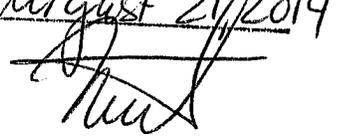


SRC APPROVED

Date August 21, 2014


State Records Committee Meeting

Division of Archives
Courtyard Meeting Room
July 10, 2014
Salt Lake City, Utah

Members present: Lex Hemphill, Chair, Media Representative
Marie Cornwall, Citizen Representative
Doug Misner, History Designee
Patricia Smith-Mansfield, Governor's Designee
Holly Richardson, Citizen Representative

Legal Counsel: Paul Tonks, Attorney General's Office
Chiarina Bautista, Attorney General's Office

Executive Secretary: Susan Mumford, Utah State Archives

Attending via phone: Raymond Payne, Petitioner
Jeanette Anderson, Witness for Respondent
Sergeant Donald Bittner, Witness for Respondent

Others Attending: Brenda Baldwin, Self
Rosemary Cundiff, Archives staff
Spencer Hadley, Lieutenant Governor's Office
Cathy Johnson, Petitioner
Amanda Montague, Attorney for Corrections
Ben Onofrio, Governor's Office
Lorianne Ouderkirk, Archives staff
Sheila Page, Attorney General's Office
Chris Pieper, Attorney General's Office
Gina Proctor, Department of Corrections
Sharel Reber, Attorney General's Office
Rebekkah Shaw, Archives staff
Steven Turley, Department of Corrections
Renée Wilson, Archives staff
Kendra Yates, Archives staff

Mr. Lex Hemphill opened the meeting at 9:10 a.m. Mr. Payne was contacted by telephone. Mr. Hemphill introduced the members of the Committee. The Respondent, Utah Department of Corrections (UDC) was represented by Amanda Montague, Assistant Attorney General, who was temporarily replacing Matt Anderson who usually represents Corrections.

Hearing: Raymond Payne vs. Department of Corrections Opening – Petitioner

Mr. Payne said that he had not been granted a suitable solution to his request for a copy of a policy manual. He requested a personal copy of FDO1, a manual dealing with

disciplinary procedures within the prison. He said the appeal to the State Records Committee is his last attempt to get the issue resolved before resorting to District Court. He said UDC would allow him to buy a copy; but since he lost his job at the prison and is indigent, he needs a fee waiver. He had copies of some of the policies because since he became indigent he was allowed 100 pages of prison policies.

Opening – Respondent

Ms. Amanda Montague said that Mr. Payne already had access to the policy, but the prison had declined to provide a personal copy to him at no charge. Although Mr. Payne asked for a fee waiver, UDC was justified in denying a fee waiver and pursuant to Utah Code 63G-2-201(8)(a)(v)(A), a governmental entity is not required to fulfill a request when the information is available in the identical physical form and content in a public publication. The policy is available to Mr. Payne. He can check the policy out and keep it for a limited amount of time. The only limitation is that other inmates can check it out as well. Pursuant to 63G-2-203(4), a fee waiver is not warranted. The department may grant a fee waiver considering the following factors: whether releasing the record benefits the public, whether the individual is the subject of the record, and whether the requester's legal rights are directly implicated and the requester is impecunious. None of those factors support the department granting a fee waiver. The policy is available to him. UDC is not required to provide Mr. Payne with an additional copy.

Testimony – Petitioner

Mr. Payne said that the only reason the policy is available in the library is because he requested it. He said FDO1 is now available in the control room. It is not complete. When it is checked out to inmates, pages get torn out. He needs to have the complete procedures to prepare for disciplinary hearings. When he has to answer questions and does not have a copy of the procedures, he finds it hard to point out problems. When he did get a copy, he only had it for four hours before it was taken away. To read the whole document would take several hours. Ms. Smith-Mansfield said to qualify for a fee waiver, he would not only have to be indigent, but his legal rights would have to be directly implicated by the information in the record. She asked how the records directly affect his legal rights. Mr. Payne said it was a time sensitive issue. When he had to go into disciplinary hearings without the information in the policy, he was not prepared to answer questions. The rules and regulations governing disciplinary procedures were important. Mr. Payne said he needed the policy so he could show he had an understanding of the issues and could point out problems. Ms. Cornwall asked how many pages were in the document and was told there were fifty-six pages. He said the Freedom of Information Act gave him the right to have the information.

Testimony – respondent

Ms. Montague called Sergeant Donald Bittner as a witness. He was contacted by phone and sworn in by Mr. Hemphill. Sgt. Bittner said he was in charge of the Hickory Maximum security unit at the prison. When an inmate wants a policy manual, it can be requested during a head count or it can be requested on the intercom. Mr. Payne has asked for the manual and it was offered to him on a temporary basis. He refused to accept it on a temporary basis. There are one hundred and ninety-two inmates housed in the

Hickory unit. He said FDO1 had been available for several years as far as he knew through the office manager, Jeanette Anderson. She makes a copy for the library and tracks it when it is checked out to inmates. To have a personal copy, an inmate would have to purchase it. Providing it to inmates without cost would be a cost burden for the department. There is no limit to the legal paper work an inmate can maintain in a cell with the proper clearance. The conversation with Sgt. Bittner was closed. Jeanette Anderson was contacted by phone. She said she was the office manager for four housing units including Hickory at the Boulder facility. The library is not a physical facility. She keeps about twenty policies in the control room that can be issued to inmates. The inmates are allowed to take policies for a day and then are required to return them. On April 21, 2014, the requested policy was reported missing. Ms. Anderson said she was asked to reprint a copy and take it to Mr. Payne. She was accompanied by Sgt. Bittner when she took the policy to Mr. Payne. She asked him to sign to receive it for the day, but Mr. Payne was upset and would not sign. He refused to speak with Ms. Anderson. He told Sgt. Bittner he would sign a statement that he wanted to keep the policy for longer than a day. The committee had no questions for Ms. Anderson and the telephone connection was ended.

Closing – Petitioner

Mr. Payne said that Ms. Anderson had been rude to him but he accepted the policy from Sgt. Bittner. He said he appreciated the firm stand of Ms. Montague representing Corrections. He restated to the Committee his request for a copy of the disciplinary policy. He said that when he has a disciplinary hearing, he needs quick access to the information in the policy.

Closing – Respondent

Ms. Montague said the department should not be required to provide a personal copy of the policy to Mr. Payne. If a temporary viewing and possession was not satisfactory to Mr. Payne, he would have to purchase a copy. He represents that he did not always have access to it. Ms. Anderson testified that she made a copy of the policy and it is available to Mr. Payne. She asked that the committee deny Mr. Payne's appeal for a fee waiver.

Deliberation

Ms. Smith-Mansfield said that pursuant to Utah Code 63-2-201(1) every person has the right to inspect and take a copy of a public record subject to Section 63G-2-203 which covers fees. An unreasonable denial of a fee waiver does not apply since the record is available to Mr. Payne and the information in the record does not rise to the level of directly implicating his legal rights. She made a motion that the committee deny a waiver of fees. Mr. Misner seconded the motion. He agreed that the public record is available and the information in the record does not rise to the level of legal rights. Ms. Cornwall said if legal rights were impinged, it would be different. Mr. Hemphill called for a vote on the motion. The vote in favor of the motion was unanimous. Mr. Hemphill said an order would be sent to the parties within seven business days.

Hearing: Cathy Johnson vs. Lieutenant Governor's Office

Mr. Hemphill welcomed and introduced the parties for the second hearing. Christopher T. Pieper and Spencer Hadley represented the Lieutenant Governor's Office. Cathy Johnson introduced herself as the petitioner.

Opening – petitioner

Cathy Johnson said that she had submitted a complaint to the Lieutenant Governor's Office about a notary's response to her request to have a copy of a page in the journal where the notary, Margaret Hawkins, had signed her mother's name. Ms. Johnson said one line of the journal page had been provided, but the rest of the page was redacted. She said she is a legal guardian for a mentally disabled adult whose benefits are affected by the signature. A notary is charged with maintaining a log and guarding the document. In Utah there is not a procedure for disposition of notary logs. In some states notary logs are surrendered to the county. She said she would like to protect her brother whose social security benefits are at risk because of the signature.

Opening – Respondent

Mr. Pieper said that while he is sympathetic to Ms. Johnson's personal circumstances, the Office of the Lieutenant Governor does not have access to the individual notary's journal. The Government Records Access and Management Act (GRAMA) defines records as documentary material prepared, owned, received, or retained by a governmental entity. The journal or log does not qualify as a record under GRAMA. The Lieutenant Governor's Office has no statutory means of acquiring the journal and is under no duty to do so. The office commissions notaries in a process similar to licensing but does not prepare, own, receive, or maintain their journals. The State Records Committee is not the appropriate forum for Ms. Johnson to appeal her request. He asked the Committee to ensure it was not expanding the scope of GRAMA and to find that it was not the appropriate forum for Ms. Johnson to obtain the record.

Testimony – Petitioner

Ms. Johnson said that pursuant to Utah Code §§ 46-1-13 and -15, the Lieutenant Governor's Office gives notaries the power to perform their function and commissions them. Commissioned by the Lieutenant Governor's Office, a notary may create a log. It is a choice to keep a journal and the journal is a public document. The notary, Ms. Hawkins, said her journal was a protected record and cited "privacy laws" in denying a copy of the page of the journal. The word "commission" is listed along with other governmental entities in Utah Code 63G-2-103(11)(b). If a commission is a governmental entity, then the notary journal is the property of the state and is a public record. The notary is suspected of fraud. She claims that interference with the binder made it difficult for the older woman to sign the journal and so she signed in her place. There was a potential crime committed if a deed to property is not properly notarized. The petitioner lives in St. George and the notary lives in Grantsville. The notary has offered inspection of the journal but will not send a copy of the one page that was asked for. The notary filled in dates on the deed and the deed is not complete. Her mother was in a frail condition and a stroke victim. Ms. Johnson said she would like to have the page examined by handwriting experts to see if the notary signed for other people as well as for her mother. The original

request was a notary complaint form sent to the Office of the Lieutenant Governor. Ms. Johnson said she needed a copy of the record to protect her brother in an unresolved case in probate court.

Testimony – Respondent

Mr. Pieper said that in a probate court, nothing would prevent Ms. Johnson from getting a subpoena to acquire the document. Although it was optional for a notary to keep a journal, they were required to maintain custody of the journal if they did keep one. There are twenty thousand notaries in the state. The Lieutenant Governor's Office is charged with commissioning and licensing notaries but they are not public officers. Mr. Hadley said that in the past there had been legislative attempts to require a journal, but the current law says that notaries "may" keep a log or journal of notarial acts. The law says "may" rather than "shall." Utah Code §45 specifies what a journal should contain and that it be kept exclusively in the custody of the notary, made available for inspection, and that it not be destroyed. The Lieutenant Governor's Office has no statutory mechanism to possess the requested log.

Closing -- petitioner

Ms. Johnson said it was still a question: who owns the notary log? The state that empowers the notary doesn't own it, but can mandate the format and custody of the log. There is a created public record that is not owned by anyone. Ms. Johnson can't obtain a copy of it to protect herself and her brother. His social security benefits are at risk. District Court may be the only means of obtaining the requested page. The notary said people advised her not to give out a copy of the page. The notary admitted she signed the mother's name. She did not say she signed for others. The offer to examine the page could alleviate some of the concern that the notary signed for others too, but the notary lives in Grantsville and Ms. Johnson lives in St. George.

Closing – Respondent

Mr. Pieper said that the ownership of the journal belonged to the notary. The means of accessing it would be a subpoena in probate court. The journal is not a record under GRAMA.

Deliberation

Ms. Smith-Mansfield said that Utah Code 63G-2-103(11)(b) lists a commission as a governmental entity. Utah Code 46-1-15 makes it clear that the notary is the exclusive custodian of the record created and the Lieutenant Governor's Office has no rights to it. The office commissions notaries but does not oversee notary records. Ms. Johnson has been offered inspection of the journal, but has requested a copy of a page rather than inspection. Ms. Richardson made a motion that the Lieutenant Governor's Office does not maintain the record and does not have the authority to order the record to be produced. The appeal should be denied on that basis. The motion was seconded by Ms. Cornwall. A vote in favor of the motion was unanimous.

Approval of June 12, 2014 SRC Meeting Minutes

Ms. Smith-Mansfield made a motion to approve the June 12, 2014 minutes. Ms. Cornwall seconded the motion. A vote in favor of the motion was unanimous.

Approval of Retention Schedules

Ms. Kendra Yates presented three schedules for Utah Highway Patrol:

1-3 Citations, with a proposed retention of ten years;

1-8 Evidence Records, with a proposed retention of ten years after adjudication;

1-9 Scheduling Records with a proposed retention of two years.

Ms. Smith-Mansfield made a motion to approve the schedules for Utah Highway Patrol.

Ms. Cornwall seconded the motion. A vote in favor of the motion was unanimous.

Ms. Rebekkah Shaw presented the following general retention schedules:

1-60 Closed Meeting Records, with a proposed retention of permanent;

1-59 Open Meeting Minutes and Public Materials, with a proposed retention of permanent;

1-65 Open Meeting Recordings, with a proposed retention of three years after written meeting minutes are approved.

Ms. Smith-Mansfield made a motion to approve the records relating to meetings. Mr. Misner seconded the motion. A vote in favor of the motion was unanimous.

Ms. Kendra Yates presented seven retention schedules for the University of Utah Campus Police Department. Ms. Cornwall asked how the retention schedules were justified. Ms. Yates said that in the case of the campus police, the U.S. Department of Education and the Utah State Courts had issued guidelines for the retention of the records. She passed out the guidelines to the committee. See attached document.

28515 Driving Under the Influence (DUI) reports

28514 Felony arrest case files

28516 Impounded vehicle reports

28510 Misdemeanor arrest reports

28508 Non-arrest case files

28509 Traffic accident files

28519 Traffic citations

The Campus Police Department, working with Ms. Yates, proposed that all records be kept for seven years with the exception of felony arrest case files which should be kept for ten years. Ms. Smith Mansfield made a motion to approve the University of Utah Campus Police retention schedules. Ms. Cornwall seconded the motion. A vote in favor of the motion was unanimous.

Ms. Rebekkah Shaw presented one retention schedule for the Department of Workforce Services:

28530 Audit engagement records with a proposed retention schedule of ten years after completion of an audit. Ms. Smith-Mansfield made a motion to approve the retention schedule for the Department of Workforce Services. Ms. Cornwall seconded the motion. A vote in favor of the motion was unanimous. See attached documents for full descriptions of all of the retention schedules.

Appeals received

Ms. Mumford reported on appeals received during the month. See attached document.

Cases in District Court

Mr. Tonks reported on cases in District Court. See attached document.

Other Business

Ms. Smith-Mansfield said that contacts had been initiated with the sheriffs' organization in the state to gain the perspective of a sheriff on the State Records Committee. Mr. Rowley, who represented an elected official of a political subdivision on the committee, had not been reelected. Mr. Hemphill said his term on the Committee ended on July 1, 2014. The governor's appointment of the media applicant could be made in August. Appointment of a chair pro-tem was discussed. Ms. Smith-Mansfield is the appropriate candidate for the chair pro-tem.

11:30 a.m. Adjournment