

## **November 16, 2023**

This is a *rough* transcript based on notes by the Executive Secretary. Her notes would normally be considered a draft, used only to create meeting minutes, but because there were problems with the recording devices employed, and an audio recording was not created of this portion of the meeting, she has chosen to use them to create this rough transcript record.

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

The parties were sworn in.

Petitioner Statement:

Chris Peiper-Thank you for your time. I'll start by saying, that I don't think this is a difficult decision if we meet the standard, but I understand that it's an unpleasant one to make. My client doesn't file this lightly. This is a civil remedy of last resort. The Legislature recognizes rights can be abused and Mr. Eames is Exhibit A. I don't ask you to take my word for it. I filed two sworn affidavits.

The factors the Committee is required to consider under the statute in 63G-2-209 are:

The number of requests and pending requests. Over the last few years, the Office of the State Treasurer has received over 100 formal GRAMA requests. You all saw the graph for the Committee's 2023 report and the number of appeals. We were over all others this year. This is the fourth time I've come before the Committee this year, I think. I've represented the Office of the State Treasurer for about a dozen hearings.

Pending requests as of the previous hearing was 25. We answered 2 or 3 of those, so there are well over a dozen still pending.

The second factor, and these aren't required, but are for you to weigh, is the scope, nature, content, language, and subject matter of requests. I point to the fact that Ms. Griffin testified in the affidavit it's unclear what he's requesting. They tend to be convoluted and difficult to work through. The nature of those requests makes it more challenging.

The third factor is the nature of content language, subject matter, and communications. This isn't so much to the formal requests, but to communications outside those requests that can relate to them. I'm glad that's in the statute. It's relevant. The Office of the State Treasurer and many entities are constantly getting emails alleging different things.

I've had 250 of these emails since February. Some are requests, but mostly they're communications separate from requests. Many of these are aggressive in nature. Some of that tone was in response to this petition.

The statute also says any pattern of conduct the petitioner deems relevant. I would point to the affidavit of Ms. Griffin that he has a practice of submitting requests, and then withdrawing after

significant resources are spent. This includes requests before the State Records Committee. That pattern is evident and impacts the Committee.

The next factor is any pattern of conduct determined to constitute substantial interference with the operations of the governmental entity. In a snapshot of 4-5 months, Ms. Griffin outlines the day-to-day impact of responding to him for that four-month period. I want it clear that there is a significant impact on the Treasurer's Office day to day from answering these requests. We went through similar burdens over the last few months since the last hearing.

Many times Ms. Griffin asked for clarification, trying to understand what he was asking for. There is great difficulty in filling the request. We believe he isn't interested in using the information for the public benefit.

I'd add the statute allows the Committee to consider any other factor that you consider relevant. That I think is important. The idea of weighing, and balancing the rights that exist under GRAMA. There are broader interests for the public at large. He conflates public benefit with personal benefit. He bolded "my/public". This is an important misunderstanding. You can't build a house on public BLM property. The public as a whole matters.

The records are managed in a way that recognizes taxpayers and the public as a whole. These requests take significant resources from taxpayers. His statement has many references to "daily, weekly, monthly, or yearly basis". I would point to that. He seems to think access under GRAMA is like a Google search result. He types in what is of interest on a particular day. The reality is state government doesn't operate like Google. There are human impacts.

This is the only remedy left to protect public resources. If taxpayers knew what's been happening, they'd be outraged. The Committee can safeguard the public trust. If he continues to abuse this right of access, it ruins it for the rest of us.

The relief we seek is that the Committee will provide relief from his requests for the maximum available, which is a year. That will let us focus on our core mission and other record requests, especially from the media. That will also signal to Mr. Eames that his requests abuse the right to access. We welcome the Committee's authority and support on the matter.

Mr. Williams- How many requests are there?

Ms. Griffin- We answered 2 of the 25 that were received since August.

Mr. Williams- Are you asking for the requests in the queue to be stayed?

Mr. Peiper- Yes.

Ms. Dean- You said Mr. Eames is "twisting and weaponizing" GRAMA. I need examples.

Mr. Peiper- In response to the petitioner, Mr. Eames stated they “manifested contempt for a violation of OPMA”. We had discussions about administrative rules, officers under case law are not permitted to legislate. Also separation of powers, and officers can’t exercise legislative power. We share responses in hopes of answering the underlying question. The number of emails about this is referenced a few times and in response to the petitioner. That’s a clear example.

Ms. Dubovik- I notice on Exhibit A, that each response has a website that he is directed to. Is that used for most requests submitted?

Ms. Griffin- Most. The core of what he’s seeking is on the website. He wants more detailed information. The reports are on a monthly basis. I pull the information into a PDF and provide it to him.

Ms. Dean- In Exhibit A it says he asks for substantial time and resources not covered by fees. Will you describe that?

Ms. Griffin- There is the time to read his emails, and discussions with staff to determine what he’s actually looking for, what may be responsive, and then compile responses. That is different from the formal response and sifting through other communications. I need to get everything in the statutory time frame. That’s not part of the fees for compiling.

It is about \$40-60 based on the transactional data he requests. Some we charge no fee for. The actual record takes less than 15 minutes, but the time spent discussing and preparing to respond, we don’t charge for.

Many of the requests would be a low fee to charge. Until 2021 we granted fee waivers before it became a significant burden on staff and resources.

Ms. Dubovik- When someone submits a request, do you require them to use the Open Records Portal?

Ms. Griffin- We accept email as well.

Ms. Dubovik- Do you find that using email, it requires you to sift through more? I see his requests can be hard to read.

Ms. Griffin- The Committee upheld our fee waiver denial. Then after all the time we spent on that, he withdrew his request. Multiple requests were associated with those hearings.

Mr. Biehler- The appeals make it all the way to us and he withdraws?

Ms. Griffin- Of the 25, we’ve had a few withdrawals already.

Ms. Dean- I wonder, of the 100+ formal requests, how many others do you get?

Ms. Griffin- It ebbs and flows. We had a significant increase in requests this last year due to national interest. We have increased interest from various researchers across the country. Five are submitting requests quarterly. The media requests ebb and flow. The last few months have slowed a little. There are three other requests outstanding that are not from Mr. Eames.

Ms. Dubovik- I'm wondering, of the requests, are they mostly duplicative?

Ms. Griffin- Yes. Many times we refer Mr. Eames to other entities because it's easier for them to pull the records. He's requested public meeting minutes or agendas of entities that aren't public bodies. We've seen a few similar to that.

Respondent Statement:

[Mr. Eames provided a statement that he read from. It can be found on the Public Notice Website here: <https://www.utah.gov/pmn/files/1049403.pdf> The part of his presentation that he read from this statement is not fully transcribed below.]

Mr. Eames- I let Mr. Swan and Mr. Williams know on a weekly basis if someone appointed is not filing their oath of office. The Treasurer's Office want to equate my being an inquisitive, zealous watchdog to being vexatious. Mr. Oaks is bound to defend me to exercise my right any day, week, month, or year. Mr. Peiper is bound to support me in my constitutional right any day, week, month, or year. Essentially, the Office of the State Treasurer, and counsel manifested by the petitioner they won't enable me to exercise my rights.

Every business day the State Treasurer, Office of the State Treasurer, State Money Management Council gets records, I must be able to exercise my right. I am a citizen of Utah. We should all agree every officer and employee works for me every day, week, and month. As a citizen, public records created are my public records. It's my business. As a citizen, I have the right to learn the conduct of my business.

We all agree that as a public servant, the State Treasurer has a duty to open, read, and consider e-mail from me to learn my protests against wrongs, my petitions for redress, and their conduct about my business.

The Office of the State Treasurer has committed egregious dereliction of duty. They never codified rules to govern the records of their office. I was told they're not subject to obey such authorities. I said the Attorney General has adopted Rules.

I drove down to participate in mediation on October 12th. It was a three-way act of intimidation so I would be forced to explain why I was requesting records. I said it is not their business. Under GRAMA I don't have to explain why I want records. I'm not under any duty to benefit the public. I'm in my rights to benefit myself by learning how the State Treasurer is doing my business.

Because I paid more than \$40.00, they expect me to withdraw all my requests and get lost. They are required to quote me the cost and let me modify my requests. I am allowed to withdraw instead of paying the fee. To know if the Office of the State Treasurer is obeying the Constitution, I must be able to exercise my constitutional rights every day, week, month, and year.

I am in my rights to protest, petition, and freely communicate my thoughts and opinions any day, week, month, and year. If I want to bring to light reporting that I may discover, I'm within my constitutional rights to protest.

They'd have you believe my protests over the last 55+ months didn't warrant a response. You weren't able to peruse them. I can assure you that the recent ones that were sent to the PTIF is misreported by many participants of the PTIF.

Ms. Griffin said she can't work 40 hours a week because she's not compensated for doing so. She's not titled as an appointed records officer, but a public information officer. Who knows how much time she spends on GRAMA requests?

Petitioner Closing Statement:

Mr. Peiper- Ms. Griffin is a model records officer. She works tirelessly. It's rare to find a full-time record officer in the state. Bless them all.

To the question of what extent do fees cover costs, all the legal advice, everything I've done, time spent regarding his requests and communications is not recoverable. Taxpayers pay for that.

The other category is the appeals. Internal administrative appeals to Mr. Oaks, there is no way to recoup those costs. The final point is the right to access records under GRAMA is not unlimited. It simply isn't. 63G-2-102 says the Legislature recognizes the policy interest in letting the government restrict access to some records. It's not pleasant to withhold records. We know they'll be upset and we don't want to go to the State Records Committee.

That burden of saying "no", there needs to be a balance. Now the burden shifts to the Committee to determine public interest. We tried to work with Mr. Eames and it hasn't been sufficient. We're grateful that the Legislature recognizes this remedy. We urge you to provide the max time.

Ms. Dean- Ms. Griffin, are you the certified records officer?

Ms. Griffin- Yes.

Ms. Dean- If the burden you attest to helping Mr. Eames with his requests was relieved in any way, what other duties would you do?

Ms. Griffin- I work with the media. I work with the Legislature on policy issues, crafting legislation and ensuring public needs. I communicate to the public and help Mr. Oaks prepare presentations on issues that affect the public. When I'm responding to these requests, it's time I'm not spending working with the public and the media.

Ms. Peterson- What is your title?

Ms. Griffin- I am the Policy and Communications Deputy.

Respondent Closing Statement:

Mr. Eames- The appointed record officer is appointed by the Chief Administrative Officer. Ms. Griffin isn't doing that. She claims I'm making unsubstantiated claims of fraud. 98 participants in the PTIF are misreporting. The PTIF is a qualified repository. The funds are transferred to the Office of the State Treasurer for investment. These reports aren't online.

So far I'm asking for 5 categories of records. If Ms. Griffin can't handle my requests, it's not my fault they don't ensure she can be compensated to work full-time as an appointed records officer.

Don't penalize and shame me because I've been a concerned citizen and government watchdog since 2015. I'm actively zealous in exercising my rights regarding billions of uninsured unguaranteed public funds. Funds that aren't in certified public repositories.

I hope you won't penalize and shame me for exercising my rights daily, weekly, monthly, and yearly by sending emails to avoid spending money on paper letters and stamps and avoid the time it takes to use snail mail.

Dr. Cornwall- You emphasize your constitutional rights. Much of GRAMA is to create transparency and make the public aware. What activities do you engage in to share the information you get?

Mr. Eames- To share it? That's part of the emails I send to them, to legislators, and other agencies to let them know there are red flags.

Dr. Cornwall- What response do you get?

Mr. Eames- None. I'm ignored.

Dr. Cornwall- Your comment that you are on a strict budget and trying to save money. The State is on a budget too. My sense is the more you are reactive, that takes away from the opportunity others might have to get information. Any comment on how costly you are?

Mr. Eames- No one else is using the public money. I'm doing what others should be doing.

Dr. Cornwall- Part of the complaint is that you aren't very forthcoming and cooperative as they try to find what information you want.

Mr. Eames- I'm trying to think of one time Ms. Griffin said she needed clarification. I can't find it.

Ms. Peterson- In your presentation, you reference 55+ months. Is that the time you've been asking for records from them?

Mr. Eames- Yes. The red flags that got me going is an audit from the State Auditor regarding banks getting external and internal funds mixed up. That's how I started around 2015. I started asking Kirt Slauch, who was the Deputy Treasurer at the time. I asked for records regarding the PTIF. There are billions in this fund.

Ms. Peterson- Any other agencies?

Mr. Eames- I admit I'm a watchdog.

Ms. Peterson- Is this the subject that is your interest, or is your interest across the spectrum of government?

Mr. Eames- This fund and these reports associated with it are supposed to be filed with the State Money Management Council to reveal what's going on with the money the Treasurer is investing. I've been advised to request them from each participant rather than ask the Treasurer's Office.

Ms. Dubovik- Ms. Griffin, how many hours do you work?

Ms. Griffin- 40. Only part are as the records officer.

Ms. Dubovik- What portion of your time goes toward being the records officer?

Ms. Griffin- It ebbs and flows. Sometimes about 5 of the 40.

Ms. Dubovik- How much of those 5 hours are you working on Mr. Eames requests?

Ms. Griffin- More than that. It depends on how close we are to the hearing. It's closer to 10 hours when I'm preparing for a hearing.

Ms. Dubovik- 10 hours a week for just Mr. Eames?

Ms. Griffin- Yes.

Deliberation:

Ms. Dean- Looking at Exhibit A. I really think the timeline suggests a pattern regarding a lot of the agency's time to address the issues. Mr. Eames is attempting to understand the people's business.

Ms. Dubovik- A lot of this information is already on the website.

Ms. Dean- I brought up the website. It is there. I think, as a citizen, I feel comfortable going there and not needing to delve further. There's a lot of information there. Portfolio, security, and type. It's listed by quarter.

It appears to me the Treasurer's Office puts so much on the website and on the transparency website. I feel they're trying to be transparent as best they can without overburdening government. That's just one point.

Mr. Eames is trying to understand in-depth information. A lot of us don't have the expertise to understand that.

Dr. Cornall- It's interesting he started this. I think it's important that people like you do this kind of work to be a watchdog, but you started after the Auditor already pointed out there was a problem.

In your writing, you think you are the public. I think that's not a true characterization of what GRAMA is about. GRAMA is about making sure people have access to government information. The public is more than Mr. Eames and I don't hear him recognizing them.

Ms. Peterson- I'd like to speak to that. I disagree. Mr. Eames is a member of the public. Nothing in GRAMA suggests treating the word 'public' as a category. He doesn't have to provide evidence. His constitutional rights are individual.

Ms. Dubovik- I'm curious about the communications between Mr. Eames and the Treasurer's Office. I'd like more evidence. I don't think that's been fully explored, and that's a key component of this. I don't think what he's requesting isn't legitimate. A lot of what he's requesting is already accessible. I'm curious about this possible abuse pattern.

Ms. Peterson- You're talking about abuse of the right of access?

Ms. Dubovik- I'm looking at the nature and content of language. We have to look at this as a whole picture. Can we request more information from the entity? More evidence? I'm not comfortable as a whole with what I've received.

Ms. Dean- What we've heard from testimony, there are a lot of emails going back and forth trying to determine what is wanted. Using appeal powers to talk to attorneys and multiple avenues.



Mr. Williams- One request can contain multiple requests. As an employee, we get abusive language at us all the time. Abuse of the system has a cost for other citizens. The excessive types of requests in multiple types can affect my rights. We're talking about one entity. I can guarantee 50 others get the same volume of requests and abuse from one person.

Ms. Peterson- 50?

Ms. Dubovik- No one else is submitting these requests so he expects a personal records officer because no one else is submitting these. That sounds like an abuse, too.

Motion to go into closed session.

**The audio recording picks up again here. You can listen to it on the Public Notice Website [here](#).**