated responsive records the county gave him that the fee is based on. He asked the Committee to order the County to provide him the records.

### **Questions from the Committee:**

The Committee stated in the provided materials that he refined the request. The Committee asked what the refinements were. Mr. David stated he defined "complaint" and clarified the type of complaints he sought.

### **Respondent statement:**

Ms. Thurgood stated the statement of facts was mailed as required by statute. She explained how the fee estimate was calculated. She reviewed the I.T. search for "complain" and "complaint" that provided their starting point. She stated the narrowed date range provided over 17,000 hits. She stated the benefit to the public is not self-proving and nothing was provided to show how the records would benefit the public. Ms. Thurgood explained why the request is voluminous.

### **Questions from the Committee:**

The Committee asked why there is not a central repository for complaints. Ms. Thurgood stated the county does not have a universal system so complaints are filed with specific departments. The Committee asked clarifying questions about the county email software.

**Petitioner Closing:**

Mr. David reviewed his expertise. He stated the county needs a review of records management practices. He stated he would like the records by July 1st, 2024 at no cost.

**Questions from the Committee:**

The Committee asked if Mr. David is willing to parse out the request to narrow it down for the county. Mr. David stated he would be happy to start anywhere. He expressed concern that the fee does not have a cap so it could cost more.

**Respondent Closing:**

Ms. Thurgood stated nothing is compiled yet because they are not required to fulfill the request under GRAMA. She stated the fee is important given the time that will be involved.

**Questions from the Committee:**

The Committee asked Mr. David how the records would benefit the public. Mr. David stated there are significant problems with county employees violating the county code. He stated sharing it with citizens would motivate them to ask the county to do something about it.

The Committee asked what he would do with the records. Mr. David stated he would analyze them and give the public his results. The Committee asked how he would analyze them. He explained how he would organize the complaints. Ms. Thurgood stated GRAMA is the incorrect route to force a policy change.

**Deliberation:**

**Motion** by Ms. Dean to deny the appeal. Mr. David should resubmit the request in a way to reduce the cost and get the information he seeks. Seconded by Ms. Petersen.

Ms. Dean explained how easily thousands of hits result from email searches and what is involved for the record officer reviewing the email to find responsive records. She suggested the only way to get the records is to parse it out. She suggested Mr. David work with the Government Records Ombudsman for help on how to ask for the records so each request is less voluminous. Ms. Dubovik suggested starting with the departments that have complaint forms on their websites.

**Vote:** 7 Aye. 0 Nay. Ms. Dean, Ms. Dubovik, Mr. Buchanan, Mr. Bieher, Dr. Cornwall, Ms. Petersen, and Mr. Williams voted in favor of the motion.

**3. Michael Clara v. Board of Education (2023-113, 2023-137)**

**Petitioner Statement:**

Mr. Clara reviewed the backstory of his request. He explained the public benefit in the request. He reviewed a letter the Board of Education sent to Natalie Cline. He stated two members of the board did not sign it. He stated the letter falls under Utah Code 63G-2-301(3)(o)(ii), therefore the other records related to the executive meeting and the draft letters should be released because the charges were sustained.

**Respondent Statement:**

Ms. Biehl stated there are two draft letters, a non-elected official complaint filed with HR and an investigative summary that were withheld. She stated the summary was prepared by an attorney. She stated the draft letters fall under Utah Code 63G-2-305(22). A final letter was issued and there is no public interest in the drafts. He stated the HR complaint falls under Utah Code 63G-2-302(2)(a) because it is personal and there is no public interest. She stated the investigative summary falls under Utah Code 63G-2-305(17). She reviewed related case law for attorney-client privilege.

**Petitioner Closing:**

Mr. Clara stated the Superintendent did not answer his GRAMA appeal. He stated the HR complaint could be redacted. He stated there is public benefit in stopping the Board from policing each other.

**Respondent Closing:**

Ms. Biehl stated the investigative summary is part of the investigation and meets the definition of attorney-client privilege. She stated the HR letter is a separate investigation. She stated the public interest in Ms. Cline has subsided.

**Deliberation:**

**Motion** by Ms. Dean to review the records in camera. Seconded by Mr. Buchanan.

**Vote:** 7 Aye. 0 Nay. Ms. Dean, Ms. Dubovik, Mr. Buchanan, Mr. Bieher, Dr. Cornwall, Ms. Petersen, and Mr. Williams voted in favor of the motion.

Ms. Dubovik stated the Committee struggled with the classification of the records because there is a public letter.

**Motion** by Ms. Dean to deny appeal 2023-113. The two drafts are classified correctly under Utah Code 63G-2-305(22). The public interest does not outweigh the classification. Seconded by Ms. Dubovik.

**Vote:** 7 Aye. 0 Nay. Ms. Dean, Ms. Dubovik, Mr. Buchanan, Mr. Bieher, Dr. Cornwall, Ms. Petersen, and Mr. Williams voted in favor of the motion.

The Committee discussed the public interest in unsubstantiated allegations and whether the investigative summary is properly classified.

**Motion** by Mr. Biehler to deny the appeal for 2023-137 because the records are not public under Utah Code 63G-2-302(2)(a). It is incorrectly classified under Utah Code 63G-2-305(17). The public interest does not outweigh the classification. Individual public employees have a greater expectation of privacy when the allegations are unsustainable. Seconded by Mr. Williams.

**Vote:** 7 Aye. 0 Nay. Ms. Dean, Ms. Dubovik, Mr. Buchanan, Mr. Bieher, Dr. Cornwall, Ms. Petersen, and Mr. Williams voted in favor of the motion.

#### **4. Hughes General Contractors v. Wasatch County School District (2023-58)**

##### **Petitioner Statement:**

Mr. McAllister stated the request is for a record they have always received in the past as common practice after a bid. He stated they did not receive an answer to their request. He reviewed the requirements in Administrative Rules R23 and R33. He stated the respondent cannot claim the information is a trade secret under these Rules.

##### **Questions from the Committee:**

The Committee asked for the relevant citations he is referencing. He listed Utah Code 63G-6A-606, Administrative Rules R23-1-614, R23-1-612, and Utah Code 63G-6A-707. The Committee asked if the rules apply to the school district. Mr. McAllister stated any rules of the district need to be in alignment with the state rules.

##### **Respondent Statement:**

Mr. Anderson stated the summary of bids was published the day the bids were opened. He explained the subcontractor list is proprietary. He reviewed Utah Code 63G-2-305(1) and (2). He stated he disagrees that the request is common practice. Mr. Robinson stated the Administrative Rules referenced do not apply to the respondent. He stated the statute does not prohibit a contractor from marking a subcontractor list proprietary. He discussed how the subcontractor list is the secret sauce.

Mr. Robinson asked the Committee to deny the appeal. He stated releasing the subcontractor list could result in competitive injury. He stated the public has no interest in the record, but their competition does.

**Petitioner Closing:**

Mr. McAllister stated the respondent's policy references the administrative rule. He stated there is no reason to hide the subcontractor list because the bid is over. He stated how the company got to their bid number should be released under Utah Code 63G-2-301(3).

**Respondent Closing:**

Mr. Anderson stated the respondent has made a determination under Utah Code 63G-2-201(5). The petitioner did not make any arguments about why these records should be released due to public interest. Mr. Robinson stated the list is proprietary and there would be unfair injury if it was released. Mr. Anderson suggested the requester needs to foster relationships to get better pricing and not use GRAMA.

**Deliberation:**

**Motion** by Ms. Dean to review the records in camera. Seconded by Ms. Dubovik.

**Vote:** 7 Aye. 0 Nay. Ms. Dean, Ms. Dubovik, Mr. Buchanan, Mr. Bieher, Dr. Cornwall, Ms. Petersen, and Mr. Williams voted in favor of the motion.

Ms. Petersen reviewed Utah Code 63G-2-309(1). She stated a stamp that the record is proprietary does not fulfill the requirement of the statute.

**Motion** by Ms. Petersen to grant the appeal per Utah Code 63G-2-309(1) and (2). Seconded by Ms. Dubovik.

Ms. Dubovik stated this has come to the Committee before and recommended contractors that do business with governmental entities read Utah Code 63G-2-309(1)(2) and 63G-2-305(1)(2) carefully because it is specific and important.

Mr. Biehler stated he feels like this appeal is granted on a technicality.

**Vote:** 7 Aye. 0 Nay. Ms. Dean, Ms. Dubovik, Mr. Buchanan, Mr. Bieher, Dr. Cornwall, Ms. Petersen, and Mr. Williams voted in favor of the motion.

**Business:**

**Approval of November 18, 2023 SRC Minutes, action item**

**Motion** by Ms. Dean to approve the November meeting minutes. Seconded by Mr. Williams.

**Vote:** 6 Aye. 0 Nay. 1 Abastin. Ms. Dean, Ms. Dubovik, Mr. Bieher, Dr. Cornwall, Ms. Petersen, and Mr. Williams voted in favor of the motion. Mr. Buchanan abstained.

**Appeal 2023-170 (Jessica Miller from The Salt Lake Tribune vs. Attorney General Office) to be heard or declined due to order 23-22, action item**

The Executive Secretary reviewed appeal 2023-170 and asked the Committee if they would like to deny it without a hearing due to order 23-22. The Committee stated they want to keep it on the agenda and see what happens in court.

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

The Executive Secretary reviewed appeals that had been withdrawn and denied. The Committee voted to reverse the denial for appeal 2023-179.

<b>2023-96</b>	<b>Patrick Sullivan v. Dept Corrections</b>	Approved	8/16/2023	Requesting access to unredacted phone lists.	<b>WITHDRAWN</b>
<b>2023-129</b>	<b>KSL (Jeffrey Hunt) v. UDOT</b>	Approved	10/4/2023	Requesting access to maps, reports, correspondence, and records related to homes and businesses impacted by an I-15 expansion project which were denied as drafts.	<b>WITHDRAWN</b>
<b>2023-107</b>	<b>Luis Sanchez v. Unified Police Dept</b>	Approved	9/1/2023	Requesting access to records related to an officer's car accident.	<b>WITHDRAWN due to Mediation</b>
<b>2023-91</b>	<b>Annie Knox (KSL) v. DCFS (DHHS)</b>	Approved	8/3/2023	Requesting access to progress reports from 2021 and 2022 as well as records document one person's move to a group home and death. KSL has a notarized "Authorization to Release Information" signed	<b>WITHDRAWN</b>



				by the mother.	
2023-141	Michael Clara v. Utah State Board of Education (USBE)	Approved	10/11/2023	Requesting access to email to/from two named people related to a specific "personnel investigation" letter.	WITHDRAWN due to mediation
2023-154	Patrick Wells v. Springville City PD	Approved	10/31/2023	Requesting a fee waiver.	WITHDRAWN due to mediation
2023-25 2023-26	Annie Knox (KSL) v. Salt Lake City	Approved	3/15/2023	Requesting access to disciplinary records and correspondence related to an incident on 2/11/23. Requesting access to body camera footage related to an incident 2/11/23.	WITHDRAWN after mediation
2023-180	Brady Eames v. Utah Housing Corporation	Denied	12/18/2023	Requesting financial statements related to the PTIF. The record officer provided records but stated the monthly reports would have a fee and asked if he wanted a fee estimate. The petitioner did not respond. Denied because there is not a proper appeal to the CAO and his appeal to the SRC seeks a hearing about the classification, but the respondent already stated the records are public.	--
2023-179	Corey Coleman v. Vernal City	Incomplete Denied Approved	12/13/2023 12-22-2023	Requesting a fee waiver refund. Denied because the appeal to the CAO was untimely and the SRC does not have jurisdiction	--

				to issue refunds for fees. Denial reversed by the SRC 12/21/2023.	
<b>2023-174</b>	<b>Randy Andrus (attorney) v. Unified Police Dept.</b>	<b>Denied</b>	<b>12/8/2023</b>	Requesting access to records related to a specific incident. Denied because no evidence was provided that additional records exist.	--
<b>2023-171</b>	<b>Brady Eames v. Auditor Office</b>	<b>Denied</b>	<b>12/5/2023</b>	Requesting access to oaths of office and financial records. Denied due to a \$6.13 pending fee from 2021. Denied because the time to appeal the pending fee has passed.	--
<b>2023-169</b>	<b>Harshad Desai v. Garfield County</b>	<b>Denied</b>	<b>12/4/2023</b>	Requesting access to the buying and selling values, written draft policy how the "bought price" is applied to "county value", and copies of NDA signed by the county assessors and a contracted appraiser. Denied because the email address to the record officer was incorrect so they never got the request. I provided the correct email address and where to find record officers on the DARS website and suggested he resubmit the request.	--
<b>2023-168</b>	<b>Harshad Desai v. Garfield County</b>	<b>Denied</b>	<b>12/4/2023</b>	Requesting access to a copy of the county assessor statement "required per Utah Code 59-2-311", a copy of a hearing officer's report on values of two parcels, and records	--

				introduced at the hearing. Denied because the email address to the record officer was incorrect so they never got the request. I provided the correct email address and where to find record officers on the DARS website and suggested he resubmit the request.	
2023-167	Harshad Desai v. Garfield County	Denied	12/4/2023	Requesting access to a policy about how income is derived from commercial property is used to value commercial property. Denied because the email address to the record officer was incorrect so they never got the request. I provided the correct email address and where to find record officers on the DARS website and suggested he resubmit the request.	--
2023-166	Harshad Desai v. Garfield County	Denied	12/4/2023	Requesting access to records related to a contractor. Denied because the appeal to the CAO was untimely and, therefore untimely to the SRC.	--
2023-161	Harshad Desai v. Garfield County	Denied	11/21/2023	Requesting job description and salaries of various employees. Denied because the appeal is untimely. (Past 45 days from sending the appeal to the CAO)	--
--	Brady Eames v.	Incomplete Withdrawn	12/11/2023	Requesting a fee waiver and access to records related to	

	<b>Utah Communica tions Authority</b>			the PTIF.	
--	<b>Harshad Desai v. Garfield County</b>	<b>Incomplete</b>	12/1/2023	A compilation of four appeals was provided. Two are related to commercial property value, one is regarding "BOE" reports and hearing records. A copy of the initial request and CAO appeal are missing. It appears the record officer email address was wrong. I provided the correct email and suggested they may want to resubmit it so the record officer has a chance to answer.	--
--	<b>Brady Eames v. SITLA</b>	<b>Incomplete</b>	11/30/2023	Requesting a fee waiver for \$7,000 for a seven-part request. I received a letter from SITLA dated December 6th with a copy of the CAO denial. In it the CAO states she instructed staff to contact Mr. Eames to narrow the request. I asked Mr. Eames on 12/7/23 if the respondent contacted him and received no response.	--
--	<b>Brady Eames v. Cache Waste Consortium</b>	<b>Incomplete</b>	11/28/2023	Requesting access to pending minutes, a contract, and oath of office. The request was not sent to the record officer, but to the entity's attorney. The request was not answered. I informed Mr. Eames that he knows who the record officer is and needs	--

				to send it to her. If anything is denied he may appeal at that point.	
--	<b>Adam Herbets (Fox 13) v. Piute County Sheriff Office</b>	Withdrawn	--	Requesting access to records of payment, reports, and body camera footage where the police department used a psychic, or supernatural being for assistance in generating information for law enforcement purposes. Withdrawn before reviewed.	--
--	<b>Adam Herbets (Fox 13) v. United Police Department</b>	Withdrawn	--	Requesting access to records of payment, reports, and body camera footage where the police department used a psychic, or supernatural being for assistance in generating information for law enforcement purposes. Withdrawn before reviewed.	--
--	<b>Adam Herbets (Fox 13) v. North Park Police Department</b>	Withdrawn	--	Requesting access to records of payment, reports, and body camera footage where the police department used a psychic, or supernatural being for assistance in generating information for law enforcement purposes. Withdrawn before reviewed.	--

The meeting was adjourned.