

State Records Committee Meeting

Date: February 15, 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
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:

Emmanuel Carranza
Blaine Thomas, counsel, Dept. Corrections
Randall Honey, Dept. Corrections
Ian Cooperstein
Terra Rosslund, counsel, University of Utah
Brian Watts, counsel, University of Utah
Ryan Stanley, counsel, The Salt Lake Tribune
Courtney Tanner, Journalist, The Salt Lake Tribune
Burke Naser, counsel, Utah State University
Michael Turley
Matthew Lewis, counsel for Michael Turley
Daniel Bokovoy, counsel for DHRM
Tim Evans, DHRM
Miki Mullor, Hideout Comment
Camera Platt, Hideout

Agenda:

- Emmanuel Carranza v. Dept. of Corrections (2023-98)
- Douglas Hulse v. Dept of Corrections (2023-133)

- Ian Cooperstein v. University of Utah (2023-139 and 2023-140)
- Courtney Tanner v. Utah System of Higher Education (2023-143, 2023-144, and 2023-163)
- Courtney Tanner v. Utah State University (2023-145)
- Michael Turley v. Division of Human Resource Management (2023-152)
- Miki Mullor v. Town of Hideout (2023-156)

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 18th, 2024 minutes. Seconded by Ms. Dean.

Vote: 4 Yes. 0 Nay. Ms. Dubovik, Ms. Peterson, Mr. Williams, Ms. Dean voted in favor of the motion. Dr. Cornwall abstained.

1. Emmanuel Carranza v. Dept. of Corrections (2023-98)

Petitioner Statement:

Mr. Carranza stated he submitted his request because he wanted to know why some privileges were removed and his housing level was changed. He stated he had not received a straight answer.

Respondent statement:

Mr. Thomas stated a reasonable search was done. He stated policy was provided and an override letter. He stated an additional search was done that expanded the date range of the request and found another record. He stated a meeting was arranged with the Warden and Director of Prison Operations to answer questions. He stated Mr. Carranza is still not satisfied and they have shifted from override records to investigation records which he stated should be a new request.

Questions from the Committee:

The Committee asked if inmates are told when override management is implemented.

The Chair swore in Randall Honey as a witness.

Mr. Honey stated in normal situations the offenders get a document that will include a comment about why the override is there. He stated Mr. Carranza got one stating the Law Enforcement Bureau investigation was ongoing.

The Committee asked why the investigation is not included in the search for a request for all information concerning the implementation of the override. Mr. Thomas stated the request did not include the Law Enforcement Bureau (LEB), but the investigation is probably concluded.

Petitioner Closing:

Mr. Carranza stated he had the record stating the justification is due to a LEB investigation but the timeline does not work, so it is not related.

Respondent Closing:

Mr. Thomas stated the request is for override documents which were provided. He stated two searches were done and a meeting was arranged to answer questions. He stated LEB investigations are different and should be a separate request.

Deliberation:

The Committee discussed requesters cannot be expected always to know what record they seek to answer the question they are trying to answer.

Motion by Dr. Cornwall to deny the appeal. The respondent has done a reasonable search. The Committee encourages the petitioner to submit a new request for the records he still seeks. Seconded by Ms. Dean.

Ms. Peterson stated she reluctantly supported the motion. She stated the respondent has followed the letter of the law, but not the spirit of the law. She stated the whole point is to allow the requesters to get the information they need. They could have been more responsive.

Vote:5 Yes. 0 Nay. Ms. Dubovik, Dr. Cornwall, Mr. Williams, and Ms. Dean voted in favor of the motion. Ms. Peterson voted against the motion.

Mr. Buchanan arrived.

2. Ian Cooperstein v. University of Utah (2023-139 & 2023-140)

Petitioner Statement:

Mr. Cooperstein stated for appeal 2023-140 the records provided are incomplete. He stated all managers had at least two accounts and they should all be searched. He stated responsive records could be on a cellphone. He stated the request was regarding a job complaint he made that was supposed to be confidential and was not.

Respondent Statement:

Ms. Rossland stated the Committee has heard this appeal before and stated the records were subject to disclosure and redactions could be made under Utah Code 63G-2-302. She stated the records were provided with limited redactions under Utah Code 63G-2-302(2)(d), which was appealed with a claim that there were missing records.

Ms. Rossland stated they searched archived accounts, but Gmail accounts were not part of the request. She stated they cannot compel someone who is no longer an employee to provide their device to them to search.

Petitioner Statement:

Mr. Cooperstein stated for appeal 2023-139 he is seeking information about how the respondent was prepared for an Office of Equal Opportunity (OEO) hearing. He stated the respondent's statement of facts cites irrelevant case law and attorney-client privilege does not apply. He stated there must be a record that exists responsive to this request.

Respondent Statement:

Mr. Watts stated the record request was about a hearing in August 2020 and references several individuals who were involved in the process. She stated the scope of the request is attorney interactions with the named former employee in preparation for that 2020 hearing. She stated their search was more than reasonable. She stated the client is the University, not the employee.

Questions from the Committee:

The Committee asked the respondent to describe their search. Ms. Rossland explained. Mr. Watts stated it is debatable whether the records they identified are really responsive to the request, but they were provided.

The Committee asked if employees have work phones provided by the university. Mr. Watts stated he is not aware of it. He stated they are usually provided with laptops, but not phones.

Petitioner Closing:

Mr. Cooperstein reviewed the problems he saw with the OEO hearing. He stated his complaint was leaked and the department he was in has since been cleared out.

Respondent Closing:

Mr. Watts stated they will rest on what they've already stated.

Deliberation:

Motion by Ms. Dean to go in camera and review the records. Seconded by Mr. Williams.

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

The Committee's intent in order 23-35 was that any private information that the petitioner was not the subject of should be redacted. It was not in the order which was an oversight.

Ms. Dubovik stated the redactions in 2023-140 are not referencing Mr. Cooperstein.

Motion by Ms. Dubovik to amend Order #23-35 to reflect the motion. Seconded by Ms. Dean.

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

Ms. Dean stated she had concerns about the search. She stated if someone is using their personal email or personal device to do government business, it is still a government record. She stated at a minimum, they should have been asked if there are any records on their device. She stated the University should go back and ask those questions. She stated a reasonable search was not done.

Ms. Peterson stated it has been months since the request and the University has not disputed that the former employee only recently left employment, and the initial search should have included that person. Ms. Dean stated the University should be on alert for things that may be responsive to requests from Mr. Cooperstein since they are aware there are a lot of requests waiting for a response.

Motion for appeal 2023-140 by Ms. Dean that the records provided to the requester were classified correctly. The University needs to go back and do a better search and find what other accounts are used for University business on work or personal devices and search for the time period indicated in the request. The record may be redacted as appropriate under GRAMA. Seconded by Ms. Peterson.

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

Motion for appeal 2023-139 by Ms. Dean that after reviewing the records in camera, the records are classified correctly under Utah Code 63G-2-305(17). Having weighed the public interest, they are properly classified and the appeal is denied. Seconded by Mr. Buchanan.

Motion for appeal 2023-139 by Ms. Dean that the University has done a reasonable search. Seconded by Dr. Cornwall and Mr. Buchanan.

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

3. Douglas Hulse v. Dept. of Corrections (2023-133)

Mr. Hulse was not present and Ms. Shaw stated he informed her that he planned to attend in person.

Motion by Ms. Dean to continue the hearing. Seconded by Mr. Williams.

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

4. Courtney Tanner (Salt Lake Tribune) v. Utah System of Higher Education (2023-143, 2023-144, & 2023-163)

Petitioner Statement:

Mr. Stanley stated the request is for any communications sent or received regarding complaints about Commissioner Woolstenhulme and his letter of resignation. He stated all three were denied under Utah Code 63G-2-302(2)(a) and 63G-2-305(28). He stated citizens have a right to know the reason for Mr. Woolstenhulme's resignation. He stated Utah Code 63G-2-302(2)(a) is regarding performance evaluations and would not apply resignation records.

Mr. Stanley stated the records are not protected under Utah Code 63G-2-305(28) because that covers things that might be discussed in a closed meeting. He stated it is narrowly worded. He reviewed each part of Utah Code 63G-2-305(28) explaining why it should not apply to the responsive records.

Mr. Stanley stated Mr. Woolstenhulme oversaw dozens of institutions and thousands of students. He resigned via a special emergency meeting and the public interest demands to know why.

Respondent Statement:

Mr. Olsen stated the statute language needs to be read in its plain text. He stated it covers records concerning current or former employees which is what the records are. He stated there is an expectation of privacy for all employees. He stated if these records cannot be confidential then the employee, employer, and the Board lose the ability to be candid. He stated the Committee has previously upheld the privacy interest in similar records.

Questions from the Committee:

The Committee asked if the investigation for appeal 2023-143 is concluded. Mr. Olsen stated Mr. Woolstenhulme resigned before it was done so it was never finished and there are no findings.

Petitioner Closing:

Mr. Stanley stated the text of the statute is not in the respondent's favor. He stated complaints would not fall under Utah Code 63G-2-302(2)(a). He stated the records can be redacted.

Ms. Tanner stated the communications with the board regarding Utah State are not evaluations. She stated the investigation being incomplete does not make it exempt and a chilling effect is not in the statute.

Respondent Closing:

Mr. Olsen stated the statute includes all records about a former or current employee. He stated employees still have an expectation of privacy regarding their employment. He stated the release of the records would lead to a chilling effect of employees.

Deliberation:

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

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

Motion by Ms. Dean to continue the hearing to March 21st to allow more time for the Committee to review the records. Seconded by Mr. Buchanan.

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

Ms. Dubovik left the meeting.

5. Courtney Tanner (Salt Lake Tribune) v. Utah State University (2023-145)

Petitioner Statement

Mr. Stanley stated the request is for complaints and investigative reports if they exist for the last two years. He stated the redactions were made under Utah Code 63G-2-302(2) and -305(10) but the University had not met its burden. He stated GRAMA presumes all records are public.

Mr. Stanley stated GRAMA exists to provide guidelines to disclosure and restrictions to records based on equitable weighing and favor of public interest. He stated Mr. Woolstenhulme resigned six months ago and the respondent still will not engage with Ms. Tanner. He stated an invasion of privacy is not enough under the statute because it must be "clearly unwarranted". If the witnesses were anonymized there would not be an unwarranted invasion of privacy.

Mr. Stanley stated the records are not protected under Utah Code 63G-2-305(10) because the respondent has not shown there is a proceeding pending that the release of the records would interfere with. He reviewed why Utah Code 63G-2-301(3)(o) does not apply because disciplinary action and time for appeal have passed. He stated Utah Code 63G-2-301 is a sword petitioner may use to get access to a private record, but not a shield for the respondent to use.

Respondent Statement

Mr. Burke stated this involves the most sensitive records the university maintains. He stated the complaint was filed by a member of the University community and the Legislature had made them both private and protected. He stated three provisions apply. He stated Ms. Tanner misquotes and mischaracterizes Utah Code 63G-2-302(2)(a) because the records only need to concern an employee and the list is not exhaustive.

Mr. Burke reviewed previous appeals the Committee heard regarding similar records. He stated the Committee needs to be consistent and follow the law as it is written.

Mr. Burke stated merely redacting the name does not remove all the sensitive content in the record because given the size of some departments, it can be easy to identify the subjects of the records. He stated under GRAMA they are not required to redact these records because the requester is not entitled to inspect it. If they were, only then could they redact the record and provide the portion a requester is entitled to.

Mr. Burke reviewed the chilling effect releasing the record would have on future complaints regarding sexual misconduct. He stated the university has a right to enforce its policies and procedures. He reviewed the process when the university gets a complaint.

Petitioner Closing

Mr. Stanley stated that sexual misconduct is not expressly protected. He stated they never stated Utah Code 63G-2-302 was an exhaustive list. He stated he doesn't know if 63G-2-302(2)(d) applies because they have not seen the record.

Mr. Stanley stated if an entity can withhold a record whenever they can imagine a circumstance where someone can identify the redacted names, GRAMA would be meaningless. He stated releasing the record is in the public interest.

Ms. Tanner stated this request was not made out of curiosity but a responsibility to hold a public official in high positions accountable for his actions.

Respondent Closing

Mr. Burke stated the University has reviewed the records and determined they're properly classified.

Deliberation

Motion by Ms. Dean to go in camera. Seconded by Dr. Cornwall.

Vote: 5 Yes. 0 Nay. Ms. Peterson, Mr. Williams, Ms. Dean, Dr. Cornwall, and Mr. Buchanan voted in favor of the motion.

Motion by Ms. Dean that having reviewed the records in camera, the appeal is denied. The records are properly classified under Utah Code 63G-2-302(2)(d) and Utah Code 63G-2-305(10)(d). The Committee is sensitive to protecting the victims and alleged victims. Having weighed whether their privacy is more important, the Committee feels their privacy outweighs the public interest. Seconded by Dr. Cornwall.

Vote: 5 Yes. 0 Nay. Ms. Peterson, Mr. Williams, Ms. Dean, Dr. Cornwall, and Mr. Buchanan voted in favor of the motion.

Ms. Dubovik returned.

6. Michael Turley v. Division of Human Resource Management (DHRM) (2023-152)

Mr. Williams recused himself because DHRM is part of his department.

Petitioner Statement

Mr. Lewis stated DHRM started an investigation in fall 2022. During that investigation, Mr. Turley was called and told he had nothing to worry about. After the investigation concluded, he was terminated, and then he filed a request asking for the investigation records. He stated that DHRM's response is vague, but they claim the records are subject to attorney-client privilege.

Mr. Lewis stated that based on the numbering system of what was provided, he cannot tell what was provided and what was withheld. He stated they wanted the investigation material and nothing in the response addressed that.

Mr. Lewis stated he is having difficulty understanding what the assertion of privilege is without a privilege log. He stated there is not enough information for the requester to evaluate the claimed privilege. He stated he doesn't even know if there is an attorney involved. He stated the records they got were not related to the investigation.

Questions from the Committee

The Committee asked if there was a findings letter provided after the investigation concluded. Mr. Turley stated there was not. Mr. Lewis stated the state took action based solely on the Office of the Inspector General (OIG) report which cleared Mr. Turley a year before and provided no other findings.

Respondent Statement

Mr. Bokovoy stated the search was not challenged in the appeal to the Chief Administrative Officer. He stated the Governor's Office was informed of the OIG investigation and directed counsel to take point and investigate it. He stated the General Counsel directed DHRM to investigate it and present findings. He stated that DHRM assessed the investigation, worked on some drafts for language, emailed back and forth, and then sent an email with their findings and assessment to the general counsel for the Governor's Office. He stated that is the context for the responsive records.

He stated of the 30 pages, 19 were provided and 11 were either withheld entirely or have redactions. He stated that attorney-client privilege is codified in Rule 504 rules of evidence. He stated 504 defines a client representative and DHRM is acting as an agent on behalf of the Governor's Office regarding the investigation as directed by counsel for the Governor. He stated the communications also fall under Utah Code 63G-2-305(17).

Questions from the Committee

The Committee asked if there is an investigation file. Mr. Bokovoy stated the 30 pages are all they found. The Committee asked Tim Evans to describe the search done for the records.

Mr. Evan stated there was not a full-level inquiry which is why there are few records. The Committee asked if there were recordings of any interviews. Mr. Evans stated interviews are not recorded.

The Committee asked if any drafts were finalized or used to carry out any action. Mr. Bokovoy stated at the conclusion, DHRM determined there was insufficient evidence to take action based on the information they had.

Petitioner Closing

Mr. Lewis stated there must be notes that exist. He stated a reasonable investigation was not done and a reasonable search was not done.

Questions from the Committee

The Committee asked for clarification on the timeline. The Committee asked if Mr. Turley got a copy of the executive summary. Mr. Lewis stated that it was read to him, but they don't have a copy.

Respondent Closing

Mr. Bokovoy stated the Committee needs to review Rules of Evidence 504. He stated there are not many pages and the Committee can review it quickly. He asked the Committee to uphold the classifications.

Questions from the Committee

Ms. Peterson asked why the Committee is only looking at classification when there were no interview notes, recordings, or findings. She asked if those records existed. Mr. Bokovoy and Mr. Evan stated this is all that exists.

Deliberation

Motion by Dr. Cornwall to review the records in camera. Seconded by Ms. Dubovik

Vote: 4 Yes. 0 Nay. Ms. Peterson, Ms. Dean, Dr. Cornwall, and Mr. Buchanan voted in favor of the motion.

Motion by Ms. Peterson to grant the appeal in part and deny it in part. Pages #13 and #14 are not drafts, but notes of interviews under Utah Code 63G-2-103(25). #25 and #26 are not attorney-client privilege. Counsel provided no evidence DHRM acted as a legal representative of the Governor's Office and those pages should be released. Page #29 and #30 were properly classified under Utah Code 63G-2-302(2)(d). #6 and #19 were classified correctly as drafts. The respondent did not do a reasonable search. Both Mr. Bokovoy and Mr. Evan stated the search was limited. The Committee directs the department to go back and do a more thorough search. Seconded by Dr. Cornwall.

Mr. Bokovoy asked if #13 and #14 are records. Ms. Dean stated they are records under Utah Code 63G-2-103(25).

Vote: 4 Yes. 0 Nay. Ms. Peterson, Ms. Dean, Dr. Cornwall, and Mr. Buchanan voted in favor of the motion.

Mr. Buchanan left the meeting.

7. Miki Mullor v. Town of Hideout (2023-156)

Petitioner Statement

Mr. Mullor started a PowerPoint presentation. He stated he is a citizen journalist reviewing water rights for the Hideout Comment. He stated his request for email had a fee. The response broke the fee into two categories with \$1000 for extracting emails and converting them to PDFs.

Mr. Mullor stated GRAMA allows fees but they must be adopted by ordinance or resolution. He stated Hideout's fee schedule has an hourly rate of \$23/hour and \$55 per request, but the respondent did not provide how the fee was calculated.

Mr. Mullor reviewed Utah Code 63G-2-203(5)(b). He stated the other \$2,000 fee is for reviewing the records, which they cannot charge for. He reviewed the Committee's order #13-19. He stated he wants to know what part of the \$2,000 fee is for review and what part is for redactions.

Mr. Mullor reviewed Utah Code 63G-2-204(5). He stated Hideout says he is not a media representative but it is irrelevant because it only applies to a narrow section of the statute. He stated Hideout has 900 residents and he has an average of 381 readers. He asked the Committee to waive the fees.

Respondent Statement

Mr. Platt stated the fee is an estimate. He stated the fee waiver was denied and they asked Mr. Mullor to narrow his request. He stated the \$1,000 fee is an estimate for an I.T. contractor to do the search because Mr. Mullor asked that the city administration not do the search. He stated that the fee schedule does not limit fees to \$55. He stated the rest of the fee is for the lowest-paid employee to do the work. He stated the Hideout Comment is a personal blog.

Questions from the Committee

The Committee stated changing emails to PDF does not require much. Mr. Platt stated if the time isn't as long as estimated, they will issue a refund for the remainder. The Committee asked questions about the software Hideout uses.

Petitioner Closing

Mr. Mullor stated the respondent is weaponizing the fee. He stated searches and redactions can be done quickly. He stated the Hideout Comment is not a personal blog.

Respondent Closing

Mr. Platt stated there is interest in the records, but the public should not have to fund it. He stated the request is for a 55 day period and there is not a specific enough topic to search.

Deliberation

Motion by Ms. Peterson that Mr. Mullor is a journalist and writes stories for the public. According to his statement 400 people viewed the Hideout Comment last month, which is 45% of the population. The fee waiver is granted under Utah Code 63G-2-204(5) because Mr. Mullor is a journalist and his publications are for the public.

Ms. Dubovik agreed he is a journalist but wondered if the request could be narrowed.

Ms. Dean stated the entity is encouraged to waive the fee, but they are not required to. She agreed the estimated fee is too high. She suggested Hideout go back and negotiate with the contractor.

Mr. Williams stated it is only an estimate.

Ms. Dean stated there is a cost for transparency and for small communities, the costs can be burdensome.

Ms. Peterson stated journalism is different in the 21st century and saying someone is not part of the legacy media is antiquated. Hideout should not make their decision based on Mr. Mullor not being a journalist.

Mr. Williams stated a lot of government business is conducted in email and entities can't keep up with it.

Mr. Mullor stated he can amend his request.

Motion by Dr. Cornwall to deny the appeal. It is not reasonable for the small town of Hideout to pay what was assessed. The Committee encourages the petitioner to submit a narrower request. The Committee recognizes Mr. Mullor as a citizen journalist. Seconded by Mr. Williams.

Ms. Dubovik stated the Committee shouldn't declare a person a journalist in their order. She agrees but does not think it should be in the order.

Motion by Dr. Cornwall to deny the appeal. It is not reasonable for the small town of Hideout to pay what was assessed. The Committee encourages the petitioner to submit a narrower request. The Committee's decision is not based on whether Mr. Mullor is a citizen journalist. Seconded by Mr. Williams.

Vote: 5 Yes. 0 Nay. Ms. Peterson, Mr. Williams, Ms. Dean, Dr. Cornwall, and Mrs. Dubovik voted in favor of the motion.

Business 2 of 2

New Administrative Rule Ideas, action item

Motion by Mr. Williams to create new rules requiring all evidence be submitted five business days before the meeting. Seconded Ms. Peterson.

Vote: 5 Yes. 0 Nay. Ms. Peterson, Mr. Williams, Ms. Dean, Dr. Cornwall, and Mrs. Dubovik voted in favor of the motion.

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

2024-03	David Castro v. Labor Commission	Requesting access to a wet-stamp copy of a record he filed. A copy was provided which was filed with the court. The petitioner says this is the wrong copy. Denied because the record was provided. There is insufficient evidence that additional records exist.
2024-15	Brady Eames v. State Records Committee	Requesting access to closed meeting records from November 2023. Denied because the Committee cannot be a neutral party in an appeal for its own records. See order 21-17
2024-11	Dylan Todd v. Correction	Requesting access to records documenting the background for denying the request to transfer to a women's facility. Denied because sufficient evidence was not provided that records exist or that the entity has concealed or not searched for the records. R35-2-2(2).

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

A quorum was confirmed for March's meeting.