

## State Records Committee Meeting

Date: January 4, 2024

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:

Amber Lindsay  
Paul Amann  
Lohnny Pehrson, Assistant Attorney General  
Alisha Ellington  
Blaine Thomas, Assistant Attorney General  
Dianna Sanchez, Dept. of Health & Human Services  
Michael Smith  
Meg Smith  
Robert Tripp, Davis County  
Rebecca Abbot, Davis County  
Brian McKenzie, Davis County  
Dan Harper, Attorney, Canyons School District  
Tom Sherwood, Canyons School District  
David Quealy, Attorney, Salt Lake City  
Britt Balkom

### Agenda:

- Paul Amann v. Attorney General Office (2023-117)
- Alisha Ellington v. Dept. of Health and Human Services (2023-122)
- Michael Smith v. Canyon School District (2023-109)
- Kelly Anderson v. Davis County (2023-95)
- Aaron Dodd (for Britt Balkcom) v. Salt Lake City (2023-114)

### **Call to Order**

The Chair called the meeting to order at 9:10.

#### **1. Paul Amann v. Attorney General Office (2023-117)**

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

Mr. Amann stated he is trying to get information that is important to the public. He stated that he wants records about the money the respondent spent on outside counsel. He stated he wants to see the agreement with Strong and Hanni. He stated the records should be public without cost because the fee is a ransom for the records.

Mr. Amann stated he is asking for his money back for request #23-411. He stated that taxpayers should not be paying for bar dues. He stated the current audit from the Legislative Auditor has a right to know about taxpayer funds paying for bar dues for someone who was not an attorney.

##### **Respondent statement:**

Mr. Pehrson stated this request is part of Mr. Amann's ongoing legal dispute against the respondent. He stated the requests do not benefit the public, but the requester. He stated Mr. Amann is not a member of the media. He stated the legislative audit does not need the requester's assistance in getting records.

Mr. Pehrson stated the real issue is whether the fee waiver was reasonable. He stated the situation and facts are the same as in Order #23-41. He explained how the request was broad and would involve searching records in various divisions. He stated the cost of providing the records should not be paid by the public. He stated the fee estimate was reasonable given the scope and complexity. He stated \$25 per hour is a conservative charge because most work will be done by attorneys and senior staff.

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

The Committee asked how records in the other divisions would be accessed. Mr. Pehrson stated the request is for "any and all" and includes a large time frame. He stated he would need to talk to litigation and finance first to find out who the record custodians are.

The Committee asked what format the records are in and if there would be redactions. Mr. Pehrson stated there would be redactions. He stated there are numerous formats including email, and paper because the request goes back ten years. He stated records could be hard copies or electronic.

The Committee asked why looking for payment of bar dues takes so much time. Mr. Pehrson stated the challenge is age. The records from 2013 are not readily accessible and the finance division would have to dig for it.

**Petitioner Closing:**

Mr. Amann stated the target of his complaint was corruption. He stated Mr. Pehrson misled the Committee. He stated bar dues should be with Human Resources records, not finance.

**Respondent Closing:**

Mr. Pehrson stated the fee waiver was appropriately denied. He stated they have to be thorough in all their searches or the requester will take them to court. He asked the Committee to deny the appeal.

**Questions from the Committee:**

The Committee asked if records have been provided for free. Mr. Pehrson stated 66 requests have been fulfilled for free. He stated some were provided due to public interest but these are directly related to the requester's litigation.

The Committee asked how they determine what gets a fee waiver. Mr. Pehrson reviewed their process. The Committee asked if requests have been partially filled. Mr. Pehrson stated they encourage requests to be narrowed in their response, but they have to look at the request as it is given.

**Deliberation:**

**Motion** by Ms. Dean to deny the appeal. The fee is reasonable and the respondent applied its policy to determine if a fee waiver should be granted. The request is in the requester's interest and not the public interest. Order 23-41 applies to this case. Seconded by Dr. Cornwall.

**Vote:** 6 Aye. 1 Nay. Ms. Dean, Mr. Williams, Mr. Buchanan, Mr. Biehler, Dr. Cornwall, Ms. Dubovik voted in favor of the motion. Ms. Petersen voted against the motion.

Ms. Petersen stated he is concerned about the Attorney General's Office belief that benefit to the public is only determined by requests coming from the media. She stated this may or may

not benefit Mr. Amann but that does not mean it isn't of interest to the public. She said there is a broader concern for the public. Believing the only power to watchdog belongs to the media is a disservice to citizens. She said any citizen has a right to access records. The request is broad, but the basis for denying the fee is not valid.

## **2. Michael Smith v. Canyons School District (2023-109)**

### **Petitioner Statement:**

Mr. Smith stated Brighton High School's baseball team athletes were denied equal opportunity to compete. He reviewed the purpose of the survey at issue. He stated that the community deserves to know the cumulative findings of the survey and any corrective actions that were taken. He stated the surveys were anonymous which protects the parents who responded. He stated the survey is the only place this information is documented. He reviewed the public interest in the records.

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

The Committee asked for clarification about the request. Mr. Smith stated he wanted the raw data. The Committee asked for more background about the survey. Mr. Smith stated he assumed all the sports got the survey but he is only interested in results for the baseball team. He stated he learned from the statement of facts that as a result of the surveys the coach was not re-hired.

### **Respondent statement:**

Mr. Harper stated this appeal is about whether the survey is a private record under Utah Code 63G-2-302. He stated the records are part of a performance evaluation. He stated evidence used for evaluation can come from parents and students per Utah Code 53G-11-507(1)(b)(ii). Mr. Harper reviewed the process of determining whether to renew the provisional employee's contract.

Mr. Harper stated the baseball coach was not let go from the survey, but a different coach. He stated the survey is about 10 questions about the coach and provided examples.

### **Question from the Committee:**

The Committee asked if there is an expectation of privacy when filling out the survey. Mr. Harper stated the surveys are anonymous. The Committee asked if there is an option for follow-up with a parent answering the survey. Mr. Harper suggested Mr. Tom Sherwood answer the question.

Mr. Sherwood was sworn in.

Mr. Sherwood stated sometimes people answering the survey identify themselves to start a dialogue.

The Committee asked if disciplinary actions are taken from surveys like this and whether those are appealable. Mr. Harper stated they can discipline, for example, a coach could be suspended for a few games.

The Committee asked if the surveys were in the personnel file. Mr. Sherwood stated they are not. The committee asked if the employee being evaluated has access to the surveys. Mr. Sherwood stated they do not, but it's the principal's discretion.

The Committee asked if the surveys are used for anything else. Mr. Sherwood stated they are a way to collect data about how the program is going.

**Petitioner Closing:**

Mr. Smith stated the Committee can order the release of the records under Utah Code 63G-2-403(11)(b). He stated it's hard for parents to assess how the program is doing without the information.

**Respondent Closing:**

Mr. Harper stated the records fall under Utah Code 63G-2-302(2)(a) as performance evaluations. He stated parents put a lot of money into their children's athletics and can be too passionate about whether their child gets enough playing time. He stated it is already difficult to fill coaching positions because of the passion of parents.

**Question from the Committee:**

The Committee asked if coaches are licensed as Utah Code 53G applies to educators and other roles with licenses. Mr. Harper stated they do not but the statute recognizes parent and student input as part of a performance evaluation.

**Deliberation:**

**Motion** by Mr. Biehler to review the records in camera. Seconded by Dr. Cornwall.

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

**Motion** by Dr. Cornwall to grant the appeal in part. The four questions about the program shall be released. The entity shall add anchors to the distribution. The rest are employee records

classified correctly under Utah Code 63G-2-302(2)(a). There are only 5 responses, so you do not know how representative they are of the total population, so it shouldn't be released for the coach. Given there may or may not be problems with the program, but not a specific coach, it is in the public interest to see what those problem areas may be. Seconded by Mr. Williams.

**Discussion to the motion:**

Dr. Cornwall stated even though the entity did not provide clear direction about how the survey is used, the statements are specific about the coach, so she is willing to say it is proper. She said there is sufficient public interest to know the results.

**Vote:** 5 Aye. 2 Nay. Ms. Dean, Mr. Williams, Mr. Buchanan, Mr. Biehler, and Dr. Cornwall voted in favor of the motion. Ms. Petersen and Ms. Dubovik voted against the motion.

Ms. Dubovik stated she voted not because the records are not part of the personnel file and she thinks they are public and should be provided to the requester. Ms. Petersen stated the district did not classify the records correctly because they are surveys and not performance evaluations.

**3. Alisha Ellington v. Dept. of Health and Human Services (2023-122)**

**Petitioner Statement:**

Ms. Ellington stated she received a few emails that had too many redactions. She stated she should be able to see how FMLA is handled. She stated it is important to know how her ADA agreements are being talked about, directed, and how decisions are made. She asked for the record to be provided.

**Questions from the Committee:**

The Committee asked what she received. Ms. Ellington stated she got 4-5 emails that were about 80% redacted. She stated no external communications from Human Resources and the Assistant Attorney General in Risk Management (Risk) and the records communicated through the Department related to her and her employment.

The Committee asked if she would like the records unredacted. She said she would.

**Respondent statement:**

Mr. Thomas stated the records the requester is entitled to were provided. He stated some records requested between employees at the Department of Human Resource Management (DHRM) are not the respondent's records. He stated communication between DHRM and the attorney general's office are not the respondent's records.

Mr. Thomas stated the format of the hearing is unwieldy because the nature of the request is personal and normally would not be released to the public. He stated the respondent asked the Department of Technology Services to search for the emails.

Mr. Thomas stated the redactions are appropriate under Utah Code 63G-2-302(2)(a) and (d), Utah Code 63G-2-305(10) and (12). He stated government employees cannot serve the public at the expense of their work. He stated there is no public interest in this case that can outweigh the classification.

**Petitioner Closing:**

Ms. Ellington stated emails are deleted within 21 days so record request searches need to go through Google Vault. She stated there is public interest in how her FMLA was handled because Risk and the Attorney General's Office was involved. She stated there is a public interest in knowing it is not a transparent process.

**Respondent Closing:**

Mr. Thomas stated the record request is for a private interest and there is no public interest.

**Question from the Committee:**

Dianna Sanchez was sworn in.

The Committee asked Ms. Sanchez to describe how she searched for the records. She described the search terms she provided and how she gets records from each search.

**Deliberation:**

**Motion** by Ms. Petersen to review the records in camera. Seconded by Ms. Dean  
**Vote:** 7 Aye. 0 Nay. Ms. Petersen Ms. Dean, Mr. Williams, Mr. Buchanan, Mr. Biehler, Dr. Cornwall, and Ms. Dubovik voted in favor of the motion.

**Motion** by Ms. Dean to continue the hearing to January 18th at 9 am. Seconded by Mr. Biehler.  
**Vote:** 7 Aye. 0 Nay. Ms. Petersen Ms. Dean, Mr. Williams, Mr. Buchanan, Mr. Biehler, Dr. Cornwall, and Ms. Dubovik voted in favor of the motion.

**4. Kelly Anderson v. Davis County (2023-95)**

Mr. Anderson informed Ms. Shaw he would not attend.

Ms. Dean stated it is concerning Mr. Anderson wouldn't withdraw if he didn't think the case had merit.

**Motion** by Mr. Buchanan to deny the appeal because the petitioner is not present. Seconded by Ms. Petersen.

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

Ms. Dean thanked Davis County for attending and supporting the process.

### **Business**

**Motion** by Ms. Dean to approve the December 21, 2023 minutes. Seconded by Mr. Buchanan.

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

### **Cases in district court, report**

Mr. Swan informed the Committee of an upcoming court date in February for Knox v. Attorney General.

### **Set the calendar for 2024, action item**

**Motion** by Mr. Williams to keep meetings on the 3rd Thursday. Seconded by Ms. Dean.

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

### **Appoint the Executive Secretary, action item**

**Motion** by Ms. Dean to appoint Rebekkah Shaw as the executive secretary. Seconded by Dr. Cornwall.

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

### **Appoint a new Chair, action item**

**Motion** by Mr. Buchanan to move this business item to March. Seconded by Dr. Cornwall.

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

**Motion** by Mr. Biehler to appoint Mr. Williams as Chair. Seconded by Ms. Dean

**Vote:** 4 Aye. 3 Nay. Mr. Biehler, Dr. Cornwall, Ms. Petersen, Mr. Buchanan voted in favor of the motion. Ms. Dean, Ms. Dubovik, Mr. Williams voted against the motion.

Mr. Williams and Ms. Dubovik stated having the chair rotate provides a fresh perspective.

**Motion** by Dr. Cornwall to negate the previous motion. Having a new chair in March will give them 9 months of experience before the next legislative session. Seconded by Mr. Williams.



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

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

Ms. Shaw reviewed appeals that were denied since the last meeting.

<p>Brady Eames v. State Bonding Commission</p>	<p>Requesting access to oaths of office, administrative rules, records management program records, procedures and bylaws, record series information, resolutions, notices, annual reports, records related to a "sinking fund" administered by the Treasurer, and codified authority allowing the Governor to designate someone to the Commission. The Date ranges are 1982-2023 or 2021-2023. Denied because the State Bonding Commission is managed by the State Treasurer's Office. See order 23-60.</p>
<p>Brady Eames v. Utah Housing Corporation</p>	<p>Requesting financial information related to the Public Treasurer Investment Fund (PTIF). Denied because sufficient evidence was not provided that access to the record was denied.</p>
<p>Brady Eames v. Southern Utah University</p>	<p>Requesting financial information related to the PTIF. Denied because the request was sent to SUU's counsel and not the record officer. Correct contact information was provided along with SUU's online request form so he can resubmit the request.</p>
<p>Brady Eames v. Utah Navajo Trust Fund</p>	<p>Requesting oaths of office and financial information related to the PTIF. Denied because sufficient evidence was provided that additional records exist. Also, the CAO appeal went to the Treasurer, who is not required to answer per order 23-60.</p>
<p>Ian Cooperstein v. University of Utah</p>	<p>Requesting access to a source document for a transcript of a handwritten note. Denied per Administrative Rule R35-2-2(2) because sufficient evidence was not provided that the entity has concealed, or has not sufficiently or has improperly searched for the record.</p>

**4. Aaron Dodd (for Britt Balkcom) v. Salt Lake City (2023-114)**

**Petitioner Statement:**

Mr. Dodd stated the record request was denied because the city claimed it was not reasonably specific. He stated the respondent is changing that argument by stating providing the records would be too costly and time-consuming.

Mr. Dodd explained the backstory of the request. He stated the request is to understand why the city is targeting people they think might be homeless and arresting them at the airport. He stated the intent is to discover the policy. Mr. Dodd stated the city is moving the goalposts in their statement of facts by arguing the request would be costly and time-consuming. He stated the respondent needs to provide what they can.

Mr. Dodd stated this appeal is about whether the request is reasonably specific, and not about a fee. He asked the Committee to determine the respondent shall respond and the fee can be determined by the respondent later.

**Respondent Statement:**

Mr. Quealy stated the request has four parts. He stated the first three are for communications between six individuals for two separate time periods. He stated the request said "such as" which is introductory, and not an exclusive list. He stated the request is for all written or digital communications and the only thing limiting the request is the date frame.

Mr. Quealy stated the request does not allow the city to reasonably find responsive records. He stated the definition of a reasonable search talks about the burden of the search. Mr. Quealy that the burden is why the request is not reasonably specific.

**Petitioner Closing:**

Mr. Dodd stated fees are for a different hearing. He stated the first three requests are limited by the last paragraph of the request which provides the subject matter. He stated the request is broad enough so the respondent understands the request is for whatever forum the respondent uses to communicate.

**Questions from the Committee:**

The Committee asked if the respondent contacted him to clarify the request. Mr. Dodd said they did not.

Mr. Balkom stated he believes the city is mistreating the homeless and he wants to take a stand for the downtrodden. He stated he believes the city is illegally stopping people at the airport and arresting them. He stated the records would bolster his case.

**Respondent Closing:**

Mr. Quealy stated record requests and appeals are not civil litigation. He stated the city worked with the requester in mediation with the Government Records Ombudsman. He stated the legislative intent of GRAMA provides guardrails which include fees to avoid requests that are unreasonably burdensome.

Mr. Quealy stated a city-wide request is too broad. He asked that the appeal be denied, but if not, clarify that the city has a right to review the records for redaction and assess fees.

**Deliberation:**

Ms. Dean expressed concern about requests using terms that broaden the request including “such as” or “including but not limited to”. She stated these make it difficult to know how much needs to be searched.

The Committee discussed whether the request was reasonably specific.

**Motion** by Ms. Petersen to grant the appeal. The request is reasonably specific. This does not conflict with previous decisions. It has the same parameters, just broader. It includes specific individuals and dates. Seconded by Ms. Dubovik.

**Vote:** 2 Aye. 5 Nay. Ms. Petersen and Ms. Dubovik voted in favor of the motion. Dr. Cornwall, Mr. Biehler, Ms. Dean, Mr. Williams, and Mr. Buchanan voted against the motion.

**Motion** by Dr. Cornwall to grant the appeal. Salt Lake City must provide communications that are emails, instant messages, text messages, and Teams messages related to the specified dates and individuals named. For the last part of the request, Salt Lake City must produce the records for September 15, 2020 thru June 23, 2023 any policies and police reports related to individuals the city has stopped, questioned, warned, sought to remove, trespassed, arrested, or forcefully removed for “returning/refusing to leave the Airport” under the Airport’s Rules and Regulations, specifically Section 1.6, 3.16, or Rule 3.19. The Committee affirms the city’s right to assess a fee pursuant to statute and Graham. Seconded by Ms. Petersen.

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

The meeting adjourned.