

State Records Committee Meeting

Date: January 18, 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:

Alisha Ellington
Blaine Thomas, counsel for DHHS
Nicholas Jarvis, ULCT
Melinda Bowen, counsel for WVC
Mallory Underwood, counsel for Lt. Governor Office
Collin Tanner, Lt. Governor Office
Ryan Wood, counsel for Lehi City

Agenda:

- Alisha Ellington v. Dept. of Health and Human Services (2023-122)
- Brady Eames v. Utah Local Government Trust (2023-13)
- Brady Eames v. Utah League of Cities and Towns (2023-128)
- Brady Eames v. Lieutenant Governor (2023-127)
- Brady Eames v. Lehi City (2023-125)
- Brady Eames v. West Valley City (2023-124)

Call to Order

The Chair called the meeting to order at 9:03.

Business 1 of 2

Motion by Ms. Dubovik to approve the January 4th, 2024 minutes. Seconded by Ms. Peterson.

Vote: 7 Yes. 0 Nay. Ms. Dubovik, Ms. Peterson, Dr. Cornwall, Mr. Williams, Ms. Dean, Mr. Biehler, Mr. Buchanan voted in favor of the motion.

1. Alisha Ellington v. Dept. of Health and Human Services(DHHS) (2023-122 Continuance)

Motion by Ms. Dean to go in camera. Seconded by Mr. Buchanan.

Vote: 6 Yes. 0 Nay. 1 Abstain. Ms. Peterson, Dr. Cornwall, Mr. Williams, Ms. Dean, Mr. Bieherl, Mr. Buchanan voted in favor of the motion. Ms. Dubovik abstained.

Deliberation:

Ms. Dean stated the records are not investigation records.

Ms. Peterson asked Mr. Thomas if the assertion of privacy is referring to the requester. Mr. Thomas stated the records are private concerning government employees. He referred to Utah Code 63G-2-305(18).

Ms. Dean provided suggestions to the respondent to improve what is redacted.

Ms. Peterson asked Mr. Thomas if there has been an official proceeding. He stated there are potential proceedings.

Ms. Peterson asked Ms. Ellington if she filed for any actions for an administrative proceeding. Ms. Ellington said no.

The Committee discussed whether the redactions were proper.

Motion by Mr. Biehler to deny the appeal. The records are properly classified under Utah Code 63G-2-305(18). There is no public interest in the records. Seconded by Ms. Dean.

Vote: 4 Yes. 2 No. Mr. Buchana, Ms. Dean, Mr. Biehler, Mr. Williams voted in favor of the motion. Dr. Cornwall and Ms. Peterson voted against the motion.

2. Brady Eames v. Utah Local Government Trust (2023-130)

The respondent did not attend the hearing.

Ms. Peterson asked Mr. Eames if he got a chance to review the records he received from the respondent that morning. Mr. Eames stated he did and the appeal is resolved.

Motion by Mr. Williams to dismiss the hearing because the petitioner has received the records. Seconded by Ms. Peterson.

Vote: 7 Yes. 0 Nay. Ms. Dubovik, Ms. Peterson, Dr. Cornwall, Mr. Williams, Ms. Dean, Mr. Biehler, Mr. Buchanan voted in favor of the motion.

3. Brady Eames v. Utah League of Cities and Towns (2023-128)

Petitioner Statement:

Mr. Eames stated he has received the requested records from other entities and they can be emailed to him easily. He reviewed the Graham v. Davis County Solid Waste Management case. He stated he can modify or withdraw his request so the fee should not stand.

Mr. Eames stated he believes the responsive record is a single page. He asked the Committee to grant his appeal and he not be obstructed by a past fee.

Questions from the Committee:

The Committee asked if he asked for a fee waiver in the original request in January 2022. He stated he did. The Committee asked if he appealed the fee then. He did not.

Respondent statement:

Mr. Jarvis stated a fee was not requested in the original January 2022 request. He stated the fee was assessed but not appealed and there is no right to appeal the past fee. He stated this is not an access denial but a refusal to process a request because of an outstanding fee.

Mr. Jarvis stated the requested record is public and has been provided many times previously, but the request has not been processed.

Questions from the Committee:

The Committee asked if Mr. Eames received the requested records from 2022. Mr. Jarvis stated they were delivered via the Open Records Portal (Portal). The Committee asked if Mr. Eames was notified there would be a fee for the request, and the request was processed after he did not appeal the assessed fee. Mr. Jarvis stated that was correct.

The Committee asked if they did the work and then told him there was a fee. Mr. Jarvis stated for the last four years the only requests they have received have been from Mr. Eames. He

stated they do not have a process in place for estimating fees. He stated they are not required to provide an estimate of fees. The Committee asked if he downloaded the responsive records on the Portal. He stated he did.

Petitioner Closing:

Mr. Eames stated he should be notified of the fee before the records are found and provided. He stated the records can be provided in less than 15 minutes. He stated the previous fee is being used as a weapon.

Respondent Closing:

Mr. Jarvis stated notification of the fee was in the Open Records Portal before the response to the request was completed and the fee was not appealed. He stated this is not an access denial, but a process allowed in GRAMA.

Deliberation:

Ms. Dean wondered if inspection of a record should be allowed regardless of past fees. Mr. Jarvis stated that Mr. Eames is welcome to go to their office to inspect the record.

Dr. Cornwall stated GRAMA allows the respondent to require the fee be paid. The Committee discussed how long a past fee could be required before processing a new request.

Motion by Ms. Dean to deny the appeal. Utah Code 63G-2-203(8)(b) allows an entity to require past fees to be paid before processing a future request. The respondent did notify the requester there would be a fee before the records were received. The records were downloaded and there was no appeal of the fee.

There was no second.

The Committee discussed whether there was a de facto denial in this appeal. Dr. Cornwall stated there was no denial because the records will be provided once the fee is paid. Ms. Dubovik stated there was no denial. Mr. Biehler and Ms. Peterson agreed if the request is not fulfilled, it is a denial. Mr. Biehler stated the fee should be paid.

Ms. Dean reviewed Utah Code 63G-2-205. Ms. Peterson and Mr. Williams agreed the Committee has jurisdiction because there was a de facto denial.

Motion by Mr. Biehler to deny the appeal. The respondent effectively denied the request per Utah Code 63G-2-204(9) and the new request does not need to be fulfilled until the fee is paid per Utah Code 63G-2-203(8). Seconded by Mr. Williams.

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

Ms. Peterson stated it is unclear whether Mr. Eames had the opportunity to address the fee initially in 2022.

Dr. Cornwall left the meeting.

4. Brady Eames v. West Valley City (2023-124)

Petitioner Statement:

Mr. Eames stated he did not get a statement of facts in the mail and wants a default decision. He stated he was not provided any records and should not be denied records due to a fee quote. He stated the records can be easily provided. He asked the Committee to keep the Graham v. Davis County Solid Waste Management case in mind. He stated he is trying to get information from participants of the Public Trust Investment Fund and carry out his due diligence because the records are not online.

Respondent Statement:

Ms. Bowen stated there are about 300 pages collected and they will be released once the fee is paid. She stated he did not address appealing the fee or adjusting the request. She stated the records are waiting for him to accept them.

Ms. Bowen stated Mr. Eames never appealed the fee waiver denial in 2019.

Questions from the Committee:

The Committee asked if the city began processing the initial request in 2019 before Mr. Eames had a chance to respond and say he didn't want to pay the fee. Ms. Bowen stated that was correct. She stated they informed him half the work was done and they had a right to charge a fee. She stated they informed him how much was incurred so far and Mr. Eames never responded. That was January 22, 2019.

Petitioner Closing:

Mr. Eames stated he should not be denied access to a one page record because the 2019 request is still open. He stated he should not be required to go to their office to view records.

Respondent Closing:

Ms. Bowen stated as far as they knew, Mr. Eames still wanted the records. She stated GRAMA doesn't make clear how to handle this situation when there is a pending fee that was never appealed.

Questions from the Committee:

The Committee asked why the city kept working on the request before the fee question was resolved. Ms. Bowen stated they informed Mr. Eames of the fee 1/22/2019 and there was no response until 1/28/2019 and the work was done by then.

The Committee asked how Mr. Eames can get the records. Ms. Bowen stated they're available by email or dropbox once the fee is paid.

Deliberation:

Ms. Peterson stated the email from Mr. Eames stating “before I pay any more fees” is implied consent to the quoted fee. She stated if he had instead said not to go further, or “before I pay fees, let me ask an additional question”. She stated the response he provided implied “go ahead”. She said he had an opportunity to dispute the fee.

Motion by Ms. Peterson to deny the appeal. The entity effectively denied the request under Utah Code 63G-2-204(9) and the new request does not need to be fulfilled until the fee is paid per Utah Code 63-G2-203(8). Seconded by Mr. Williams.

Mr. Williams stated the city made an effort to allow the requester to address the fee or withdraw the request before the work was completed.

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

5. Brady Eames v. Lieutenant Governor Office (2023-127)**Petitioner Statement:**

Mr. Eames stated the request is for a fundamental record. He stated he believed the Committee is misled that he can get the equivalent of the wet signatures by seeing the online copy.

Respondent Statement:

Ms. Underwood stated Mr. Eames did not qualify for a fee waiver. She stated GRAMA permits the charge of a reasonable fee under Utah Code 63G-2-203(4). She stated there is a direct cost to the office to fulfill the request and asked that the appeal be denied.

Questions from the Committee:

The Committee asked for clarification about where the records were held. The Committee asked if the work has been done and the records are ready to provide. Mr. Tanner stated they are.

Petitioner Closing:

Mr. Eames stated he'd like to know if there is a retention and classification report for the records.

Respondent Closing:

Mr. Tanner stated the Committee's decision is whether the signature sheets are beneficial to the general population and should be provided without a fee. He stated he cannot go out of his way to fulfill requests without some sort of compensation.

Deliberation:

Motion by Ms. Dubovik to deny the appeal under Utah Code 63G-2-302(2). A fee may be charged for compiling a record not normally maintained. Seconded by Mr. Buchanan.

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

6. Brady Eames v. Lehi City (2023-125)

Mr. Eames left the meeting due to audio difficulty on Zoom.

Motion by Mr. William to continue the hearing to February. Seconded by Ms. Dean.

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

Business 2 of 2

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

No appeals were denied since the previous meeting.

Committee members' attendance polled for next meeting, format and quorum verification

A quorum was confirmed for February's meeting.

APPROVED