

State Records Committee Meeting

Date: May 9, 2024

Time: 9:00 a.m. – 4:00 p.m.

Committee Members Present:

Nancy Dean, Chair, Political Subdivision Representative
Marie Cornwall, Chair pro tem, Citizen Representative
Kenneth Williams, State Archivist Designee
Mark Buchanan, Private Sector Records Manager
Nova Dubovik, Citizen Representative

Committee Members not present:

Ed Biehler, Electronic Records Representative
Linda Petersen, Media Representative

Legal Counsel:

Brian Swan, Assistant Attorney General
Michelle Adams, paralegal

Executive Secretary:

Rebekkah Shaw

Others Present:

Doug Hulse
Anthony Christensen, for Mr. Hulse
Justin Anderson, Counsel, Dept. Corrections
Michael Clara
Ashley Biehl, Counsel, Board of Education
Elliot Clark, Counsel, SITFO
Ryan Kulig, SITFO
Brady Eames
Shaun Lucas
Aaron Waite, Counsel, Tax Commission
Reynolds, Tax Commission
Miki Mullor
Cameron Platt, Hideout
Alicia Fairbourne, Hideout

Agenda:

- Douglas Hulse v. Dept. Corrections (2023-133)
- Michael Clara v. Board of Education (2024-04, 2024-13)
- Shaun Lucas v. Tax Commission (2023-173)
- Brady Eames v. Vernal City (2023-184)
- Brady Eames v. School & Institutional Trust Fund Office (2023-159, -178, 2024-01, -79)

- Miki Mullor v. Hideout (2024-07)
- Jared Kummer v. Sevier School District (2024-09)

Call to Order

Dr. Cornwall called the meeting to order at 9:03.

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

Mr. Christensen asked for a continuance. He was not aware of the meeting until five minutes ago.

The Chair asked Mr. Hulse if he was ready to move forward. Mr. Hulse stated he was not ready because all of his paperwork was with Mr. Christensen. Mr. Anderson stated the respondent does not oppose a continuance. Mr. Christensen stated he has the paperwork and would like to represent Mr. Hulse.

Motion by Mr. Williams to continue the hearing to June 20th to be first on the agenda and it will not be continued again. Seconded by Ms. Dubovik.

Vote: 4 Aye. 1 No. Dr. Cornwall, Mr. Williams, Ms. Dubovik and Mr. Buchanan voted in favor of the motion. Ms. Dean voted against the motion.

2. Michael Clara v. Board of Education (2024-13)

Petitioner statement:

Mr. Clara stated several emails were withheld under attorney-client privilege. He asked the Committee to review them in camera and if they are properly classified, to use the weighing provision to order their disclosure.

Mr. Clara stated the record officer told him there were no other records, but more records were provided a week before the hearing.

Respondent statement:

Ms. Biehl stated another search was done after mediation. She stated her search terms were likely different from what the record officer used, but once they found the records, they were provided.

Ms. Biehl stated there are three emails at issue. Two are related, one is a sent email, and the other is a reply. She stated the third is from the director of law for the Board and her response regarding how to classify some records. She stated the purpose of the email is to seek legal advice and apply the law.

Petitioner Closing:

Mr. Clara stated that Mr. Rasmussen is the record officer, but provides legal advice to the Chief Administrative Officer (CAO) sometimes which robs the public of a proper appeal review by the CAO. He stated Mr. Rasmussen is in the emails that were provided from the second search, so he should have been able to find them.

Respondent Closing:

Ms. Biehl clarified Mr. Rasmussen's role related to legal counsel. She stated she assists the CAO for GRAMA appeals. She stated Mr. Rasmussen is an attorney, so there is an attorney-client relationship.

Deliberation:

Motion by Mr. Williams to go in camera to review the records. Seconded by Mr. Buchanan.

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

Motion by Mr. Williams to deny the appeal for items Bates stamped 020-001 and 020-002 because they are not responsive to the request. Bates stamp 020-003 is subject to attorney-client privilege under Utah Code 63G-2-305(17) & (18). The Committee carefully looked at the benefit of releasing the records using the weighing provision. The public interest does not outweigh the classification.

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

Business 1 of 2**Approval of April 2024, SRC Minutes, action item**

Motion by Ms. Dubovik to approve the minutes. Seconded by Mr. Buchanan.

Vote: 4 Aye. 0 Nay. 1 Abstain. Dr. Cornwall, Mr. Williams, Ms. Dubovik and Mr. Buchanan voted in favor of the motion. Ms. Dean abstained.

2. Brady Eames v. Vernal City (2023-184)

Vernal City was not in attendance.

Petitioner statement:

Mr. Eames stated he did not get a statement of facts until Ms. Shaw forwarded it that morning.

Motion by Mr. Williams to move the hearing to the end of the day to give Mr. Eames time to review the statement of facts because the records have already been provided to Mr. Eames. Seconded by Dr. Cornwall.

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

3. Brady Eames v. School & Institutional Trust Fund Office (2023-159,178, 2024-01, -79)**Petitioner statement:**

Mr. Eames stated the record officer, Mr. Kulig, notified him he could appeal the fee waiver denial but never notified him what provided record was provided without charge and which ones were provided with less than 15 minutes of work. He stated he was not told he could modify his request to avoid the fee. He stated he was notified of the fee when he was given the records.

Mr. Eames stated the \$125 fee was unlawful and used as a weapon to prevent his access to records.

Questions from the Committee:

The Committee asked how he responded when he was notified there would be a fee. Mr. Eames stated he appealed to the CAO. The Committee asked if they offered him an avenue to appeal the fee when they informed him about the fee. Mr. Eames stated twice he was not told he could appeal, and then was charged when the records were provided.

The Committee asked him to show where his response to Mr. Kulig is. Mr. Eames stated he does not need to respond when told there is a fee because he can appeal directly to the CAO. The Committee asked why he didn't respond to Mr. Kulig. Mr. Eames stated he is not required to tell the record officer he will appeal. He looked online to determine who the CAO was.

Respondent statement:

Mr. Clark stated Mr. Eames is a frequent flyer and know show to appeal. He stated three emails were sent asking how he would like to proceed and Mr. Eames ignored them. He stated the records were provided because they did not have a choice. The request would have been denied if they did not provide the records.

Mr. Clark stated the following appeals were denied due to the pending \$125 fee. He stated they were for actual costs under Utah Code 63G-2-203(1)(a). He stated time spent fulfilling the requests are actual costs to SITFO and taxpayers. He stated the hourly rate was discounted. He stated they acted in accordance with GRAMA under Utah Code 63G-2-203(8).

Questions from the Committee:

The Committee asked Mr. Kulig to describe the search for the records. Mr. Kulig stated he is one of two employees. He described the search. The Committee asked if they prepared the records before assessing the fee or if they estimated the fee. Mr. Kulig stated they worked to compiler he records and respond to the request.

Petitioner closing:

Mr. Eames stated the \$125 was charged as an estimate. He stated he has the right to appeal any notification of a fee. He asked the Committee to make a policy statement regarding what records must be online. He stated it is not fair to pay for records that could be posted online.

Respondent closing:

Mr. Clark stated the public is entitled to public information, but it is incumbent on them to request the documents. He stated posting everything online would be a burden on agencies.

Questions from the Committee:

The Committee asked why the records were provided when the fee waiver was on appeal. Mr. Clark stated they are required to produce the record within 10 business days and if they didn't do that the hearing would have been about that denial. He stated the fee represents actual cost. He stated they were required to proceed. Mr. Kulig stated they tried to do their part ot satisfy the request.

Deliberation:

Motion by Mr. Williams to deny the appeal for a fee waiver per Utah Code 63G-2-203(1)(a) for appeal 2023-159 and per Utah Code 63G-2-203(8) for appeals 2023-178, 2024-01, and 2024-79. The respondent should be commended for providing the records and cutting the fee in half and answering the full request. Seconded by Dr. Cornwall.

Vote: 2 Aye. 3 Nay. Dr. Cornwall and Mr. Williams voted in favor of the motion. Ms. Dean, Ms. Dubovik and Mr. Buchanan voted against the motion.

Ms. Dubovik stated the respondent did reach out in good faith, but concerned they provided the records while the fee was on appeal. Mr. Buchanan agreed. Ms. Dean stated they followed what the statute said, but it is frustrating that an entity never has to answer a request as long as there is a pending fee.

Motion by Ms. Dubovik to grant the appeal 2023-159 under Graham v. Davis County, the entity needs to inform the requester before proceeding with the request. The fee was quoted and Mr. Eames requested a chance to modify his request. Under Utah Code 63G-2-203(6) the requester has a right to appeal a fee waiver denial. The whole process did not take place. Seconded by Mr. Buchana.

Vote: 3 Aye. 2 Nay. Ms. Dean, Ms. Dubovik and Mr. Buchanan voted in favor of the motion. Dr. Cornwall and Mr. Williams voted against the motion.

Motion by Ms. Dean to grant the appeal and order SITFO to proceed with the process for the pending requests now that a fee is not pending. Seconded by Mr. Buchanan.

Vote: 4 Aye. 1 Nay. Ms. Dean, Mr. Williams, Ms. Dubovik and Mr. Buchanan voted in favor of the motion. Dr. Cornwall voted against the motion.

Ms. Dubovik stated she encourages the entity to read the requests carefully and not provide records until the fee is settled.

Motion by Mr. Buchanan to break for lunch. Seconded by Mr. Williams.

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

4. Shaun Lucas v. Tax Commission (2023-173)

Mr. Lucas requested 15 minutes to present.

Motion by Mr. Williams to allow both parties 15 minutes. Seconded by Mr. Buchanan.

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

Petitioner statement:

Mr. Lucas stated the records were denied due to trade secrets. He stated they have no value to anyone now that the studies are done. He stated the records do not disclose if the property was sold or not. He stated names and addresses are county public records.

Mr. Lucas stated his request is for sales data so he can see the information that explains his taxes justifying appraisal values. He stated the sales ratio study in 2023 is unconstitutional and he will take it to court. He stated there is a public interest in it because everyone's property value will be adjusted when the court makes a decision regarding the study.

Respondent statement:

Mr. Waite asked the Committee to deny the appeal and determine the records were properly

classified. He stated the Tax Commission uses a mass appraisal using surveys conducted by the Commission and data from Wasatch Regional Multi-Listing Service (MLS). He stated MLS expects the data will be kept confidential. He stated the respondent pays for access to the data and the data is confidential under Utah Code 63G-2-305(1) and (2).

Mr. Waite stated the respondent does not have access to MLS records, just this data. He stated there is not public interest in this, but a personal one for Mr. Lucas.

Petitioner closing:

Mr. Lucas stated the person who has the easiest access to the record has the burden of producing it. He stated the contract with MLS is not valid. He stated the contract cannot take his constitutional rights especially as he is not a party to it.

Respondent closing:

Mr. Waite stated the contract has everything required for business confidentiality under Utah Code 63G-2-309. He stated the surveys are protected.

Questions from the Committee:

The Committee asked if the weighing provision was considered by the Chief Administrative Officer. Mr. Waite said he didn't know. The Committee asked Mr. Waite to address the private vs. public interest. Mr. Waite explained the process if a property owner does not like the assessment. He stated there is a venue for appeal at the county level. He stated the MLS data will not help determine what went into the ratio, so it would not be useful to give context to a specific assessment.

The Committee asked if records regarding the appraisal were provided. Mr. Reynolds stated those are at the county level. The Committee asked about backup information that can be provided to the petitioner. Mr. Reynolds explained the appraisal process and how sales data is obtained. He stated if the assessor did not do the appraisal correctly it can be appealed to the local Board of Equalization and up to the Tax Commission.

Deliberation:

Motion by Mr. Williams to deny the appeal. The records are properly classified under Utah Code 63G-2-305(1). The respondent satisfied the requirements under Utah Code 63G-2-309 and provided supporting documentation in Exhibit C that the claim of business confidentiality have been met. Seconded by Dr. Cornwall.

Vote: 4 Aye. 0 Nay. 1 Abstain. Ms. Dean, Dr. Cornwall, Mr. Williams and Mr. Buchanan voted in favor of the motion. Ms. Dubovik abstained.

5. Miki Mullor v. Hideout (2024-07)

Petitioner Statement:

Mr. Mullor stated his request was denied per Utah Code 63G-6a-409(5). He stated the records he seeks is not a Request for Information (RFI) under the Procurement Code. He reviewed the definition in Utah Code 63G-6a-103. Mr. Mullor stated the rule of construction state a service and RFI cannot be the same element.

Respondent statement:

Mr. Platt stated the appeal is moot because the petitioner withdrew the request by email.

Questions from the Committee:

The Committee asked if Mr. Mullor withdrew the appeal. He stated he did, but it was hard to know what he was replying to because the respondent conflated his requests.

Motion by Ms. Dean to move forward with the hearing. Seconded by Mr. Buchanan.

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

Respondent statement:

Mr. Platt stated the denial was appropriate because the information to and from the entity as a result of an RFI is protected. He stated responses are protected until a contract is entered. He stated the RFI is a request for a service and it is irrelevant whether it is a procurement item.

Questions from the Committee:

The Committee asked where the town is in the process. Mr. Platt explained.

Petitioner closing:

Mr. Mullor stated there is a valuable project regarding 10 acres the town is hiding from the public. He stated he is not accusing Hideout of corruption, but that this would be how it starts. He stated the respondent cannot hide behind the Procurement Code.

Respondent closing:

Mr. Platt stated the town has a policy to develop the property but there is no contract yet. He stated they need to protect the town's ability to decide what to do before putting out information.

Deliberation:

Motion by Ms. Dean to deny the appeal. The records are properly classified under Utah Code 63G-2-305(7)(b) and 63G-6a-409(1). The final determination has not been entered, and it has not been two years since the RFI was received. Seconded by Ms. Dubovik.

Mr. Williams stated Hideout owns the property and is seeking information about what to do with the property.

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

6. Jared Kummer v. Sevier School District (2024-09)**Petitioner statement:**

Mr. Kummer stated he is learning about the Endurance Day program and will use the records to benefit the children of the district. He stated the request was denied under FERPA. He stated the records need to have student identifying information and be maintained in a certain way.

Mr. Kummer stated he made a similar request to the Board of Education and received records with redactions. He stated that there is evidence GRAMA and FERPA can work together.

Respondent statement:

Mr. Garlock stated over 600 pages were provided to the petitioner in response to the request. He stated one email was withheld due to attorney-client privilege. He stated another is an

employee record because it is regarding an evaluation. He stated responding to employee feedback on how to do their job better is similar to a performance evaluation.

Mr. Garlock stated Utah Code 63G-2-107 puts FERPA outside of GRAMA. He stated that FERPA is comprehensive to protect students. He stated the emails get detailed, often regarding disciplinary issues.

Petitioner closing:

Mr. Kummer stated that the district is using FERPA to cover up the evidence that Endurance Days was wrong. He stated he is protecting children. He stated he wanted the parents to understand what happened to their children and asked the Committee to grant the appeal.

Respondent closing:

Mr. Garlock stated that the court case requiring all education records to be stored a certain way was before digital records were mainstream. He asked the Committee to uphold the decision.

Deliberation:

Motion by Mr. Buchanan to continue the hearing to June 20th to allow time to review the records in camera. Seconded by Mr. Williams.

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

7. Brady Eames v. Vernal City

The respondent did not attend.

Petitioner statement:

Mr. Eames stated the request is for one record that is required to be open for public inspection at the city treasurer office per Utah Code 51-7-15(3)(c). He stated it is not on the website. He stated the record officer's response acknowledged he asked to be notified of the cost. It was \$3 and attached the record. He stated they will not respond to any other request until payment is received.

Petitioner closing:

Mr. Eames stated he needs to be notified of the fee so he can modify or withdraw the request, or negotiate the fee.

Deliberation:

Ms. Dubovik stated she does not understand why the entity provided the record without confirmation that the requester will pay the fee.

Ms. Dean explained the process for a city record officer to obtain the record. She stated it takes less than 15 minutes.

Motion by Ms. Dubovik to grant the appeal under Utah Code 63G-2-203(5)(b)(iii) and 51-7-15(3)(c). The entity may not charge for the first 15 minutes of staff time and should not provide records until the fee waiver appeal is resolved. Seconded by Mr. Buchanan.

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

Business 2 of 2

Comments on Administrative Rule, action item

Ms. Shaw read the comment suggesting the rule add “Either party may request up to 5 more minutes from the Chair at the hearing.” The Committee discussed the comment and determined the suggestion does not provide flexibility the Committee needs. The Committee said the short time helps parties keep focused.

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

Adam Herbets (FOX 13 News) v. Spanish Fork Police Dept.	Requesting access to unredacted records related to a officer involved crash. The appeal is untimely (day 31), and should have gone to the local appeals board first. The CAO responded that they will not schedule a hearing because it's untimely.
--	--