SRC APPROVED
Date Aug. 12, 2010
SLM

# State Records Committee Meeting

Division of Archives, Courtyard Meeting Room
July 8, 2010
Salt Lake City, Utah

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| Members Present: | Scott Daniels, Citizen Representative |
| | Lex Hemphill, Media Representative |
| | Betsy Ross, Auditor's Designee |
| | Patricia Smith-Mansfield, Governor's Designee |
| | Scott Whittaker, Private Sector Records Manager, Chair |
| Member Excused: | Gary Ott, Elected Official Representative |
| | Chris Hansen, State History Designee |
| Legal Counsel: | Sheila Page, Attorney General's Office |
| | Ed Lombard, Attorney General's Office |
| Executive Secretary: | Susan Mumford, Utah State Archives |
| Others Attending: | Rosemary Cundiff, Archives staff |
| | Glen Fairclough, Archives staff |
| | Letisha Garrick, Department of Public Safety |
| | Neil Hansen, State Representative, petitioner |
| | Maren Jeppsen, Archives staff |
| | Nasrulla Khan, Petitioner |
| | Debbie Kurzban, Attorney for Human Services |
| | John Robson, Salt Lake City School District |
| | Mindy Spring, Archives staff |
| | Heidi Stringham, Archives staff |
| | Lana Taylor, Attorney, Department of Public Safety |
| | Sue Taylor, Division of Child and Family Services |
| | Tab Uno, Petitioner |

**Mr. Scott Whittaker called the meeting to order at 9:16 a.m.**
Mr. Whittaker, Chair of the Committee, called the meeting to order. Mr. Whittaker welcomed the parties for the first hearing and reviewed the procedures for the hearing. Since there were two hearings scheduled with the Department of Public Safety, the agenda for the meeting was changed to accommodate the parties and have those two hearings first. Nasrulla Khan was the petitioner. Lana Taylor represented Public Safety.

**First Hearing – Nasrulla Khan vs. Utah Department of Public Safety**

**Opening statement, petitioner**
Mr. Khan said he had requested investigative reports pertaining to the complaints he had made to the department of terrorist threats against him. He said he had received three reports. One had been incomplete. After appealing to the commissioner of public safety and being denied again, he had sent an appeal for a hearing to the Committee.

**Opening statement, respondent**
Ms. Taylor said that the initial request had been made to the Department of Public Safety and forwarded to the bureau of investigations. The State Bureau of Investigations (SBI), did a search and found that there were three separate case files. The one that Mr. Khan thought was incomplete was a single page synopsis of an investigation. That single page was all that could be found of the report. Mr. Lance Davenport, Commissioner of Public Safety, responded to Mr. Khan that no further records were found. Some personal information was redacted from another individual whose name was mentioned in the report.

**Testimony, petitioner**
Mr. Khan said he was not contesting the redaction of a name from the report, but was saying that the report itself was incomplete. It contained only a heading with no details of the investigation. He said he had filed a complaint about crimes of repeated terrorism and threats against him. The Ogden Police Department had initially refused to investigate his complaint and he had no response from the Department of Public Safety. After Mr. Khan appealed to Governor Leavitt, the department responded and investigated the complaint. Mr. Miller was the agent assigned to the case. The report mentions a possible criminal action, but does not explain against whom. The details of the investigation are also missing. A letter from Mr. Miller was mentioned in the report but is also missing. All three reports are about the same complaint to the Department of Public Safety.

**Testimony, respondent**
Ms. Taylor verified that in 2005, the department had responded that there were no records to be found responsive to Mr. Khan's request. The State Records Committee and District Court had not been able to proceed without proof of the existence of records. The three reports were generated in 2002. The investigation was given three case numbers. Two of the reports contain details of an investigation. A follow-up request was given a new case number. That case number represents a request to send the information to an attorney handling the complaint in district court. No charges were filed as a result of Mr. Khan's allegations. Title 77 chapter 24 provides for the disposal of evidence at the conclusion of an investigation if no charges result. It was unlikely that any evidence such as a letter sent to Mr. Khan would have been retained. The agent investigating the complaint was no longer employed by SBI.

**Closing, petitioner**
Mr. Khan said that Mr. Miller who had investigated the complaint noted that he had sent a letter saying there were possible criminal charges against someone. That fact suggests the validity of the complaint. There was nothing in the report to explain the statement. The department had a duty to detect and prevent crimes and to impose criminal penalties if evidence exists to sustain it. The report contained no detail but was blank concerning what criminal conduct may have been found. The commissioner wrote a false report stating that there were no records. When records were eventually produced it proved that the three reports had existed at the time of the original request.

**Closing, respondent**
Ms. Taylor said that the incomplete record appeared to be a documentation of having provided the records to district court when they were requested. The reports all relate to the same complaint from Mr. Khan. Each report has different sections filled out depending on the investigator. The shorter report is a documentation of supplying the record to the court and appeared to be complete for the purpose it was created.

**Deliberation**
Ms. Page said she could provide a copy of the case as it was handled in the court of appeals. It was an unpublished opinion. During discovery, records were located by the Department of Public Safety. Those records were ordered provided to Mr. Khan by the court. They appeared to be the same records currently being discussed. Copies of the unpublished opinion were made and passed out to the members of the Committee and the two parties. Mr. Daniels made a motion that the petitioner's request be denied and the Department of Public Safety's position is upheld. Mr. Hemphill seconded the motion. Ms. Smith-Mansfield said it should perhaps be a motion to dismiss as there was nothing the Committee could order the respondent to do other than make another search. Mr. Daniels made a substitute motion that the case be dismissed. Ms. Smith-Mansfield seconded the substitute motion. A vote was taken. Mr. Daniels, Mr. Hemphill, 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 said that an order would be issued within five business days.

**Second Hearing –Representative Neil Hansen vs. Utah Department of Public Safety**
The parties for the hearing introduced themselves. Representative Neil Hansen was the petitioner. Lana Taylor represented the Department of Public Safety.

**Opening – petitioner**
Representative Hansen said the issue was moot because the requested records had been released. He wanted to talk about the process and about the checks and balances in our government system. In January 21, 2010 he had requested the records from Public Safety relating to the arrest of Senator Killpack for a DUI. Representative Hansen was teaching a merit badge class to boy scouts and thought it would be a great teaching tool about honor, duty, and obeying the law. Even elected officials must obey the law. He had called Public Safety and asked for a copy of the record. He had been told by an officer he could have it. The officer called back and told Mr. Hansen to send a GRAMA request to the department because it was a "protected" record. The GRAMA request was denied. As a state legislator, he again requested the records with the provision that the "protected" classification would be honored. In that way a balance between the executive and legislative branches would be reinforced and the request became a way of learning how Public Safety performed its duties. The request was again denied. He pursued it through the legislative research and general counsel. An appeal letter was drafted to commissioner Davenport to request the records be shared with the legislative committee. He signed an acknowledgement that he would keep the record protected. He had received another denial. He had intended to review the records in light of drafting potential new legislation and was still denied. He said he did not understand why the record was repeatedly withheld from a member of the legislature for two months after he had sworn to keep the record protected.

**Opening – respondent**
Ms. Taylor said that the records requested had already been provided in a redacted form. The private information redacted. The dash-cam video had also been provided. While investigative matters were pending, the department had classified the investigative report and the complete video as protected. The matter had come before the Committee and before district court and the department's classification had been overruled in both instances. Because the original request from Representative Hansen had been to share the record publicly, his request had been denied. Under the sharing provision, a governmental entity "may" but is not required to share information, so while the litigation was pending, the department did not choose to share the records. The records had recently been released with private information redacted. While litigation was pending, the department had taken the position that the records could not be released until the time for appeals was exhausted. There was still a question as to the intended use of the records when requested by Representative Hansen.

**Deliberation**
Mr. Daniels asked Ms. Taylor if her client presumed they needed to examine the motive of a legislator before releasing a record to them. Ms. Taylor said that under the sharing provision there were certain legitimate reasons to share a record, and some that were not legitimate. If a record is public, it can be shared with anyone. If a record is protected or private, it can be shared for purposes that are specified. Mr. Hemphill said that the Committee follows GRAMA and does not set policy. It seemed to him that DPS was within its rights to deny the record. Ms. Ross said the only instance in which a governmental entity "shall" provide a record to the legislature is pursuant to UCA 63G-2-305(4), when withholding the record could cause commercial injury or confer a competitive advantage. Ms. Smith-Mansfield said another time a record is required to be shared is pursuant to UCA 63G-2-201(6)(a) when required for participation in a state or federal program. After the discussion, Representative Hansen withdrew his appeal and thanked the Committee for their time and consideration.

**Third Hearing – Tab Uno vs. Salt Lake School District**
Mr. Daniels had previously said he would need to disqualify himself from the hearing as he was potentially a subject of the records request. With that disqualification, a quorum was not available to hear the appeal of Mr. Uno. None of the other members of the Committee were available to be contacted by phone. The hearing was postponed until August 12, 2010. New notification letters will be sent to the parties.

**Approval of June 10, 2010 SRC minutes**
Ms. Smith-Mansfield made a motion to approve the June 10, 2010, minutes after a correction had been made. Mr. Hemphill seconded the motion. A vote was taken. Mr. Daniels, Mr. Hemphill, Ms. Smith-Mansfield, Ms. Ross, and Mr. Whittaker voted in favor of the motion. The motion passed.

**Approval of Retention schedules**
The following schedules had been sent for review to Committee members:
1. Board of Regents – *Scholarship files* with retention of seven years.
2. Department of Health –*Kids on the Move* with retention of fifty years.

3. Department of Health – *Financial Audit and Report files* with retention of nine years.
Ms. Smith-Mansfield made a motion that the Committee accepts the retention schedules. Ms. Ross seconded the motion. A vote was taken. Mr. Daniels, Mr. Hemphill, Ms. Smith-Mansfield, Ms. Ross, and Mr. Whittaker voted to approve the retention schedules. Ms. Smith-Mansfield said that agencies that had had previously approved unique records series were sometimes opting to move to a General Retention schedule. A revision of the general retention schedule was also contemplated. After a discussion it was determined that the Committee's role in approving the schedules, either general or agency-specific, would not change.

**Cases in District Court**
Ms. Page reported that no new appeals had been sent to district court since the last meeting. No report is attached.

**Appeals received**
Ms. Mumford distributed a list of appeals to the State Records Committee that had been made during the month. Seven requests for hearings had been received. See attached list.

**Adjournment**
Ms. Ross made a motion for adjournment. Ms. Smith-Mansfield seconded the motion. The meeting was adjourned by acclamation.

**Next meeting scheduled for August 12, 2010**

# July, 2010 Appeals to SRC

1. **Steve Onysko vs. Department of Human Resources**. I sent e-mail saying needed original request. No response and then denied for timeliness issue. He wanted personnel file information for other people
2. **Lawrence Jackson vs. Uintah County.** Mr. Lawrence wrote generic requests to "State of Utah." I wrote him a letter with the addresses for the Uintah County records he was seeking.
3. **Reginald Williams vs. Corrections.** He was seeking information about the inmate trust fund and failed to provide sufficient information that the records existed. With Scott Whittaker's concurrence I wrote a letter and denied hearing.
4. **Cathy McKitrick, SL Tribune vs. UTA.** Originally she had not yet appealed to the UTA Board of Trustees. Then by the time she had done so, UTA revised ordinance. Denied for lack of jurisdiction.
5. **Rodney Ham vs. Human Services.** Mr. Ham appealed the lack of response from Human Services. Incomplete request. I wrote him a letter with instructions about how to file an appeal to the SRC, including copies of statutes.
6. **Wesley Thompson vs. Corrections.** Mr. Thompson sent a series of documents and correspondence with officials at the prison. His appeal of the original request is confusing. A hearing may be denied. The denial of the request was untimely appealed and the petitioner failed to provide sufficient evidence that some of the requested records exist. He did get some information from Corrections that he requested.
7. **Mike Weaver vs. Corrections.** Mr. Weaver sent an incomplete request (no copy of original request) for psychological records. He said in his appeal he had received some of the requested records. I will need a copy of original request.