

State Records Committee Meeting

Date: March 21, 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
Linda Petersen, Media Representative
Mark Buchanan, Private Sector Records Manager
Ed Biehler, Electronic Records Representative

Committee Members not present:

Nova Dubovik, Citizen Representative

Legal Counsel:

Brian Swan, Assistant Attorney General
Michelle Adams, paralegal

Executive Secretary:

Rebekkah Shaw

Others Present:

Courtney Tanner, The Salt Lake Tribune
Kevin Olsen, Counsel, Utah System of Higher Education
Alison Adams, Counsel, Utah System of Higher Education
Jack Brewer
Jonathan Stearmer, Counsel, Uintah County
Brady Eames
Mohammad Adbullahi, Counsel, Logan City

Agenda:

- Courtney Tanner v. Utah System of Higher Education - Continuance (2023-143, 2023-144, 2023-163)
- Jack Brewer v. Uintah County (2023-175)
- Brady Eames v. Logan City (2023-136, -151, 153, 2024-14, -19)
- Logan City v. Brady Eames (2024-V2)

Call to Order

The meeting was called to order at 9:13.

1. Courtney Tanner v. Utah System of Higher Education (USHE) (2023-143, -144, -163)

Mr. Biehler abstains from deliberations as he missed the presentations.

Deliberation:

Motion by Dr. Cornwall to go in camera to view the records.

Respondent statement:

Mr. Olsen stated he wanted to emphasize two things he didn't emphasize enough during his presentation. First, the Legislature clearly desires to protect employee records and their privacy interests. Second, there is an important privacy interest for those reporting allegations.

Petitioner Statement:

Ms. Tanner stated there are three requests and none of them are explicitly protected in the law. She stated all of the responsive records are employee records is overly broad. She stated resignation does not exempt the respondent from completing their investigation. She stated a "chilling effect" is not in GRAMA.

Deliberation:

Motion by Dr. Cornwall to go in camera to view the records. Seconded by Ms. Petersen.

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

Questions from the Committee:

The Committee asked for the Title IX investigation. Mr. Olsen did not know. The Committee asked about how the search was done. Ms. Adam described the search. The Committee asked for the status of the Title IX investigation. She stated she couldn't speak for Utah State University, but USHE follows the University of Utah's policy which allows for dismissal. She stated the investigation is incomplete and will not continue.

Motion by Dr. Cornwall for appeal 2023-144 letter of resignation. A reasonable search was done. After reviewing the record, the Committee determines it should be released. It is classified correctly, but under the weighing provision and Shroeder it should be released. There is nothing in the letter that reveals anything about the complainants. Seconded by Ms. Petersen.

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

Motion by Ms. Petersen for appeal 2023-143 complaints. The motion is to grant the appeal as redacted but with further redactions of when and where the events happened. The original

investigation was a draft, but the investigation was concluded because of the Commissioner's resignation. Under Shroeder, with the protection of possible victims, the public needs to understand the possible actions of those in public positions. That outweighs the privacy interest. Also, this is an area of GRAMA that hasn't been addressed. If an investigation is concluded, then drafts are not available unless a great deal of time passes. GRAMA doesn't address if an investigation is abandoned. I think under Shroeder, the public interest outweighs the privacy interest of the former Commissioner. The rest of the records are properly classified and under Schroeder, the public interest does not outweigh the classification. Seconded by Ms. Dean for discussion.

Discussion to the motion:

Ms. Peterson stated the date and place need to be redacted in the draft report.

Vote: 3 Yes. 1 Nay. Mr. Buchanan, Ms. Petersen, and Ms. Dean voted in favor of the motion. Dr. Cornwall voted against the motion.

Mr. Williams joins as Chair.

2. Jack Brewer v. Uintah County (2023-175)

Petitioner statement:

Mr. Brewer stated he is a researcher and volunteer at a nonprofit advocating transparency and open record access. He stated the case is about records regarding the Phenomecon paranormal conference in Uintah County. He stated the request resulted in three records, but the appeal got dozens of additional pages.

Mr. Brewer stated the county undertakes the contracts for speakers and service providers. The contracts were heavily redacted due to an agreement in the contract that the terms would be confidential. He stated the county does not have the authority to facilitate agreements that block public access. He stated public funds were used. He stated redactions should be for email addresses, home addresses, and phone numbers. He stated the public good is not served by withholding the records.

Questions from the Committee:

The Committee asked if the only challenge was the redactions. He stated it is and the fee is not in dispute at this time.

Respondent statement:

Mr. Stearmer stated the county has been hosting Phenomecon for a number of years and it is funded by ticket sales and revenue, not taxes. He stated they do not want people to outbid their competitors to be at the event so the redactions are made to make sure no one has an undue competitive advantage. He stated that the business confidentiality provision allows the records to be confidential.

Questions from the Committee:

The Committee asked what classification the county is using. Mr. Stearmer stated there is a specific paragraph addressing the business confidentiality under the contract. He stated there is standard boilerplate language in the contract, but the business proprietary information must be protected.

Petitioner Closing:

Mr. Brewer stated he hopes the Committee can empathize that they were initially given 3 pages and later 92 pages almost completely blacked out. He stated they appreciate the Committee being a third party to look at the record.

Respondent Closing:

Mr. Stearmer stated he had nothing to add.

Deliberation:

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

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

Motion by Ms. Dean to grant the appeal. Under Utah Code 63G-2-301(3)(c) contracts are public records and subject to Utah Code 63G-2-309 which addresses business confidentiality claims. Confidentiality claims can only be granted under certain conditions listed under Utah Code 63G-2-309. The contracts do not meet that statute. Private addresses can be redacted, tax ID's, email addresses, and similar information under Utah Code 63G-2-302(2)(d). Seconded by Ms. Petersen.

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

Business

Approval of February 15, SRC Minutes, action item

Motion by Mr. Buchanan to approve the minutes with one change to add when he left the meeting. Seconded by Ms. Dean.

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

Appoint Chair, action item

Motion by Dr. Cornwall to appoint Ms. Dean as the Chair and thank Mr. Williams for his service. Also to have March the meeting annually when the Chair is appointed. Seconded by Mr. Buchanan.

Mr. William stated the change is to avoid the legislative session.

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

Appoint Chair Pro Tem, action item

Motion by Ms. Dean to appoint Dr. Cornwall as the Chair Pro Tem. Seconded by Ms. Petersen.

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

Appeal 2024-21 parties request to postpone until related court case resolves, action item

Motion by Ms. Dean to postpone appeal 2024-21 until a related court case is resolved per the request of the petitioner. Seconded by Ms. Petersen.

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

Adding additional meetings to the calendar, action item

Motion by Mr. Williams to add a meeting to May 9th, 2024. Seconded by Ms. Dean.

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

Administrative Rule updates, action item

Motion by Ms. Dean to approve proposed changes to the Rules as presented. Seconded by Mr. Williams.

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

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

The following table lists appeals that were denied and why.

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| 2024-44 Nicholas Schou v. Salt Lake City School District | Requesting a list of members of the Boundary Options Board. Denied because sufficient evidence was not provided that additional records exist. |
| 2024-43 Harshad Desai v. Garfield County | Requesting access to records regarding an employee's employment and compensation. Denied because sufficient evidence was not provided that additional records exist which were not provided. Note- the CAO did not respond to the appeal. |

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| <p>2024-42 Harshad Desai v. Garfield County</p> | <p>Requesting access to records regarding an employee's employment and compensation. Denied because sufficient evidence was not provided that additional records exist which were not provided. Note- the CAO did not respond to the appeal.</p> |
| <p>2024-39 John Gadd v. Joint Legislative Committee</p> | <p>Requesting budget and financial records. Denied because the Utah School Boards Association is not a governmental entity.</p> |
| <p>2024-38 John Gadd v. Utah School Superintendents Association</p> | <p>Requesting budget and financial records. Denied because the Utah School Boards Association is not a governmental entity.</p> |
| <p>2024-36 Ross George v Dept of Corrections</p> | <p>Requesting access to a roster to get an officer's full name. Denied due to timeliness issues.</p> |
| <p>2024-33 John Gadd v. Utah School Boards Association</p> | <p>Requesting budget and financial records. Denied because the Utah School Boards Association is not a governmental entity.</p> |
| <p>2024-27 John Gadd v. Utah Association of School Business Officials</p> | <p>Requesting budget and financial records. Denied because the Utah School Boards Association is not a governmental entity.</p> |
| <p>2024-26 Jenny Frazier-Relyea v. Division of Professional Licensing</p> | <p>Requesting access to a summary and audio of a meeting. Denied because sufficient evidence was not provided that the records exist. Also, the request for redactions from appeal 2023-13 was appealed and withdrawn previously because the record was provided.</p> |
| <p>2024-20 David Castro v. Labor Commission</p> | <p>Requesting access to a specific PDF version of a document. Denied because sufficient evidence was not provided that the record exists or the agency improperly searched for it.</p> |
| <p>2024-18 Brady Eames v. Cache County</p> | <p>Requesting access to "orders, directives, recommendations or other correspondence" from a list of people from the State Treasurer's Office. Denied because sufficient evidence was not provided that additional records exist.</p> |

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| <p>2024-17 Harshad Desai v. Garfield County</p> | <p>Requesting access- to the highest education compensation for the various employees.</p> <p>Denied because the request was not sent to the record officer. He was referred to the record officer to resubmit his request.</p> |
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Committee members' attendance polled for next meeting, format and quorum verification

A quorum was confirmed for April's meeting.

3. Brady Eames v. Logan City (2023-136, 2023-151, 2023-153, 2024-14, 2024-19)

Petitioner statement:

Mr. Eames stated in these five cases, one was withdrawn. He stated he is requesting a fee waiver because the records are public. He stated he needs to be informed of the fee before they do any work on the request. He stated he reserves the right to appeal.

Mr. Eames stated he was unlawfully charged and he withdrew the requests the fee was charged for on September 21, 2023. He stated the respondent cannot use the fee as a weapon.

Respondent statement:

Mr. Adbullahi stated the city got the records ready for Mr. Eames and told him they were ready for pickup and there was a fee for \$75. He stated Mr. Eames threatened the city that if he did not get a breakdown of the fee then he would submit 16 separate requests to circumvent the fee. That began September 21st.

Mr. Adbullahi stated the city has already responded to the request and for new requests, the pending fee needed to be paid before a new request would be processed. He stated the statute is clear the request needs to specify what records are sought. He stated the city went above and beyond to get them ready and Mr. Eames never picked them up.

Questions from the Committee:

The Committee asked how the fee was assessed. Mr. Adbullahi stated the request goes to Ms. Teresa Harris who contacts the relevant department and notifies them of the request. In this case, Mr. Eames knew there would be a fee, especially when the request had 35 parts. Mr. Adbullahi stated Mr. Eames had previously submitted requests and withdrawn them after the city had done the work.

The Committee asked if Mr. Eames was informed there would be a fee before the records were prepared for him. Mr. Adbullahi stated he was not for two reasons. First, Mr. Eames tends to withdraw once he finds out there is a fee and then submits the requests piecemeal. He stated the work is the same for the city so it is more efficient for the city to produce the records. He stated he has a thumb drive with him of sewer plants from an older request that Mr. Eames knows are ready for pickup, but had not picked them up. He stated this is why they processed the request.

The Committee asked if the request was made on a form that indicated there would be a fee. Mr. Abdullahi stated they were. The city uses a records portal.

Petitioner Closing:

Mr. Eames stated Mr. Abdullahi is not a record officer. He stated the thumb drive could be mailed to him. He stated he is a serious watchdog regarding the Public Trust Investment Fund and he is working to learn all he can.

Mr. Eames stated the crime bond policy had been provided for free previously. He stated an investment report is also withheld that should be available for inspection in the city office and those had previously been provided for free. He stated the city is using the fee as a weapon to deny him access to fundamental records. He stated the information is not available on their website.

Respondent Closing:

Mr. Abdullahi stated these are not being used for watchdog purposes. He stated a lot of time and resources have been wasted on the same decisions because Mr. Eames knows the city can charge a fee.

Questions from the Committee:

The Committee asked what was involved in retrieving the records that resulted in a \$75 fee. Mr. Abdullahi stated the records had to be compiled from different sources. They had to contact two banks and an investment entity. Those are brought to the city and reviewed until what was responsive is on the drive. He stated it was not a quick process.

Deliberation:

Motion by Ms. Dean to deny the appeal. Mr. Eames is a seasoned requester and understands the fee process. The city has its fee schedule established and published. Mr. Eames knows where that is and what it looks like. The denial of the fee waiver is reasonable. Appeal 2023-136 is already fulfilled and on the flash drive waiting for the \$75 fee. Seconded by Dr. Cornwall.

Dr. Cornwall stated there are clear efforts to manipulate the system by taking each request separately. She stated she sees no evidence how the request benefits the public.

Ms. Petersen stated GRAMA allows the entity to decline to process future requests. It is irrelevant what the requests are for if they are waiting for a pending fee to be paid.

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

4. Logan City v. Brady Eames (2024-V2)

Petitioner statement:

Mr. Adbullahi thanked the Committee for hearing the appeal. He stated the city understands they're asking to curtail someone's rights. He stated the city has been tracking Mr. Eames's requests since 2016. There were 126 requests from 1/1/2023 to 10/19/2023. He stated they do not have an issue with the request themselves, but Mr. Eames's inability to take "yes" for an answer and decisions already made. He reviewed Utah Code 63G-2-209.

Mr. Adbullahi stated 17 requests are pending which are often broad in scope and subject matter. He addressed the "convoluted format" of the requests. Mr. Eames is often incessant, combative, and harasses city staff.

Mr. Adbullahi reviewed Page 37 of the exhibit and his affidavit regarding a request for his oath of office. He stated his graduate certificate was provided among other things, but Mr. Eames was not satisfied. Mr. Eames emailed him, the mayor, the entire city council, and eleven others including Rosemary Cundiff and Kenneth Williams questioning whether he would engage in mediation.

Mr. Adbullahi stated Mr. Eames sent numerous emails to city staff about whether Mr. Adbullahi would take the oath and concerns about him engaging in mediation. An email over a year later stated Mr. Adbullahi was not a lawyer in response to Mr. Adbullahi's request for Mr. Eames to narrow his request.

Mr. Adbullahi stated Mr. Eames has a habit of levying serious allegations against the city recorder, including accusations of extortion regarding fees under GRAMA.

Mr. Adbullahi stated Mr. Eames is abusing the right to access records. He wastes city resources and hinders the city's ability to function. He stated it is difficult to know when requests will increase. He stated in 2023 Mr. Eames was active from January to May. After September requests picked up again. The 126 requests are from a five or six month span.

Questions from the Committee:

The Committee asked how this affects other requesters. Mr. Adbullahi stated statute requires they respond within 10 business days so when they get 35 requests within two days, other things have to be put on the backburner.

The Committee asked Mr. Adbullahi to speak to the pattern of behavior. Mr. Adbullahi stated it is offensive for Mr. Eames to accuse the recorder that she's extorting fees. He stated Mr. Eames routinely accuses her of illegal activity when she is simply following the law. He stated Mr. Eames spends a lot of time attacking Ms. Harris.

Ms. Harris was sworn in.

The Committee asked Ms. Harris how many requests they get from others. Ms. Harris stated that 90% of their requests are from Mr. Eames. Requests come to her and she reviews them. She stated she usually consults someone in the attorney's office before forwarding the request to a department for fulfillment. She stated they have a dedicated portal that was implemented because of Mr. Eames so all of his requests had a central place with easier tracking than her email inbox.

The Committee asked how long it takes to fulfill his requests. Ms. Harris stated Mr. Eames often asked for expedited responses and she can usually answer within that time, but requests take a significant amount of her time. She stated sometimes she spends most of her day answering his requests.

The Committee asked if most requests require redaction. Ms. Harris stated they usually do not. Mr. Abdullahi stated some employees silence their phones at night to avoid alerts of his emails at 1 or 3 am. He stated the requests are not only affecting them at work, but they change their conduct at home.

The Committee asked who the team is involved in answering requests. Mr. Abdullahi stated most requests lately are related to financial records so directors in those departments are involved.

The Committee asked if the lowest-paid person on that team was doing the search. Mr. Abdullahi stated they are paid more than \$15 per hour, but they only charge \$15 an hour.

Respondent statement:

Mr. Eames stated he only sends emails to their work email account. He stated public officials have email addresses for the purpose of getting input from the public. He stated when he is unhappy with something Ms. Harris or Mr. Abdullahi is doing, he is in his constitutional right to tell them what he thinks. He stated he does not call people at their homes.

Mr. Eames stated he sent a petition to Logan City to make an ordinance that specifies how many requests can be submitted before someone is denied their constitutional rights. He stated he sent that March 18th and has not heard back.

Mr. Eames stated he and the Utah System of Higher Education (USHE) came to an agreement in mediation to resolve USHE's appeal that they agreed could be shared. He stated it specifies how many requests he can submit the next year. He stated that kind of agreement can be made with Logan City.

Mr. Eames stated there must be some basis for abridging this constitutional right. He stated they would not engage in mediation after they filed their appeal. He stated he is compelled to request records because the city does not put the records online. He stated there is no reason public records cannot be online.

Mr. Eames stated city employees are appointed or employed to work for him as a citizen of Logan City. He stated no entity will discourage or stop him from exercising his right to be a watchdog. He stated he is not required to have a blog or provide what he receives to the public. He stated if records are created he should be able to access them hourly, daily, weekly, monthly, and yearly.

Mr. Eames stated the appeal from Logan City is defective because it was not filed by the city recorder and the mayor did not sign it. He stated the Committee is not a judicial body. He stated Ms. Harris should be dedicating at least 40 hours a week to handling record requests.

Petitioner Closing:

Mr. Abdullahi had nothing to add.

Respondent Closing:

Mr. Eames stated he was singled out because he is a watchdog. He stated a record officer must be dedicated fulltime to handle his requests. He stated it is not his fault Ms. Harris cannot keep up with his requests. He stated the city should appoint additional record officers to post more records online. He asked if the appeal is granted, that an exception be made for certain records.

Deliberation:

Ms. Petersen stated the Legislature has empowered the body to determine when a person is a vexatious requester under Utah Code 63G-2-209(9). She read the statute.

Ms. Dean stated the evidence provided by the City is very good and she appreciates the time and effort to provide all the evidence they did. She reviewed the difficulty in deciphering what records the requests are for. She stated it is not clear in the requests what records are sought. She stated it takes time to decipher the requests.

Ms. Dean stated she is concerned about the language Mr. Eames uses. She stated she is concerned about emails sent to many people accusing people assisting him of not helping.

Dr. Cornwall stated she wanted to emphasize Mr. Eames's abuse of civil servants. She stated he does not understand the impact of what he is doing and she would support efforts to send him a strong signal about that.

Ms. Petersen stated she is reluctant to make the motion because it goes against what she believes in, but it is clear Mr. Eames is a vexatious requester and any possible good that could happen by producing records is outweighed by the toxicity of the situation.

Motion by Ms. Petersen to grant the appeal to designate Mr. Brady Eames as a vexatious requester under Utah Code 63G-2-209(9). The interactions with him fulfill every condition listed. The appeal is granted to a full year. The City and its offices do not need to respond to any record request. Seconded by Mr. Biehler.

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

Mr. Williams stated that the Committee does not take these appeals lightly and any inference that they are not is offensive. He stated he is proud of the Committee for reviewing everything that was provided.

APPROVED