

State Records Committee Meeting

Date: September 5, 2024

Time: 9:00 a.m. – 4:00 p.m.

Committee Members Present:

Marie Cornwall, Chair pro tem, Citizen Representative

Linda Petersen, Media Representative

James Kichas, State Archivist designee

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:

John Gadd

Patrick Tanner, counsel for Alpine School District

Amanda Oakes

Jeff Oakes

Dr. Anthony Godfrey, superintendent, Jordan School District

Agenda:

- John Gadd v. Alpine School District (2024-77)
- Amanda and Jeff Oakes v. Jordan School District (2024-116)

1. John Gadd v. Alpine School District (2024-77)

Petitioner Statement:

Mr. Gadd stated the appeal is for a \$35 fee waiver, but he believes an important precedent can be set with the case. He stated the records were provided without any modifications. They were already sorted and provided unredacted. He stated he was initially told he could inspect them for free, but was told there would be a fee when he said he would be taking a copy.

Mr. Gadd reviewed Utah Code 63G-2-201(1)(a). He stated the right to inspect public records was absolute unless the three exceptions in (1)(b) applied. He stated when he said he would not

take a copy, the fee was still charged. He stated this is a simple case and asked the Committee to provide an order on the right to inspect a record free of charge.

Respondent Statement:

Mr. Tanner stated free inspection of records is against case law. He stated that would prevent an entity from charging for expenses in preparing the records. He stated the fees are directly correlated with the cost of getting the records prepared to be inspected. He stated this case is about maintaining the entity's authority to charge fees for actual costs incurred.

Mr. Tanner stated the case is already decided under the Graham court case. He stated the court allows entities to charge fees for actual cost. He stated they are not charging for the inspection of records, but compiling and preparing. He stated there are no redactions in the final record provided, but the non-public records were extracted.

Question from the Committee:

The Committee asked Mr. Gadd how he was going to take a copy. He explained he would look at the records on a laptop, so he could take a thumb drive. He stated he explained that to the entity, at which point he was charged \$40. He stated the records were ready and did not require extra work.

The Committee asked if there was a dispute about the classification. Mr. Gadd stated the second part of his appeal was regarding whether a record was a draft.

The Committee asked Mr. Tanner how the records were compiled. He explained there was work done prior to the work of gathering the documents from various locations. He stated this request was a followup to a prior request. He stated there were additional records located. He stated emails were already provided. He stated the prior request had a folder of records that were not responsive or were not public. He stated some records for this request were pulled from there.

Mr. Tanner stated no final decisions were made from the drafts.

The Committee asked why the records not previously provided were not provided in the prior request. Mr. Tanner stated that Mr. Gadd did not go to view them. The Chair asked Mr. Gadd to respond.

Mr. Gadd stated his followup request was for records that should have been included in the emails provided in the prior request. He stated all of the records were already compiled in the previous request. The Committee asked Mr. Tanner if he disputed that. Mr. Tanner stated he did because the records were gathered into a different location to provide to the requester.

Petitioner Closing:

Mr. Gadd stated he has a right to inspect the records for free. He stated the format was not changed and "compiling" or "gathering" only applies if the format was changed per Utah Code

63G-2-203(2)(a). He stated the charge is for a prior request. He stated he was not charged for the 600+ emails in the prior request.

Respondent Closing:

Mr. Tanner stated they often waive fees, but Mr. Gadd is a frequent requester and they are required to continually devote staff time to answer his requests. He stated redaction is not only the process of blocking out portions of a record, but excluding documents due to restricted classifications. He stated the issue is already decided by the Graham court case. He stated “compiling” includes creating a new organization for the responsive documents. He stated the time for finding and identifying responsive records can be charged under Utah Code 63G-2-203(2)(a)(ii).

Deliberation:

Ms. Petersen stated the statute doesn’t clearly side with either party in this case. Ms. Dubovik stated it is odd to be charged only when planning to go to the entity to inspect the records. Mr. Kichas stated the work was already done. Dr. Cornwall stated Graham requires the entity to tell the requester how much the fee will be before making the records available. She stated the proper process was not followed.

Motion by Ms. Petersen to grant the appeal to have the fee remitted based on the fact the request is part of the original request.

Dr. Cornwall stated the issue is not whether the entity can charge the fee, but if they followed the appropriate process. She asked counsel if they could issue the order that way.

Mr. Swan stated they could. He reviewed Utah Code 63G-2-201(1).

Dr. Cornwall stated the Committee wants to allow the entity to charge a fee, but they have to follow proper procedure. Mr. Buchanan stated the entity did not give the requester a chance to modify or cancel his request per Graham.

Motion by Ms. Petersen to grant the appeal to have the fee remitted per Utah Code 63G-2-201(1) and 63G-2-203(2). The respondent is allowed to charge fees for organizing records under the statute and Graham, but the district did not inform the petitioner about the fee at the appropriate point in the process. They did not allow the petitioner to modify or cancel his request. Seconded by Ms. Dubovik.

Vote 5 Aye. 0 Nay. Mr. Buchanan, Dr. Cornwall, Ms. Dubovik, Mr. Kichas, Ms. Petersen voted in favor of the motion.

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

Vote 5 Aye. 0 Nay. Mr. Buchanan, Dr. Cornwall, Ms. Dubovik, Mr. Kichas, Ms. Petersen voted in favor of the motion.

Dr. Cornwall stated the records are drafts and there was no additional data in the drafts that the Committee could determine. She stated the Committee needed to weigh the interest under Schroeder. Mr. Buchanan and Mr. Kichas stated they did not see a public interest.

Motion by Mr. Buchanan to deny the appeal. After reviewing the records in camera, the drafts were properly classified under Utah Code 63G-2-305(22) and were not relied on for a final decision. There is no empirical data in them that was not in the final. Based on the weighing analysis, there is not a public benefit that outweighs the classification. Seconded by Ms. Petersen.

Vote 5 Aye. 0 Nay. Mr. Buchanan, Dr. Cornwall, Ms. Dubovik, Mr. Kichas, Ms. Petersen voted in favor of the motion.

2. Amanda and Jeff Oakes v. Jordan School District (2024-116)

Petitioner Statement:

Mr. Oakes stated they are seeking a \$46 reimbursement. He stated it was wrongfully charged because of the respondent's bias against them. He stated Utah Code 63G-2-203(4) encourages entities to waive the fee. He stated the entity does not treat all requesters equally.

Mr. Oakes stated they were charged for the first 15 minutes and the charge included the salary and benefit costs of the employee fulfilling the request. He stated that ignores Utah Code 63G-2-203(2)(a) and (b), and (5)(b). He stated the employee fulfilling the request is not the lowest paid person capable of doing the work.

Mr. Oakes stated they asked how the fee was calculated and the respondent never answered. He asked the Committee to hold the respondent accountable for overcharging everyone and reimburse the fee.

Respondent Statement:

Dr. Godfrey stated the question before the Committee is whether the fee should be waived. He stated the District is not required to waive fees. He stated the law supports this. He stated they look at each case individually, but consistently charge fees. He stated they are not required to provide justification for what they charge. He stated they did not charge benefits, only the time. He stated the request took 30 minutes.

Questions from the Committee:

The Committee asked if he charged for the first 15 minutes. Dr. Godfrey stated they will have to refund it. The Committee asked why they did not want to explain how they came to the fee. Dr. Godfrey stated they are not required to so they don't.

Petitioner Closing Statement:

Mr. Oakes stated charging salary and benefits is part of district policy. He stated the respondent admits to charging for the first 15 minutes, which was also charged in previous requests. He stated they have not been treated fairly.

Mrs. Oakes stated they ask that they at a minimum be refunded for the first 15 minutes. She stated they have been charged for the first 15 minutes previously, so that should also be refunded.

Questions from the Committee:

The Committee asked the respondent if there is a policy that instructs how to know whether the record officer should consider a fee waiver, or what the process is to consider the fee waiver. Dr. Godfrey stated the process is in the law. The Committee asked if asked for a fee waiver, what conditions would have to be met for the district to consider waiving the fee. Dr. Godfrey stated no fee is specifically waived in statute. The Committee asked if the entity has ever waived a fee, to his knowledge. Dr. Godfrey said no.

Respondent Closing Statement:

Dr. Godfrey stated the respondent is not hiding anything, and will refund the first 15 minutes if they need to. He stated he will work with the board to update their policy so it matches the statute.

Questions from the Committee:

The Committee asked if there was a compilation of records under Utah Code 63G-2-203(2), and if that was what the charge was for. Dr. Godfrey stated the law states they can charge a fee for the word they did. He stated they had to pull the records from a larger group of records, and charged for that time. He stated they sorted through the records.

Deliberation:

Dr. Cornwall stated since there is a compilation, the entity can charge a fee, but since they charge the first 15 minutes, they charged too much.

Motion by Dr. Cornwall to grant the appeal in part. It is reasonable to deny the fee waiver request because the entity did compile the records and are allowed to charge for that under Utah Code 63G-2-203. The respondent needs to refund for the first 15 minutes in this request per Utah Code 63G-2-203(5)(b). Seconded by Mr. Buchanan.

Vote 5 Aye. 0 Nay. Mr. Buchanan, Dr. Cornwall, Ms. Dubovik, Mr. Kichas, Ms. Petersen voted in favor of the motion.

Business**Approval of August 15, 2024, SRC Minutes, action item**

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

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

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

Ms. Shaw reviewed notices of compliance received.

Appeal 2024-94 request to be held in abeyance, action item

Ms. Shaw stated both parties in the appeal are in agreement asking for the appeal to be held in abeyance until the related court case is resolved.

Motion by Mr. Buchanan to hold the appeal in abeyance. Seconded by Mr. Kichas.

Vote 5 Aye. 0 Nay. Mr. Buchanan, Dr. Cornwall, Ms. Dubovik, Mr. Kichas, Ms. Petersen voted in favor of the motion.

Possible Administrative Rule regarding appeals held in abeyance, action item

Ms. Shaw asked for a Rule that both parties agree in order for an appeal to be held in abeyance. Dr. Cornwall asked for language to be brought to the next meeting for the Committee to vote on.

Possible Administrative Rule regarding consolidating appeals, action item

Mr. Swan stated civil procedure can provide guidance on what a Rule would look like. Dr. Cornwall asked for language following the court to be brought to the next meeting for a vote.

Possible Administrative Rule regarding notices of compliance, action item

Ms. Shaw asked for a Rule that both parties agree in order for an appeal to be held in abeyance. Dr. Cornwall asked for language to be brought to the next meeting for the Committee to vote on.

Committee members' attendance polled for next meeting, format and quorum verification

A quorum was confirmed for September 19th, 2024.

The meeting was adjourned.