

State Records Committee Meeting

Division of Archives
Courtyard Meeting Room
May 8, 2014
Salt Lake City, Utah

SRC APPROVED
Date June 12, 2014
SLM

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

Legal Counsel: Paul Tonks, Attorney General's Office
Chiarina Bautista, Attorney General's Office
Executive Secretary: Susan Mumford, Utah State Archives

Attending via phone: Jack Jessop, Petitioner
Justin Crosbie, Petitioner
Wayne Crosbie, Witness for Justin Crosbie, Petitioner

Others Attending: Matt Anderson, Attorney for Corrections
Lisa Cloyd, Corrections
Rosemary Cundiff, Archives staff
Bryce DeGiulio, Corrections
Lorianne Ouderkirk, Archives staff
Gina Proctor, Corrections
Austen Snow, Student intern at Archives
Renée Wilson, Archives staff
Rebekkah Shaw, Archives staff
Kendra Yates, Archives staff

Mr. Lex Hemphill, chair of the committee, opened the meeting at 9:08 a.m. Two hearings were scheduled involving the Utah Department of Corrections (UDC). Mr. Matthew Anderson from the Attorney General's Office represented UDC for both hearings.

Jack Jessop vs. Utah Department of Corrections

Mr. Jack Jessop was contacted by phone at the prison for the first hearing. Mr. Hemphill explained the procedures for the hearing.

Opening – Petitioner

Mr. Jessop said he requested copies of instructions and the side effects and fact sheets for the drugs he had been prescribed during his incarceration. He had been incarcerated for over 40 years. He is currently taking over 15 medications each day. He is uncertain whether his symptoms and pain are because of the medications or because of the diseases

from which he suffered. He wasn't sure whether the information he was getting was accurate. In 2001 he had chest pains, nausea and dizziness. He passed out and was told it was angina. An angiogram was ordered because of a leaking heart valve and the doctor performed a double bypass and aortic valve replacement. Later he had another bypass and surgery. Then two months in a row he had shock treatments to keep his heart in rhythm. He also suffered from a hernia. He saw Dr. Roberts and was told he should have surgery. He had waited two or three months and the pain had worsened. A hernia belt was ordered and he was told that the pain medication he was on should be sufficient to handle the pain he was experiencing.

Opening—Respondent

Mr. Anderson said Mr. Jessop had requested the instructions or the package inserts in the medications. UDC did maintain the instructions for the use of the pharmacists at the prison clinic. The information was more technical than was intended for the inmates. It did contain some information on side effects and interactions. UDC classified the records as protected. The medications' information could be used to circumvent security. The written information circulated in the institution could allow inmates to mimic symptoms and abuse prescription medications.

Testimony--Petitioner

Mr. Jessop said in the past an information page was attached to all medications. That was stopped. The inmates will abuse drugs with or without the information. Medications are dispensed one dose at a time and other security measures are in place such as blood and saliva tests and physical exams. Prisoners are closely watched when receiving drugs and there are always security cameras. Mr. Jessop argued that limiting the flow of information does not change the behavior of inmates who want to abuse drugs. Mixing medications and being unaware of drug interactions could be dangerous. Verbal instructions are not always understood and can be forgotten. Mr. Jessop said he has a hearing aid and can misunderstand explanations at times. Medical staff should be able to tell if a prisoner is faking a drug reaction. Being old and hard of hearing, he said he needs to refresh his memory about the drugs he takes and protect himself from the possibility of side effects or drug interactions. He requested information on the drugs he was prescribed from 2000 to the present. He questioned the information that was given to him. A physician's assistant (PA) gives out drugs to inmates and there is little time allotted to each to ask questions. An inmate may want to know if the drug has known side effects or reactions. In the past, Mr. Jessop said, he did not have the same concerns as he has now that he is older. One of the prison doctors told him he might not live to see his next Board of Pardons appearance in 2020. He said he was taking Tramadol, as a pain reliever for degenerative arthritis, but it was not sufficient for pain from the hernia. He has taken Prednisone for 18 years, also Methotrexate, and both have side effects. New medications include Coumadin for heart problems. Some of the symptoms he has could be caused by the medications rather than the diseases. He asked the committee to order the release of the information he had requested so he could be responsible for his own health.

Testimony--Respondent

Mr. Anderson introduced Deputy Warden Bryce DeGiulio. Mr. DeGiulio was sworn as a witness. He said he currently worked in the medical unit and had worked for the Department of Corrections for 27 years. Drug abuse is a major concern at the prison. Drug overdoses, deaths, violence, and abuse of medications are all part of the issue. He was familiar with the records Mr. Jessop had requested and thought the information could be given to Mr. Jessop in person when the doctors reviewed his medications. If records were allowed to float around the prison, inmates could study and use the information to fake symptoms. Visits to the hospital were a security concern. Drug abuse has to be attacked from many angles. Prescription drugs are given out to the inmates in pill lines twice a day. Drugs, if not swallowed, can be sold. Faking symptoms is a way for inmates to get off the property to try to escape. If Mr. Jessop could get copies of the records, every inmate could access them. All the inmates are housed together and there is no place the information would be secure. The information that comes with the drugs is intended for medical professionals. Tramadol, a pain medication, is abused at the prison. Ms. Smith-Mansfield said the information is a publication from the pharmaceutical company. Therefore it is not a record and is public information. The information is maintained in the pharmacy. Mr. Anderson said the information is maintained by Corrections. There is a distinction between information requested by the general public and contraband when the same information is requested by an inmate. Mr. Hemphill asked if it were possible to have Mr. Jessop inspect the information. Mr. Anderson said it would be acceptable from a security standpoint. Mr. Jessop asked Mr. DeJulio what would prevent him from writing down the information and distributing it.

Closing--Petitioner

Mr. Hemphill asked if Mr. Jessop would be satisfied if he could read the information rather than have a copy. He said he had been on Tramadol for two years and had never been threatened with violence by other inmates who wanted to take it away from him. He needed the medication to combat pain. Once he was in such pain that he took all his pills to try to keep from waking up. He was taken to the medical facility for several days and given a medical clearance not to work and to sleep on a bottom bunk. He was asking for the information for himself. He has a short memory and cannot remember information given to him orally. The fifteen medications he was on could have interactions. Accidents happen in giving out the medications. The department is justified in their security concerns. Selling medication is common. Another problem is that the department takes any money the inmates earn to pay for medical expenses. He said he only wanted the information for his own protection.

Closing--Respondent

Mr. Anderson said pursuant to 63G-2-103, the information did not fit the definition of a record but was a commercial publication and not a record. It was information received by a governmental entity. He agreed with Ms. Smith-Mansfield that the information was not a record to begin with. Mr. Jessop's medical concerns are legitimate. Deputy Warden DeGiulio said that numerous restrictions were in place to deal with the drug problem in the prison and to curtail the fighting in the institution. It is understandable that he would want information about his medications and a procedure was in place to accomplish that.

Mr. Anderson requested that the Committee uphold the decision of Corrections to not release the records and to uphold the classification as protected.

Closed Session

Ms. Smith-Mansfield made a motion to go in camera to review the records. Paul Tonks interjected that the classification of the record was not determined by who requested the records. He said the records had been denied because of security protocols rather than classification. Ms. Cornwall seconded the motion. A vote was unanimous in favor of the motion. The committee members did not leave the room, but viewed the information without discussion. There was a motion by Ms. Smith-Mansfield to return to open session. The motion was seconded by Ms. Cornwall. A vote was unanimous in favor of returning to open session.

Deliberation

Ms. Smith-Mansfield made a motion that the information about the medications was not a record under Utah Code 63G-2-103(22)(b)(iv) and (vii). They were commercial publications meant for public distribution. The committee had no authority to classify, to create a retention policy, or to order the release of the information. The motion was seconded by Ms. Richardson. Limited by copyright or patent junk mail or commercial publication Ms. Smith-Mansfield said that the information should be made available in some way. The committee has no jurisdiction over non-records. But the committee could encourage UDC to make the guidance available to the users of the medications. A vote was taken on the motion and it was unanimous in favor of the motion. Mr. Misner expressed his support in favor of the petitioner who wanted to take control of his health and needed the information to do so. Mr. Hemphill said an order would be sent to the parties within seven business days. A draft of the minutes will be sent to Mr. Jessop when available. He will also receive a copy of the approved written minutes.

Break at 10:30 a.m.

Hearing--Justin Crosbie vs. Utah Department of Corrections

Mr. Justin Crosbie was contacted by phone. Mr. Wayne Crosbie, his father, was contacted by phone as a witness for Justin Crosbie. Mr. Matthew Anderson represented Utah Department of Corrections (UDC), the respondent.

Opening--petitioner

Mr. Crosbie said he had paid for his own polygraph exam while on probation and he wanted a copy sent to the Board of Pardons and Parole. He requested and was denied a warrant request, parole violation report, field notes, emails, and progress reports made by his former parole agent Randi Jeurgens from 2011 to the present. He felt the former parole agent had discriminated against him. She asked his sexual preference and he admitted he was openly gay. Her demeanor toward him changed at that point and he felt discriminated against. He was returned to prison after the parole violation. The parole violation report could have influenced the Board of Pardons to extend his parole date. He said Ms. Juergens only included aggravating factors in her reports. She omitted mitigating factors from the reports and deliberately withheld positive things he had done

to be a better person. He held out hope of someday being a contributing member of society and asked the committee to grant him the records so he could challenge his former parole officer's reports that had negatively influenced the Board of Pardons.

Opening--respondent

Mr. Anderson listed the requests in the initial GRAMA request. He said eighteen pages of field notes had been provided to Mr. Crosbie. After consideration, another two pages of the notes formerly classified as controlled and protected were changed to private and provided to him. Four cell phone records had been found that pertained to Mr. Crosbie. Redactions from the cell phone records were the account number and user address. A number of email records had been found and provided to Mr. Crosbie with redactions of references to other offenders. Progress reports were the Parole Violation (PV) reports made by Corrections employees to the Board of Pardons. Any warrant recommendations made to the Board of Pardons were protected by another statute. A PPG report is a test taken to test reactions to certain sexual stimuli. The date range of 2011 to the present resulted in no PPG report, but a test administered in 2009 was found. That record is classified as controlled and the Department of Corrections is willing to defend the classification of that report.

Testimony-- petitioner

Mr. Crosbie said he wanted the emails and cell phone records to see if the agent had contacted an internet company called Mugshots.com. He said Ms. Jeurgens had sent photos of his father's house and car to the site. As a sex offender, his address is required to be public but photos of his father's house and car had appeared on Mugshots.com. He wanted the cell phone records to see if she had sent the photos to the site to expose him. He said the photo of his father's house is still on the website. He asked for a copy of the warrant request and the parole violation report. Those records were part of the blue packet provided for his parole appearance. He wanted another copy of the blue packet to challenge some of the things said in the reports. Seven emails were released to him. He wondered if there were any prior to those. He had also received copies of four cell phone records. He had been told the agent lost her cell phone and that it would require a DTS representative at least five hours to search cell phone records to see if any matched the search terms. Corrections sent a PPG report to the regional treatment center and to the Board of Pardons. He wanted to gather information and prepare to apply for a job on the outside while he was still in prison. Mr. Wayne Crosbie was on the phone and was asked to join the conversation. Mr. Crosbie was sworn as a witness by Mr. Hemphill. Mr. Crosbie asked his father if he remembered witnessing Randi Jeurgens and a supervisor taking pictures of his house while Justin was at work. Mr. Wayne Crosbie said he saw pictures being taken of vehicles in the driveway and of the house. He said while VIN numbers and descriptions of houses and cars were public records for sex offenders, he thought Ms. Juergens was overstepping her bounds and may have broken a law as a state employee by posting photos. Records from her cell phone could show if she had sent the photos. He said that was all of the questions he had for his father. Mr. Crosbie said he had been told that Randi Jeurgens had retired and lost her cell phone. He thought that emails of a state employee would be public information in any case.

Testimony--respondent

Mr. Anderson said the PPG report from 2009 was not a responsive record and was done by a private company. The Department of Corrections does not maintain the record. The polygraph test was done by a private treatment center in Ogden, is not a responsive record, and is not maintained by Corrections. All available office and field notes have been provided to Mr. Crosbie. If there were cell phone photos they would have been lost with the phone. The available cell phone records have been redacted but were given to Mr. Crosbie. UDC does not maintain photographs or texts from a cell phone. The PV and PPG reports and warrant requests were provided in the blue packet. They are provided to an offender pursuant to Statute 77-27-11(5) at the time of sentencing in preparation for a parole revocation hearing.

Closing--petitioner

Mr. Crosbie thanked the committee for the chance to participate in the hearing. He said he wanted copies of the records in order to dispute the information in the report and to change the information before another hearing before the Board of Pardons and Parole.

Closing--respondent

Mr. Anderson said he had no more information unless there were questions.

Deliberation

Mr. Hemphill said Mr. Crosbie had received the field notes, cell phone records, and available emails. The warrant request and parole violation report from September 2012 under Utah Code 63G-2-305(14) is classified as protected. The PPG report is classified as controlled. Mr. Hemphill made a motion that the committee finds that the Department of Corrections has fulfilled request # 15-6-33, field notes; #15-6-45, cell phone records; and #15-6-46, for emails. For request #15-6-43, there are no responsive records (the PPG report). The polygraph test results are properly classified as protected under Utah Code 63G-2-305(10) as in a former decision of the committee. Request # 15-6-44, the warrant request and PPG report is properly classified under Utah Code 63G-2-305(14) and is therefore denied. Ms. Cornwall seconded the motion. The motion was approved by a unanimous vote of the committee. An order will be sent within seven days.

Break 11:35**Approval of the April 10, 2014 SRC Minutes**

Ms. Smith-Mansfield said the retention schedules were amended and changes to the descriptions should be entered in the record. Ms. Smith-Mansfield made a motion to approve the minutes with corrections. Mr. Fleming seconded the motion. Ms. Cornwall abstained because she was absent for the meeting in April. The motion to approve the minutes was in the affirmative 5-0.

Retention Schedules

Ms. Rebekkah Shaw reported on three general retention schedules:
Transitory Correspondence # 1-61
Executive Correspondence # 1-62

Administrative Correspondence # 1-63

Administrative Correspondence had been before the Committee with a proposed retention of three years. The Attorney General's Office through David Sonnenreich suggested seven years as a retention period. Cedar Hills Citizens for Responsible Government recommended permanent retention. Mr. David Fleming said it was more difficult and costly to destroy electronic records because of the many iterations. He added that records are kept for a period of time based on the risk involved. The only change the committee discussed was to Administrative Correspondence. Mr. Fleming did not see a longer retention as a benefit. Mr. Tonks said Federal Court Rules operated on the presumption that if a document is missing, the responsibility is on the governmental entity. One year beyond the highest statute of limitations of six years was the reasoning behind the suggestion from the Attorney General's Office. Ms. Smith-Mansfield said the retention schedule should be open for public review for another 30 days. Mr. Fleming made a motion to approve 1-61 and 1-62 and, as amended, 1-63 was to have another period of review with a proposed retention of seven years. Ms. Smith-Mansfield seconded the motion. She said the general schedules are models for governmental entities if they do not have their own specific schedule. Comments on the proposed retention schedules received during the last thirty days are attached.

Administrative Rules

Mr. Tonks said the five-year review was to make sure the rules were adequate for the committee and to propose needed changes to the rules. Mr. Hemphill said the committee was proposing changes in the Administrative Rules as part of the five year review. See the attached document with proposed changes. Mr. Fleming made a motion to approve the amended Administrative Rules and to submit them as directed by the Division of Administrative Rules. Ms. Smith-Mansfield seconded the motion. A vote in favor of the motion was unanimous.

SRC Appeals received

Ms. Mumford distributed a list of appeals received during the month. See attached list.

Cases in District Court

Mr. Tonks said there were no new cases to report.

Other Business

Mr. Hemphill said that on July 1, 2014, his term and the term of Mr. Rowley on the committee would expire. Mr. Hemphill said he would serve as the media representative on the committee until a replacement is found.

Adjournment at 1:30. p.m.

STATE RECORDS COMMITTEE MEETING
Thursday May 8, 2014
9:00 a.m.

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

AGENDA

HEARINGS

Hearing: Jack Jessop vs. Utah Department of Corrections. Mr. Jessop is appealing the denial of the information sheet from the drugs he has taken from 2000 to the present listing the side effects of the medications.

Hearing: Justin Crosbie vs. Utah Department of Corrections. Mr. Crosbie is appealing the denial of warrant requests, parole violation reports, emails, polygraph results and all notes and cell phone records concerning him generated by his former parole agent Randi Juergens.

BUSINESS

Approval of April 10, 2014, SRC Minutes, action item

Retention Schedules, action item

Administrative Rules, action item

SRC appeals received

Cases in District Court

Other Business

SRC Appeals Received
May 2014

1. **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.
2. **14-27 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
3. **14-28 Rand Henderson vs. Weber State University.** Mr. Henderson is appealing the denial of a list of faculty who were denied tenure, final decisions regarding tenure, and any grievances for denied tenure.
4. **14-29 Siddiga Ghanavi vs. DCFS.** Ms. Ghanavi is appealing the denial of records of allegations against a person with custody of her child. Scheduled for June.
5. **14-30 Corey Vonberg vs. Iron County.** Mr. Vonberg is appealing the denial of a record of the destruction of his case file.
6. **14-31 Ray Mullings vs DCFS.** Mr. Mullings is appealing the denial of a case file. Appeal incomplete.
7. **14-32 Raymond Payne vs. UDC.** Mr. Payne is appealing the denial of procedures concerning prison policy. Appeal incomplete.
8. **14-33 Rand Henderson vs. University of Utah.** Mr. Henderson is appealing the denial of a list of faculty who were denied tenure, final decisions regarding tenure, and any grievances for denied tenure.
9. **14-34 Rand Henderson vs. Utah Valley University.** Mr. Henderson is appealing the denial of a list of faculty who were denied tenure, final decisions regarding tenure, and any grievances for denied tenure.
10. **14-35 Corey Vonberg vs. UDC.** Mr. Vonberg is appealing the partial denial of medical records. UDC says response is complete.

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.

R35. Administrative Services, Records Committee.

R35-1. State Records Committee Appeal Hearing Procedures.

R35-1-1. Scheduling Committee Meetings.

(1) The Executive Secretary shall respond in writing to the notice of appeal within five business days.

(2) Two weeks prior to the Committee meeting or appeal hearing, the Executive Secretary shall post a notice of the meeting on the Utah Public Meeting Notice website.

(3) One week prior to the Committee meeting or appeal hearing, the Executive Secretary shall post a notice of the meeting, indicating the agenda, date, time and place of the meeting at the building where the meeting is to be held and at the Utah State Archives.

R35-1-2. Procedures for Appeal Hearings.

(1) The meeting shall be called to order by the Committee Chair.

(2) Opening statements will shall be presented by the petitioner and the governmental entity. Each party shall be allowed five minutes to present their opening statements before the Committee.

(3) Testimony shall be presented by the petitioner and the governmental entity. Each party shall be allowed twenty minutes to present testimony and evidence, to call witnesses, and to respond to questions from Committee members.

(4) Witnesses providing testimony shall be sworn in by the Committee Chair.

(5) Questioning of the witnesses and parties by Committee members is permitted.

(6) The governmental entity must bring the disputed records to the hearing to allow the Committee to view records in camera if it deems an in camera inspection necessary. If the records withheld are voluminous or the governmental entity contends they have not been identified with reasonable specificity, the governmental entity shall notify the Committee and the adverse party at least two days before the hearing and obtain approval from the Committee Chair to bring a representative sample of the potentially responsive records to the hearing, if it is possible to do so.

(7) Third party presentations ~~shall~~ ^{may} be permitted. Prior to the hearing, the third party shall notify the Executive Secretary of intent to present. Third party presentations shall be limited to five minutes.

(8) Closing arguments may be presented by the petitioner and the governmental entity. Each party shall be allowed five minutes to present a closing argument and make rebuttal statements.

(9) After presentation of the evidence, the Committee shall

*if unavailable
the petition*

(3) In order to file an appeal the petitioner must submit a copy of his or her initial records requests or a statement of the specific records requested, as well as any denial of the records request. The Executive Secretary shall notify the petitioner that a hearing cannot be scheduled until the proper information is submitted.

(4) The Committee Chair and one other member of the Committee must both agree with the Executive Secretary's recommendation to decline to schedule a hearing. Such a decision shall consider the potential for a public interest claim as may be put forward by the petitioner under the provisions of Subsection 63G-2-403(11)(b), Utah Code. A copy of each decision to deny a hearing shall be signed by the Committee Chair and retained in the file.

(5) The Executive Secretary's notice to the petitioner indicating that the request for a hearing has been denied, as provided for in Subsection 63G-2-403(4)(b)(ii), Utah Code, shall include a copy of the previous order of the Committee holding that the records ~~series~~ at issue are appropriately classified.

(6) The Executive Secretary shall report on each of the hearings declined at each regularly scheduled meeting of the Committee in order to provide a public record of the actions taken.

(7) If a Committee member has requested a discussion to reconsider the decisions to decline a hearing, the Committee may, after discussion and by a majority vote, choose to reverse the decision of the Executive Secretary and hold a hearing. Any discussion of reconsideration shall be limited to those Committee members then present, and shall be based only on two questions: whether the records being requested were covered by a previous order of the Committee, and/or whether the petitioner has, or is likely to, put forth a public interest claim. Neither the petitioner nor the agency whose records are requested shall be heard at this time. If the Committee votes to hold a hearing, the Executive Secretary shall schedule it on the agenda of the next regularly scheduled Committee meeting.

(8) The Executive Secretary shall compile and include in an annual report to the Committee a complete documented list of all hearings held, withdrawn, and declined.

KEY: government documents, state records committee, records appeal hearings

Date of Enactment or Last Substantive Amendment: January 5, 2007

Notice of Continuation: September 23, 2009

Authorizing, and Implemented or Interpreted Law: 63G-2-403(4)

R35. Administrative Services, Records Committee.

R35-6. Expedited Hearing.

R35-6-1. Authority and Purpose.

In accordance with Subsection 63G-2-403(4)(a)(i), this rule establishes the procedure for requesting and scheduling an Expedited Hearing.

R35-6-2. Requests for an Expedited Hearing.

(1) A party appealing a records designation to the Committee may request that a hearing be scheduled to hear the appeal prior to 10 business days after the date the notice of appeal is filed by making a written request to the Executive Secretary. A copy of this request shall also be mailed to the government entity.

(2) A written request shall include the reason(s) the request is being made.

(3) The Executive Secretary shall consult with the chair of the Committee to decide whether an Expedited Hearing is warranted.

(4) The standard for granting an Expedited Hearing is "good cause shown." The chair shall take into account the reason for the request, and balance that against the burden to the Committee and the governmental entity.

R35-6-3. Scheduling the Expedited Hearing.

(1) In the event that an Expedited Hearing is granted, the Executive Secretary shall poll the Committee to determine a date upon which a quorum can be obtained.

(2) After settling on a date no sooner than 5 days nor later than 14 days after the notice of appeal has been filed, the Executive Secretary shall contact the petitioner and governmental entity and schedule the hearing.

(3) The government entity shall file its response to the appeal with the Executive Secretary, and mail a copy to the petitioner no later than three days prior to the scheduled hearing. The Executive Secretary shall make this response available to the Committee as soon as possible.

R35-6-4. Holding the Expedited Hearing.

With the exception of the time frame for scheduling a hearing and providing responses, all other provisions governing hearings under the Government Records Access and Management Act (GRAMA) shall apply to Expedited Hearings.

KEY: government documents, state records committee, records appeal hearings

Date of Enactment or Last Substantive Amendment: March 4, 2005

Notice of Continuation: September 23, 2009

Authorizing, and Implemented or Interpreted Law: 63G-2-502(2)



Rebekkah Shaw <rshaw@utah.gov>

Public Comment regarding proposed 36-month records retention

Ken Cromar <kencromar@bluemoonprod.com>

Thu, May 8, 2014 at 12:09 AM

To: rshaw@utah.gov

Cc: Rosemary Cundiff <roundliff@utah.gov>, Ken & Debbie Severn <ksevksv@gmail.com>, Marilyn & Jerry Dearinger <jwdearinger@gmail.com>

May 7, 2014

Dear Records Committee Members,

I am a member/researcher of an ad hoc group called Cedar Hills Citizens for Responsible Government. We have been before the Records Committee before and it appears that our City's more recent Denials of our GRAMA requests will bring us back to you soon.

We are of the belief -- probably naively so -- that if the taxpayers of our community were to simply see the public record proof of questionable actions by City officials that has cost millions of dollars in golf course losses, that they will be able to vote more intelligently. If the City has its way, and continues to stall, delay and destroy records, our community may never know the full truth of our unfortunate series of events.

Two years ago, this Committee ordered the City of Cedar Hills to gather city related business public email records, including those that were kept on personal email accounts, resulting in 8000 pages of records. Unfortunately it came over 200 days after requested -- and by then, nobody cared about the damning evidence, which may have been a strategy. Additionally, City officials blamed us for the \$30,000 the City spent in legal fees to fight us in order to collect a \$766 fee. This made no sense to us.

It appears that because of our occasional public record requests, the City has adopted a policy to destroy public records at the earliest legally allowed opportunity of 12 months -- reportedly asking city employees to destroy records -- which may have included responsive records not yet destroyed, even though policy had allowed for it. If this is true, then it is illegal.

Regardless, the bigger point is this: Because the city is so quick to destroy the public record, we have found it necessary to make periodic GRAMA requests for public email records, as a strategy to preserve at least parts we guess might have value. In Cedar Hills this means that we may never know what really led to six major resignations including the City Manager, City Recorder (a 20-year veteran who put out a press release saying she was pushed out for "political reasons"), City Financial Officer, Golf Course Manager, and the Mayor who went to prison on unrelated bank fraud charges. The results? No forensic audits, investigations, etc. Critical information has been simply swept under the rug, with most of the records deleted and gone forever.

So, what does this have to do with the 36-month records retention period being considered by the Committee? Everything.

Actually, a bigger question better addresses the 36 month proposal: With recent jumps in modern day powerful technology and space saving storage, why do we feel the need to destroy public records at all? It bares repeating! Modern technology has made the "need" for record storage space a non-issue. Records that used to fill filing cabinets, that in turn filled rooms, that required new buildings, can now all actually fit in the palm of your hand -- literally. Next year your thumb. The following year, possibly your finger nail?

The point is this: The statutes of yesterday reflect a time when records were all on paper. That is no longer the case. Those same critical paper documents, are now scanned into the archives electronically and paper is thrown away. While the technology has rapidly changed, the Records related State Code has not, and is no longer fully effective in protecting the public records in behalf of the People.

So, records destruction became a way to save space, -- but may have inadvertently become a method to hide information.

The statutes of today don't seem to take into account that **electronic records are easily stored, and require virtually no space whatsoever to store**, and should be quicker and easier to access, and hence make government more transparent and more accountable to its citizens. Instead, at least in Cedar Hills, we getting the exact opposite results.

Yes, 36-months is much better than 12-months. But better still is not destroying any records at all. The public records serves many purposes, including protecting the public servant/official from himself. When the public servant knows the records won't be destroyed and his tracks won't be erased -- the temptations tend to disappear. If we really care about those we've put into public office, then we'll create and install measures most likely calculated to take into account human nature.

Conversely, it could be argued that a truly transparent government should WANT to keep all records in order to be able to prove at any given moment that they are always open, honest and accountable.

In conclusion, the public record retention timeframe is a direct reflection of how long we value government integrity -- 12 months worth? -- or a more permanent trust? The good news is that the minimal cost and power of today's technology makes that decision much easier.

Thank you for your time and attention to this public comment. And, thank you for your service to me, my family, my city and the entire State of Utah.

Kindest Regards,

Ken Cromar - Researcher
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Patricia:

The Discovery Advanced Resource Team of the Utah Attorney General's Office has reviewed the proposed correspondence records retention schedules that you presented during today's meeting. We recommend that the retention period for the proposed "Administrative Correspondence" series (28479) be enlarged from three years to seven years. The reason for this is legal need - to make sure that documents necessary to protect Utah's interests in future lawsuits are not destroyed prematurely, and to provide greater protection to the state from liability based upon the doctrine of spoliation. That doctrine says that a court can impose adverse consequences (even dismissing a case or a defense) if a party destroys evidence after it becomes aware of the likelihood of litigation. A state agency can become aware of the likelihood of litigation long before attorneys from the Attorney General's Office see a filed lawsuit. There is a "safe harbor" for normal document destruction done in accordance with standard retention procedures before legal counsel implements a "litigation hold" that suspends all destruction of potentially relevant documents. However, that safe harbor only applies if the document retention policy is reasonable. We feel the new "Administrative Correspondence" category will likely contain documents that are relevant to lawsuits, and that the safest thing to do is to choose a destruction date that is after the expiration of the statute of limitations in most cases. The vast majority of cases in Utah have statutes of limitation of three, four, or six years. We recommend seven years to allow time for a lawsuit to be filed and served on the state, and for legal counsel to impose a litigation hold on the relevant agencies.

I have discussed this with Paul Tonks, and understand that he is comfortable with this recommendation. Please do not hesitate to call me if you have any questions or if I can provide additional information.

Thank you again for taking the time to meet with us today.

- David