

State Records Committee Meeting

Date: August 15, 2024

Time: 9:00 a.m. – 4:00 p.m.

Committee Members Present:

Marie Cornwall, Chair pro tem, Citizen Representative

Ed Biehler, Electronic Records Representative

Linda Petersen, Media Representative

Kenneth Williams, State Archivist

Nova Dubovik, Citizen Representative

Mark Buchanan, Private Sector Records Manager

Legal Counsel:

Brian Swan, Assistant Attorney General

Michelle Adams, paralegal

Executive Secretary:

Rebekkah Shaw

Others Present:

Ian Cooperstein

Rebekah Bradway, counsel, University of Utah

Brian Watts, counsel, University of Utah

Robert Payne, counsel, University of Utah

Lionel Trepanier, for the Green Party

Mallory Underwood, Lieutenant Governor Office

Collin Tanner, Lieutenant Governor Office

Adam Herbets (FOX 13 News)

Charles Lyons, counsel, Department of Natural Resources

Chief Wyatt Buback, Department of Natural Resources

Agenda:

- Jana Tibbits v. Millcreek (2024-50)
- Lionel Trepanier v. Lieutenant Governor (2024-134 Expedited)
- Ian Cooperstein v. University of Utah (2024-137)
- Adam Herbets (FOX 13 News) v. Dept. of Natural Resources (2024-126 Expedited)
- University of Utah v. Ian Cooperstein (2024-V3)
- State Treasurer v. Brady Eames (2024-V5)

Business Part 1 of 2

Approval of July 18, 2024, SRC Minutes, action item

Motion by Ms. Petersen to approve the July 18 minutes. Seconded by Ms. Dubovik.

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

Request for appeals to be held in abeyance, action item

Ms. Shaw reviewed a request from some respondents asking for appeals to be held in abeyance. She stated the petitioner did not want the appeals to be held in abeyance. The Committee said there needed to be agreement from both parties to hold an appeal in abeyance.

1. Ian Cooperstein v. University of Utah (2024-137)

Petitioner Statement:

Mr. Cooperstein stated 90% of his 205 requests were submitted in 2020. He stated it has been nearly a year since his last request. He stated he has only received 47 responses and only appealed 10% of them.

Mr. Cooperstein stated his requests were submitted because the general counsel's office blocked his access to his Title IV file in 2020. He stated that compelled him to submit a request for each document in the file. He stated there are no real extraordinary circumstances, but it is a tactic used to avoid processing the requests.

Mr. Cooperstein stated there was an agreement in 2021 about processing the requests and one would be processed every 10 days. He described the fees he was charged and how often requests were answered.

Mr. Cooperstein stated there is extreme public interest in his requests as he provides records to ESPN and the Associated Press. He stated that people at the university have been fired due to his complaints.

Questions from the Committee:

The Committee asked how many pages he had received. Mr. Cooperstein stated the first was 10 pages, he had a lot of duplicates. He stated he got 10,000 pages from the Labor Commission, and they are smaller than the University.

The Committee asked if he was getting records from other entities. He stated one request had a \$850 fee, but when he went down to their Human Resources office, he got the records for free.

Respondent Statement:

Ms. Bradway stated the fees and classifications are not at issue in this appeal. She stated there are over 200 requests, and 100 of them were submitted in less than 3 days. She stated they were processing them in order of submission, but the 2021 agreement provided a list of Mr. Cooperstein's priorities and so they have been processing the requests that way.

Ms. Bradway reviewed pending fees that exist which allow the University to stop responding to requests until it is paid. She stated while the petitioner claims he was denied access to the OEO file, there was no request for the file and she does not see how these requests are the equivalent of getting that file. She stated the University is following the agreed-upon process and asked the Committee to deny the appeal.

Questions from the Committee:

The Committee asked for clarification on the timeline of previous requests that should have been appealed in 2023. The parties clarified this appeal is related to extraordinary circumstances. Mr. Watts stated the order for Logan City was regarding 100 requests in a longer time frame, and this situation involved 200 requests in 3 days.

The Committee asked for the status of the agreement made in 2021. Ms. Bradway stated they replied to the requests in the order proposed by the requester within 10 business days they would respond with records or extraordinary circumstances. She stated they stopped processing requests due to unpaid fees.

Petitioner Closing:

Mr. Cooperstein stated he wasn't able to ask for his OEO case file, so he had to use GRAMA to ask for individual documents. He stated he did not know about the pending fee until just now. He stated there was an agreement 3 years ago to have a response every 10 days but the respondent did not adhere to it. He explained the respondent uses fees and extraordinary circumstances to avoid answering his requests.

Questions from the Committee:

The Committee asked how long he waited before the chargeback. He stated it was a few months. He stated there was no communication. Ms. Bradway stated the fees are not at issue in this appeal. She stated he stopped paying in August 2023, but they continued to process requests until May 2024 when another fee was not paid.

The Committee asked how the petitioner was notified of the fee. Ms. Bradway stated notifications go through their portal and an email is generated. Ms. Cooperstein stated he does not get something from them every 10 days.

Deliberation:

Motion to deliberate in private in the Skull Valley room. Seconded by Mr. Buchanan.

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

The Committee returned and summarized their discussion.

Motion by Mr. Biehler to grant the appeal. The appeal is appropriately before the Committee based on timeliness. There is evidence and testimony that there are records responsive to the

requests and appropriate fees should still be paid according to a fee schedule. As requests are processed, if a fee is assessed, it should be consistent with providing what the fees will be before documents are produced. Per Utah Code 63G-2-203(8) for past fees, the Graham case and 63G-2-203(1) for the records that have not been processed. Seconded by Ms. Petersen

Ms. Petersen stated some of the confusion was that sometimes the request was processed without the fee being paid and other times was not. She stated that based on Graham, the entity needs to assess the fee, communicate with the requester, and get the fee before they provide the records. She stated that when the fee is paid and then taken back, the process is confused.

Mr. Biehler suggested Mr. Cooperstein be more diligent in checking the portal for communication. Dr. Cornwall explained the behavior of both parties needs to improve. Mr. Biehler stated if there is a fee, Mr. Cooperstein may appeal.

2. Lionel Trepanier (Green Party) v. Lieutenant Governor (2024-134 Expedited)

Petitioner Statement:

Mr. Trepanier stated he is authorized by the Green Party to seek these records and pursue this appeal. He stated the appeal is about the denial of access and a fee waiver. He stated the records sought are who is a member of the Green Party. He reviewed the statute that required parties to know who their members are.

Mr. Trepanier stated fees charged to individuals under Utah Code 28-2-104(3)(d) are not for political parties. He stated this falls under Section 17 of the Constitution as their right to suffrage. He stated the respondent is not authorized to charge them and the lack of response to their request for a fee waiver violates GRAMA.

Respondent Statement:

Ms. Underwood stated the cost for production was set by the Legislature. She stated the fee is applied to everyone requesting the database. She stated waiving it would overstep the fee set by the Legislature and would be unfair to other requesters. She stated the requester can get the customized list from county clerks.

Question from the Committee:

The Committee asked if the respondent provides customized lists. Ms. Underwood stated they do not. They have a list with public and withheld names, but they do not provide customized data. She stated the \$1,050 fee is for everyone.

The Committee asked if they've ever had a request for a reduced fee. Ms. Underwood stated they have not. She stated smaller political parties have requested the database and paid the fee. Everyone gets the same database.

The Committee asked if they have the ability to create a subset. Ms. Underwood stated that she is not familiar with the database and would have to ask her director. She did not know if it would be a spreadsheet that a requester could sort. She stated the subset would be creating a record. She stated she does not know how long it would take to create. She stated there are three versions, a public, private, and withheld version. They cannot filter it by party.

Petitioner Closing Statement:

Mr. Trepanier stated the party is making a request and the fee waiver applies within GRAMA.

Respondent Closing Statement:

Ms. Underwood stated access has not been denied. She stated the respondent acted in accordance with Title 28 for the election code and 63G which allows them to charge fees.

Deliberation:

The Committee discussed whether the fee should be less because the request is not for the full database. The Committee discussed Utah Code 20A-2-104(3)(d) and Utah Code 63G-2-704.

Ms. Petersen suggested a motion to grant the appeal. Given that the respondent is not familiar with the database, the Committee is not convinced the request is for a new record, but rather a subset of a larger record. She stated if someone was there who knew the database, they could let the Committee know if it could be generated.

Ms. Petersen moved to grant the subset database and if the respondent cannot provide it, they shall provide the entire database. She stated if they weighed the public interest, it would be firmly on the side of the Green Party.

Motion by Ms. Petersen to grant the fee waiver per Utah Code 63G-2-203(10) and 20A-2-1014(3)(d). Both say the entity "can" or "may" exercise the fee. Given that, the Committee sees this as a unique situation and grants the fee. Seconded by Ms. Dubovik.

Mr. Williams stated there are a lot of "may"s and the entity interpreted those and established a fee which they have consistently applied to anyone who asked for the record. He stated whether the fee should be reduced for political parties is a question for a legislative committee. Mr. Biehler agreed.

Ms. Dubovik stated they cannot apply a fee under Section 203 per Section 704. Mr. Williams stated the fee is established through the Legislature. Ms. Dubovik stated being consistently applied does not make it correct.

Vote: 2 No. 4 Yes. Ms. Dubovik, Dr. Cornwall, Mr. Buchanan, Ms. Peterson voted in favor of the motion. Mr. Williams and Mr. Biehler voted against the motion.

Ms. Petersen stated the intent of the fee is not to handicap the Green Party and the respondent is following what was outlined. She stated that does not make it right.

3. University of Utah v. Ian Cooperstein (2024-V3)**Petitioner Statement:**

Mr. Watts stated Section 209 is a necessary release valve for entities. He reviewed what the Committee can weigh under Utah Code 63G-2-209. He stated the Logan City v. Brady Eames case does a nice job of setting statutory standards.

Mr. Watts stated the requests from Mr. Cooperstein are unreasonably burdensome, often misunderstand facts, and the entity has to figure out how the records may or may not relate to events that may or may not have occurred.

Mr. Watts stated there were initially 100 requests made in 3 days. He compared it to sand in a gas tank. He stated the requests were disruptive, unclear, made assumptions, were accusatory and derogatory. He stated most requests had multiple parts.

Respondent Statement:

Mr. Cooperstein stated he has not made a request in nearly a year. He stated he had dropped requests that may have been duplicative. He stated the relief sought cannot be granted for requests that are already four years old. He stated he has no plans to make more requests.

Mr. Cooperstein stated he has prevailed at his hearings before the Committee. He stated a pause would put responsive records at risk of being destroyed per their retention schedules. He stated people have been fired or asked to retire as a result of his investigation. He stated he has been interviewed by ESPN and the Associated Press related to the requests.

Mr. Cooperstein stated the University never responded to his requests in good faith. He stated that the University abuses the system by giving itself extensions. He stated he has paid overestimated fees. He stated he submitted similar requests to the Labor Commission and all the records were provided in 72 days. He explained why he submitted the requests.

Questions from the Committee:

The Committee asked if the request is for the OEO file, are there 100 pieces to that file? Mr. Cooperstein stated there are. He stated his requests are based on what he was told existed from the OEO report. He stated he did eventually request the case file, and was assessed a \$1,140 fee. He stated he was able to get almost the whole thing from the Labor Commission for free.

The Committee asked what is outstanding if he received records elsewhere. Mr. Cooperstein stated the case file is still incomplete. He stated there are a lot of internal records he does not have because they were not shared with the Labor Commission.

The Committee asked for clarification about whether the requests were going to be batch processed. Mr. Watts stated there was an agreement in 2021 to reorder the request in order of Mr. Cooperstein's priorities.

Petitioner Closing Statement:

Mr. Watts stated the more the University interacts with the respondent, the more confused they are. He stated Mr. Cooperstein removed 17 requests, but those should not have been sent in the first place. He stated GRAMA is not working in this situation and Section 209 is the mechanism to try to fix it.

Respondent Closing Statement:

Mr. Cooperstein stated he agreed the GRAMA statute is not working because the University is taking advantage of it. He stated they should not still be overwhelmed by his requests. He stated the records will be destroyed if they do not need to answer the requests.

Deliberation:

Motion by Mr. Buchanan to deliberate in private in the Skull Valley room. Seconded by Dr. Cornwall.

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

Dr. Cornwall reviewed what was discussed in the closed deliberation. She stated they felt they needed to continue deliberations in public.

Ms. Dubovik stated the bulk of the requests are from 2020. She stated the petitioner has a right to access records and it's a high bar that needs to be set to take that right. She expressed how important that right is to her. She stated there has been a communication breakdown between the parties. She stated a request has not been submitted since September 2023. She stated he has a right to appeal requests that are denied and can still come to the Committee.

Ms. Dubovik stated the messages can be snarky, but that does not meet the burden required. She stated abuse of the right to access records has not been met. She stated the University has not met their burden that the respondent is a vexatious requester.

Motion by Ms. Dubovik to deny the appeal under Utah Code 63G-2-209(9). The University has not met the burden of proof. Seconded by Ms. Petersen.

Mr. Biehler stated he believes some of the messages are personal attacks and the requester could have done better. Mr. Cooperstein agreed. Mr. Biehler stated he does not view Mr. Cooperstein as vexatious and Mr. Cooperstein already stated he does not plan to submit new requests.

Ms. Petersen stated she believes the University wanted a ruling that would eliminate the pending requests. She stated they have had four years. She stated there are frustrations on both sides, but the remedy they want is not appropriate under the statute.

Mr. Buchanan stated if the appeal came four years ago, the criteria would have been met. He agreed with Mr. Biehler that the tone was beyond snarky sometimes. He stated there has not been a new request in almost a year. He stated four years is a long time to not get records.

Mr. Williams stated he can support a motion that the University has not met the requirements to have Mr. Cooperstein declared vexatious. He stated he feels strongly about a citizen's right to request records. He stated there are statutes in place that an entity cannot destroy records while a request is pending and they are required to honor that. He encouraged both parties to improve their communication.

Dr. Cornwall stated she appreciates Mr. Buchanan's comments. She stated she is curious why the university has not been able to get through these requests in four years. She stated there is a lack of patience on the respondent's part, and a lack of communication on both sides. She stated the first thing the Committee discussed in closed deliberation was what the Committee can do to help the parties through the process to get the requests done. She stated even if the Committee granted the petitioner's appeal, it would not change anything.

Ms. Dubovik agreed if Section 209 was in place four years ago, and the University filed, this would be different.

Mr. Buchanan asked if the motion could include better communication and working together. Mr. Biehler stated the parties can see the Committee would like better communication.

Ms. Petersen asked the parties to remember the human element. She stated there is a lot going on at a big university, but Mr. Cooperstein's frustration is also understandable. She stated the people answering the requests are just doing their jobs.

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

4. Adam Herbets (FOX 13 News) v. Department of Natural Resources (2024-126 Expedited)

Petitioner Statement:

Mr. Herbets stated the appeal is for two different items. The first is for incident reports in which there is illegal activity detected, but no public is involved. She stated the crux of the story is about police quotas. He stated these are banned, but there are questions about whether the Department is still finding a way to enforce the quotas. He explained what he meant by that. He stated there is a high fee associated with it because they would have to pull every report to see if it is responsive. He stated charging the public for that is outside the legislative intent of GRAMA.

Mr. Herbets stated the second is for performance goals. He stated this is not for the evaluations, just the goals so he can see what standard the officers are held to.

Respondent Statement:

Mr. Lyons stated that the appeal is for the fee and performance goals. He stated performance goals are part of the evaluation and they are allowed to charge a fee under Section 203.

Mr. Lyons explained how the records are found in the FATPOT system. He had a 5% sample of 1,800 records as approved by the Chair, and explained that it took 4-6 hours.

Mr. Lyons stated the performance goals are private and there is no fee associated with them.

Questions from the Committee:

The Committee asked if they just provided traffic stops, how many would that be. Mr. Lyon stated those would be separate, but were provided. He stated 5 people worked for two days to provide those to him for free. He stated these reports are more cumbersome.

Mr. Lyons stated their policy is not to charge for the first 30 minutes and charge at the lowest wage, which is \$25 per hour. He stated this would take 200 hours.

The Committee asked Mr. Herbest if he was looking for more general goals or specific employee goals. Mr. Herbets stated he wants all the specific goals because he is fact-checking what two whistleblowers told him. Mr. Lyons stated they provided a standard template of performance goals that were not specific to an officer, but the petitioner said it was not responsive.

The Committee asked about how the database worked and if it is shared. Chief Bubak stated reviewed the divisions they have and how FATPOT is used. He stated to see if there is public contact, they have to review each report. He explained how the system is organized and there is no coding to determine if there was or was not contact with the public. Chief Bubak stated some things that wouldn't have public contact information are the hotline, and anonymous tips which may have a suspect but not interaction with the public. He stated alternatively, there may be an informant or other person who is only mentioned in the narrative. He stated this is a variable they have never needed to evaluate before.

Petitioner Closing Statement:

Mr. Herbets stated the respondent does not want to do the work without charging the public \$5,000, but the question remains how the officers are evaluated. He stated the public wants to know if they are inflating their statistics. He stated they cannot charge for time to determine if a

record is responsive. He stated with no public interaction, there should be minimal redaction required.

Question from the Committee:

The Committee asked if he wants the narratives, or just the statistic itself if how many times people are contacted. Mr. Herbets stated it would be a great start.

Respondent Closing Statement:

Mr. Lyons stated the fee is for the individual making the request. If they waive the fee and the employee does the work, the public is still paying it. He stated they tried to work with Mr. Herbets to narrow the request. He stated the time they have spent on the request was already paid by the public.

Mr. Lyons stated GRAMA allows charges for actual cost. He stated this is the actual compilation cost. He stated the public interest is not an issue, but whether the requester will pay the fee.

Questions from the Committee:

The Committee asked questions about the database. Chief Bubak answered regarding activities tracked in FATPOT.

Deliberation:

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

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

The Committee asked questions about the performance evaluations template provided.

Ms. Dubovik stated the database is cumbersome. Ms. Petersen stated she was skeptical about the estimated 200 hours, but one report reviewed in camera was 18 pages and they had to check line by line to see if it was responsive or not.

Dr. Cornwall stated this system isn't where someone should go to check this question.

Ms. Peterson asked if the requester could pay 4-6 hours to get a sample to use as a starting point. Mr. Lyons stated he would have to check with his client. Mr. Biehler suggested starting with a request with no names in the jacket. Dr. Cornwall agreed.

Mr. Biehler stated what the respondent says about the difficulty is accurate.

Motion by Dr. Cornwall to deny the appeal. After reviewing the records in camera, the records are classified correctly. The database is as unwieldy as the entity suggests and the fee is reasonable given the time it would take. Seconded by Mr. Williams.

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

5. Jana Tibbits v. Millcreek (2024-50)

Ms. Shaw explained the petitioner is unable to attend. The appeal will be scheduled for a later date.

6. State Treasurer v. Brady Eames (2024-V5)

Ms. Shaw explained the parties came to an agreement in mediation.

Business part 2 of 2

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

Ms. Shaw reviewed appeals denied since the last meeting. No motion was made to reverse the denials.

2024-156 Michael Clara v. Attorney General Office	Requesting access to investigation records pertaining to the signature gathering nominating petitions for Governor Spencer Cox. Denied due to insufficient evidence that records exist.
2024-147 Sydney Gonzalez (Utah Investigative Journalism Project) v. Wasatch County	Requesting a fee waiver and access to discipline records for officers who violated policy on body camera video from 1/1/2019 to 5/21/2024. Untimely appealed to the CAO, but was filed with the wrong CAO. Denied due to lack of jurisdiction.
2024-143 Harshad Desai v. Garfield County	Requesting access to meeting records between the county commission and West Panguitch Water District. Missing the initial denial. Denied due to insufficient evidence additional records exist.
2024-142 Harshad Desai v. Garfield County	Requesting access to an appraisal report for parcel P-288. Missing the initial denial. Denied due to insufficient evidence additional records exist.
2024-141 Harshad Desai v. Garfield County	Requesting access to board member information and "inflow/outflow" tax records from 2021-2023. Missing the initial denial. Denied due to insufficient evidence additional records exist.
2024-139 Harshad Desai v. Garfield County	Requesting EEO-4 records. Denied because there are no records responsive. Missing the initial denial. Denied due to insufficient evidence additional records exist.
2024-140 Harshad Desai v. Garfield County	Requesting access to federal funds for 2023. Respondent referred the requester to a URL. Denied due to insufficient evidence additional records exist.
2024-128 Kiran Andrews v. Washington County	Requesting access to rejected signatures in Senator Ipson's signature gathering. Denied because it was previously heard per order 23-53.
2024-127 Annie Knox (KSL) v. Department of Health and Human Services	Requesting access to a fatality review. Denied because the records are not in the SRC's jurisdiction per Utah Code 26B-1-506(5)(b) and order #23-53.

Ms. Shaw stated there is a request for appeal 2023-182 from USA Today to be re-heard because the related investigation is not closed yet and Order 24-25 from April 2024 assumed the case would be closed soon.

Motion by Mr. Williams to reopen the hearing, and if it is not resolved by December, the parties will come to the December meeting. Seconded by Ms. Petersen.

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

A quorum was confirmed for the next meeting on September 5th.

APPROVED