

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

Mark Buchanan, Private Sector Records Manager

Ed Biehler, Electronic Records Representative

Linda Petersen, Media Representative

Kenneth Williams, State Archivist

Committee members not present:

Nova Dubovik, Citizen Representative

Legal Counsel:

Brian Swan, Assistant Attorney General

Michelle Adams, paralegal

Executive Secretary:

Rebekkah Shaw

Others Present:

Corey Coleman

Brady Eames

Christopher Pieper, Assistant Attorney General

Detective Ben Pender, Unified Police Dept.

Chaire Westernhaver-Loretz

Jerry Kingston

Harry Souvall, Counsel, Unified Police Dept.

Tyler Winterton

Aaron Waite, Assistant Attorney General

Laron Lind, Assistant Attorney General

Shelley Robinson, Utah Tax Commission

Eric Petersen, Utah Investigative Journalism Project

Sydnee Gonzalez, Utah Investigative Journalism Project

Ciriac Alvarez, Workforce Services

Laura Thompson, Assistant Attorney General

Agenda:

- Corey Coleman v. Vernal City (2024-05, 2024-06)
- Claire Westernhaver-Loretz, Jerry Kingston v. Unified Police Dept. (2024-10)
- Brady Eames v. Dept. of Veterans and Military Affairs (2024-25)
- Tyler Winterton v. Tax Commission (2023-183)
- Sydnee Gonzalez (Utah Investigative Journalism Project) v. Dept. Workforce Services (2024-24)

Call to Order

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

1. Corey Coleman v. Vernal City (2024-05, 2024-06)

The Chair stated Vernal City would not be in attendance and stated they rest on the written submission. She asked if Mr. Coleman wanted to proceed. He did.

Petitioner statement:

Mr. Coleman stated this appeal is regarding two appeals. He stated in a court case the record officer stated there were missing time sheets, but he stated the records still exist. He reviewed the related court case. He stated if the record does not exist he wants an affidavit he can provide his attorney.

Mr. Coleman reviewed Utah Code 63G-2-203(4). He stated he is Vernal staff was advised to block his email so he is not optimistic about getting responses to his requests.

Questions from the Committee:

The Committee asked if he was contacted about the fee to see if he could modify his request. Mr. Coleman stated he was not contacted. He stated he was not told what the cost was for. He stated the statement of facts claimed there was lawful destruction of irrelevant information, but it might have been relevant to him.

Mr. Coleman stated if the Committee determines he needs to pay the \$750, he will because he needs the records and will have no choice.

The Committee asked if they charged him the \$250 he authorized. Mr. Coleman stated they did not. The Committee asked if they've done any work yet. Mr. Coleman stated they claim they have.

Deliberation:

The Committee stated nothing in the statement of facts provides how the fee was determined.

The statement of facts does not provide what the hourly rate is or if it is the lowest-paid employee capable of doing the work.

The Chair stated she had questions for Vernal and the Committee has the option compel them to attend. Dr. Cornwall suggested they move forward with a decision.

Motion by Ms. Dean to go into closed deliberation. Seconded by Mr. Buchanan.

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

Ms. Peterson stated the respondent provided limited information. She stated she is not convinced records do not exist and there is no evidence provided that a reasonable search was done.

Ms. Dean stated Vernal claimed the request was not reasonably specific. Ms. Petersen stated the Committee believes the request was reasonably specific.

Motion by Ms. Peterson to grant appeal 2024-05. The request is reasonably specific. The Committee requires Vernal to do a reasonable search or provide evidence to the Committee that they did a reasonable search. The search is specific to the time card mentioned in the court record, not the time card itself, but records surrounding the time card. Seconded by Mr. Buchanan.

Ms. Petersen stated the respondent is not in attendance to ask if they actually did a search.

Dr. Cornwall expressed frustration the respondent was not in attendance to answer questions. Ms. Dean stated the Committee doesn't know what their process was or if they followed Graham.

Motion by Dr. Cornwall to grant the fee waiver request for appeal 2024-05 per Utah Code 63G-2-203(1) and (2). The Committee feels the original \$250 fee is sufficient and a reasonable fee given that the Committee was not provided any other parameters from the respondent. Seconded by Mr. Biehler.

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

2. Brady Eames v. Dept. of Veterans and Military Affairs (2024-25)

Petitioner statement:

Mr. Eames stated he requested records for deposit and investments regarding the PTIF. He stated there was not response to the request or his appeal until he received the respondent's statement of facts. He asked the Committee to grant his appeal.

Respondent statement:

Mr. Peiper stated there are no records responsive to the request. He suggested the appeal be dismissed. He stated the respondent replied by snail mail on the 10th business day which is compliant with the statute. He stated the appeal was filed before the response was received, which is why the hearing is scheduled.

Questions from the Committee:

The Committee asked about the search. Mr. Peiper explained what he had done in the last week when he inquired further. The Committee asked if the records were ever created. Mr. Peiper stated they were not.

Petitioner Closing:

Mr. Eames stated other entities have told him the records are with the State Treasurer, but he cannot request anything from that office until June.

Respondent Closing:

Mr. Peiper stated there are no records and asked the Committee to deny or dismiss the appeal.

Deliberation:

Motion by Ms. Dean to deny the appeal. The entity has done a reasonable search under Utah Code 63G-2-201(7)(b) and (7)(a)(i). They are not required to create a record. They testified to their search and that no records exist. Seconded by Ms. Petersen.

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

Business:**Approval of May 9 SRC Minutes, action item**

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

Vote: 3 Aye. 0 Nay. 2 Abstain. Dr. Cornwall, Ms. Dean, Mr. Buchanan voted in favor of the motion. Mr. Biehler and Ms. Petersen abstained.

Administrative Rule comments, action item

Ms. Shaw read a submitted comment regarding the proposed administrative rule change.

Adding an extra meeting, action item

The Committee tentatively added an extra meeting date for August 1st, 2024.

Motion by Mr. Buchanan to saunter until 11 am. Seconded by Mr. Biehler.

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

3. Claire Westenhaver-Loretz, Jerry Kingston v. Unified Police Dept. (2024-10)

Petitioner statement:

Ms. Westenhaver-Loretz reviewed the 1971 case that is the subject of the cold case records. She stated the respondent has not met their burden to show the records are properly classified under Utah Code 63G-2-305(10)(a). She stated the statement of facts mentions a private classification, but that was not included in any of the denials.

Ms. Westenhaver-Loretz stated the argument of an increased chance of false confession isn't reasonable because the detectives can test the veracity of the confession. She said the argument of an unwarranted invasion of privacy for the family does not apply because Mr. Kingston is a family member. She reviewed two previous orders: Danish v. UPD and Gilman v. UPD. She stated they agree names should be redacted. Ms. Westenhaver-Loretz stated nearly 53 years have passed and the case deserves the same treatment as the Gilman case.

Mr. Kingston stated he would like to see the statements provided. He stated he is looking for closure.

Questions from the Committee:

The Committee asked if they have received anything. Ms. Westenhaver-Loretz stated they have not. They were allowed to inspect a sketch, but no records in the case file.

Respondent Statement:

Mr. Souvall stated each case is unique. He stated releasing the statement of individuals could have something that might identify a suspect or harm the resolution of the case. He stated even with redacted names, people who know the case will be able to determine who they are.

Mr. Pender stated the earliest case has is from 1956 and the latest is 2016. He stated he has resolved 10 unsolved homicide cases ranging from the 1950s up to 2000. He stated they have also resolved 5 missing person cases.

Mr. Pender stated he started working the code cases in 2014. He stated he works closely with the state crime lab and the district attorney's office. He stated they have evidence currently getting tested. He stated this case is active and he believes it will be solved. Mr. Pender stated reviewed efforts he has made working on the case. Mr. Pender stated if the file is released it would jeopardize the case and could jeopardize other cases they are not aware of.

Questions from the Committee:

Mr. Biehler asked how often Detective Pender meets with the family. He stated he generally does not reach out often because he is working on the cases and some family members do not want to be contacted, but they can reach out to him at any time. Ms. Dean asked why the initial contact report was not provided. Mr. Souvall stated he can look into that. Mr. Pender stated it

would need to be redacted because reports were handwritten then and often had more detail that should be shared publicly.

Petitioner closing:

Mr. Kingston stated he doesn't think everything is being done. He stated he is not in communication with Mr. Pender. Ms. Westenhaver-Loretz stated there is a huge personal and public interest in getting closure. She stated Mr. Kingston is the last living witness and has a right to access some of the records.

Respondent closing:

Mr. Souvall stated the record is properly classified. He stated the respondent's job is to solve crime and they cannot open the files for everyone to look at while the case is worked on. He stated the case is from 1971, but the cold case unit was not created until much later. He stated this case can be solved, but it needs to stay protected.

Deliberation:

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

Vote: 0 Aye. 5 Nay. Dr. Cornwall, Ms. Dean, Mr. Buchanan, Mr. Biehler, Ms. Petersen voted against of the motion.

Motion by Mr. Biehler to go into closed session. Seconded by Ms. Petersen.

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

Motion by Ms. Petersen to continue the hearing to June 20th to review the records in camera. Seconded by Mr. Buchanan.

Ms. Petersen stated they cannot treat this lightly and she does not think they can decide objectively without seeing the records. It may also help the family to know several people on the Committee are not law enforcement and reviewing the records.

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

Mr. Williams joined the meeting.

4. Tyler Winterton v. Tax Commission (2023-183)

Petitioner statement:

Mr. Winterton stated the records he seeks were withheld under Utah Code 63G-2-305(15). He stated even if the Committee were to conclude the records were maintained for audit purposes,

there is an "if". He stated the entity has not shown how releasing it will interfere. He stated the records are no different than initial contract reports.

Mr. Winterton stated the information he's asking for is not related to an ongoing audit. He stated the respondent claims the records will need to be compiled or summarized but the records are maintained in a database therefore it would be easily searchable and indexable.

Respondent statement:

Mr. Waite stated the request has multiple requests within it. He stated statute states the Tax Commission cannot divulge information derived from tax returns. He stated that is also applicable to sales tax under Utah Code 59-12-109.

Mr. Waite stated the statute does not require there to be an ongoing audit because the Tax Commission has its own provision for audit work papers in Utah Code 63G-2-305. He stated it is possible to take the list of businesses and make determinations about who was audited and why. Ms. Robinson explained how. She stated in her 39 years they have never provided this information to anyone.

Questions from the Committee:

The Committee stated the request was for a list of anyone the Tax Commission initiated sales/use tax audit proceedings against and asked what they understood the "tax audit proceeding" to mean. Ms. Robinson stated she believed it was for any audit they had completed.

The Committee asked what the purpose of the audit is. Ms. Robinson is to make sure tax is collected and paid correctly. She stated sometimes they find taxes were overpaid and issue refunds. Others resolve in assessments.

The Committee asked why providing the list is problematic. Ms. Robinson stated from the list people can determine who the state is looking at and then look for what they could do without getting caught.

Mr. Waite stated Utah Code 63G-2-301(3)(q) describes records that are normally public but can be restricted under 305. He stated the records are protected under Section 305 and the confidentiality statute.

Petitioner closing:

Mr. Winterton stated it would be impossible to reverse engineer the record he's asking for. He stated if an audit led to a refund it is less likely that entity will be audited again. He stated the respondent withholding the records is preventing the public from reviewing their processes. ;

Respondent closing:

Mr. Waite stated the records are protected.

Deliberation:

Motion by Mr. Buchanan to deliberate privately. Seconded by Mr. Biehler.

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

Motion by Mr. Williams to deny the appeal. The records are subject to another statute per Utah Code 63G-2-201(3)(a). They are properly classified under Utah Code 59-1-403. Seconded by Mr. Buchanan.

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

5. Sydnee Gonzalez (Utah Investigative Journalism Project) v. Dept. Workforce Services (2024-24)

Petitioner Statement:

Ms. Gonzalez stated children have been losing medicaid coverage and the records will shed light on the decision that has influenced the program. She stated the respondent claims the records fall under Utah Code 63G-2-103(25) as a temporary draft. She stated this is a clear case of a public program and messages from public officials.

Witness statement:

Ms. Alvarez stated she is a policy analyst working on health care for kids and families and thanked the Committee for letting her speak. She stated there is a public process for the information sought, but there were changes made to the process and the public was not involved. She explained the impact on those using emergency Medicaid. She stated she is concerned about the transparency of the process and wish to know why the deviation happened.

Respondent statement:

Ms. Thompson stated there were a series of requests made. She stated they produced an email with the subject line of "Draft Medicaid unwinding talking points". She stated the email memorialized the talking points referenced. She stated Legislators wanted to create a document of talking points. That and the ultimate report were provided.

Mr. Burt stated there was transitory correspondence with a reminder to create the report and included some talking points to add. The text was deleted because it had no administrative use. He stated it as a virtual sticky note. The information in the text is in the record provided. He stated no legislators were in the text chain.

Petitioner closing:

Ms. Gonzalez stated there are questions about the text. When was it created. Is it personal practice or agency wide to delete text messages?

She stated the Division to Technology Services could recover the text. She stated that would encourage everyone to properly retain their records.

Respondent closing:

Ms. Thompson stated once the draft was created the text could be deleted.

Ms. Ellington stated they had classes to teach the directors of each department what they can and cannot do for GRAMA and those directors trained their staff.

Questions from the Committee:

The Committee asked if all texts are transitory. Ms. Ellington stated they are not because it depends on the content. She stated this one at issue is transitory. The Committee asked who the text string was with. Mr. Burt stated it was with Mr. Checketts, a deputy director at DHHS.

Deliberation:

Motion by Mr. Buchanan to go into closed deliberation in the skull valley room. Seconded by Dr. Cornwall.

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

Dr. Cornwall stated the Committee would've reviewed the text if it existed. She stated the Committee reviewed GRS-1759 for transitory correspondence and GRS-1758. She stated the Committee is uncomfortable with the agency not recognizing that this was the beginning of an important process. The text may have been transitory for the individual, but not for the policy involved.

Motion by Dr. Cornwall to continue the appeal. This was more than a transitory communication. The Committee asks the entity to ask Mr. Checketts for the text to see if the record is retrievable. If it is, bring it for the Committee to review in camera. Seconded by Ms. Petersen.

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

The meeting was adjourned.