

Date May 13, 2010

State Records Committee Meeting

Division of Archives, Courtyard Meeting Room

April 8, 2010

Salt Lake City, Utah

Members Present: Lex Hemphill, Media Representative
Gary Ott, Elected Official Representative
Betsy Ross, Auditor's Designee
Patricia Smith-Mansfield, Governor's Designee
Scott Whittaker, Private Sector Records Manager, Chair

Members Excused: Scott Daniels, Citizen Representative
Chris Hansen, State History Designee

Legal Counsel: Paul Tonks, Attorney General's Office
Ed Lombard, Attorney General's Office

Executive Secretary: Susan Mumford, Utah State Archives

Others Attending: Layne Nielson, Archives volunteer
David Reymann, Deseret News/ Salt Lake Tribune
Austin Riter, Deseret News/ Salt Lake Tribune
Patrick L. Tanner, Sevier School District

Attending via phone: Myron Mickelson, Sevier School District
Karen Pace, Sevier School District
Robert Resendes, Petitioner

Mr. Scott Whittaker called the meeting to order at 9:40 a.m.

Mr. Whittaker, Chair of the Committee, called the meeting to order. The parties for the hearing were contacted by phone. Mr. Whittaker welcomed the parties for the first hearing. Mr. Robert Resendes was contacted by phone and introduced himself. Mr. Patrick Tanner was present at the meeting and introduced himself as the attorney representing Sevier School District. Mr. Myron Mickelson, assistant superintendent of schools, and Karen Pace, director of child nutrition services, from Sevier School District were contacted by phone. Mr. Whittaker outlined the procedures for the hearing.

Hearing – Robert Resendes vs. Sevier School District

Opening statement, petitioner

Mr. Resendes thanked the Committee for the opportunity to have a hearing. He thanked Mr. Whittaker, who had conducted a pre-hearing conference in an attempt to resolve the request. He said it was his opinion that the subjects of the record he had requested were his children receiving the reduced-cost lunch at the school. He had requested the signature of the adult member of the household that had applied for the school lunch program. He had received a redacted copy of the application and was not interested in the financial details that had been redacted. Mr. Resendes said there was a disagreement about whether the school lunch application was a federal or a school district record. He said he would like to know who had applied to have his daughters participate in the free lunch program.

Opening statement, respondent

Mr. Tanner said that he had not been a part of the pre-hearing conference. He said that the school district's interest was to comply with federal law governing the school lunch program. Any information on the application was protected by federal statute and is not a public record under the Government Records Access and Management Act (GRAMA). The school district had an interest in maintaining the trust and confidence of the patrons of the school lunch program. The school district does not have an interest in being in the middle of divorce and custody disputes. The records could only be released with the written consent of the adult member of the household submitting the application.

Testimony, petitioner

Mr. Resendes said he had been provided with the records in the past. He said in the case of a foster child, no parental information was provided on the application form. Therefore the record was presumably about the child and not the parent.

Testimony, respondent

Mr. Tanner said Mr. Resendes' request had originally been sent to Karen Pace, director of food services for the district. It had been referred to her by the district business administrator, Mr. Wilson. Ms. Pace did not consider fully the implications of GRAMA for the request, and Mr. Wilson was not available to consult. Ms. Pace sent copies of three prior applications to Mr. Resendes. On the occasion of the current request, Ms. Pace was able to consult with Mr. Wilson. Ms. Pace indicated to Mr. Resendes that the information on the application was considered private financial information that she was not able to release. Pursuant to UCA 63G-2-201(3)(a)(b), private, controlled, and protected records are not public. Based on the conditions of participation in a federal program, the information in the application was restricted and not subject to GRAMA. Welfare benefits are also considered private records under GRAMA. Mr. Mickelson responded to Mr. Resendes. He said information collected on the form was a school district record but was governed by 7 C.F.R. § 45.6(i). The school district's position is that children were not the subject of the record. The financial information of the adult member of the household submitting the application was the subject of the record.

Closing statement, petitioner

Mr. Resendes said the forms he received in the past had Utah written across the top. He said the records were about the children and were for their benefit. As a parent, he wanted access to the information about the adult who had applied for the program.

Closing statement, respondent

Mr. Tanner said the form of the application for free and reduced school lunch was prescribed by federal regulation, and the information collected was required for participation in the program. Information was gathered from household adults to determine eligibility.

Deliberation

Ms. Ross made a motion that the request be denied pursuant to 63G-2-201(3)(b) and (6)(a).

The record was limited by federal statute pursuant to 7 C.F.R. §245.6(i). Only the parent or guardian, who is a member of the child's household for purposes of the free and reduced price meal application, may give consent to the disclosure of the information. Ms. Smith-Mansfield seconded the motion. A vote was taken. Mr. Hemphill, Mr. Ott, Ms. Ross, Ms. Smith-Mansfield, and Mr. Whittaker voted in favor of the motion. The motion passed. Mr. Whittaker thanked the parties for their attendance and apologized for the technical difficulties of the failed conference call. Mr. Resendes had been connected by cell phone to a microphone in order to hear and be heard by all the parties. Mr. Whittaker said an order would be sent within five business days.

Discussion – The inclusion of the Deseret News and the Salt Lake Tribune in the recent order to release the police report and dash cam video requested by Chris Vanocur of ABC 4 News was discussed. The possibilities of issuing an amended order, a new order, or denying a hearing were discussed. No action was taken. Pursuant to UCA 52-4-202(5), the Committee scheduled an emergency meeting for Monday, April 12, 2010, at 1:00 p.m. in order to take action on the matter. A notice would be posted immediately on the Public Meeting Notice Web site. Those not able to attend the meeting in person could call in on available cell phones to participate.

Approval of Minutes

Mr. Hemphill made a motion that the draft of the March 18, 2010, minutes be approved. Ms. Smith-Mansfield seconded the motion. A vote was taken. Ms. Smith-Mansfield, Mr. Whittaker, and Mr. Ott voted in favor of the motion. Ms. Ross abstained as she had not been present at the meeting. Mr. Daniels had excused himself for another appointment. The minutes were approved.

Approval of General Schedules

Mr. Hemphill made a motion that the general schedule for verification of interim licenses as submitted to the Committee be approved. Ms. Smith-Mansfield seconded the motion. A vote was taken. Mr. Hemphill, Mr. Ott, Ms. Smith-Mansfield, and Mr. Whittaker voted for the motion. The general schedule was approved as submitted.

Appeals received

Ms. Mumford said five new appeals had been received during the month. One hearing would be scheduled for May. See attached list.

Cases in District Court

Mr. Tonks' report on cases in district court is attached to the minutes.

Adjournment

Mr. Whittaker thanked the Committee members for their attendance, and the meeting was adjourned by acclamation.

Next meeting scheduled for May 13, 2010, 9:30 a.m.

April appeals to SRC

1. Jenny Lewis vs. Cottonwood Heights Ms. Lewis requested communications between attorneys and officers of city related to her contract with the city not being renewed. No hearing scheduled.
2. Paul Foy vs. United Police expedited hearing scheduled then cancelled. Redacted versions of police report and tapes provided. Appeal dropped.
3. William York vs. Lieutenant Governor's Office referred to Archives and History Research Room. Requested waiver of fees for impecuniosity.
4. Jesse Fruhwirth, Salt Lake City Weekly, vs. Salt Lake City Corporation. Mr. Fruhwirth appealing denial of police report of undercover operation at Heartsong Healing Center, Holladay, UT and any reports from previous year on the arrestee, Jesse or Janae Bird. Redacted copies were provided. Petitioner is appealing the redactions. Schedule for May.
5. Laura Hancock, Deseret News vs. Utah Transit Authority. The authority has adopted a separate ordinance and SRC has no jurisdiction over records issues. Wrote letter.

April
March 2010 Records Committee Case Updates

District Court Cases

Utah Dept. Of Public Safety v. Vanocur, 3rd Judicial District, Salt Lake County, Case No. 100904439, Judge Lindberg. Filed March 16, 2010.

Current Disposition: Petition for judicial review filed by Dept. of Public Safety. Answer filed on behalf of State Records Committee on March 26, 2010. Anticipate answer to be filed by Vanocur and addition of other parties (Salt Lake Tribune & Deseret News).

Moulton v. State Records Committee, 3rd Judicial District, Salt Lake County, Case No. 100901662, Judge Hansen. Filed February 1, 2010.

Current Disposition: Appeal filed of a decision by the Department of Human Services to not release a record. No appeal was filed with the State Records Committee, so Motion to Dismiss the complaint against the Committee (and the Governor) was filed on March 25, 2010.

Attorney General Office v. McKitrick, 3rd Judicial District, Salt Lake County, Case No. 090917108, Judge Dever. Filed October 13, 2009.

Current Disposition: Complaint filed by AG's office. Answer filed on behalf of State Records Committee. McKitrick and the Salt Lake Tribune have filed answers. Nothing has been filed since October 22, 2009.

Utah Appellate Court Cases

Murray City v. Maese, 3rd Judicial District, Salt Lake County, Case No. 080912185, Judge Christiansen. Filed July 11, 2008. Court of Appeals Case No. 20090958 CA.

Current Disposition: Case currently pending before Court of Appeals. No briefing schedule yet. Record has been certified to the appellate court by the trial court.