

STATE RECORDS COMMITTEE MEETING

Location: Courtyard Meeting Room, 346 S. Rio Grande Str., SLC, UT 84101
Date: January 8, 2015
Time: 9:00 a.m. to 1:44 p.m.

Committee Members Present:

Patricia Smith-Mansfield, Chair, Governor's Designee
Marie Cornwall, Citizen Representative
Tom Haraldsen, Media Representative
Blaine Breshears, Elected Official Representative
Doug Misner, History Designee
Holly Richardson, Citizen Representative
David Fleming, Private Sector Records Manager

Legal Counsel:

Paul Tonks, Attorney General's Office
Nicole Alder, Paralegal, Attorney General's Office

Executive Secretary:

Nova Dubovik, Utah State Archives

Telephonic Attendance:

Maximino Arriaga, Petitioner
Scott Gollaher, Petitioner
Dwayne Baird, Department of Public Safety

Others Present:

Rosemary Cundiff, Ombudsman
Lorianne Ouderkirk, Archives staff
Kendra Yates, Archives staff
Cameron Mansen, Archives staff
Harshad P. Desai, Petitioner
Gina Proctor, Utah Dept. of Corrections
Steve Turley, Utah Dept. of Corrections
Dolores Furniss, Tax Commission
Denny Lytle, Tax Commission
Barry Huntington, Attorney
Paul G. Amann, Petitioner
Debbie Cragun, Dept. of Human Resource Mgt.
Robert Thompson, Dept. of Human Resource Mgt.
Gale Francis, Attorney
Matthew Anderson, Utah Dept. of Corrections

Rebekkah Shaw, Archives staff
Susan Mumford, Archives staff
Laura Lockhart, AG Office

Agenda:

- Five Hearings Scheduled
- Approval of Retention Schedules
- Approval of Minutes
- Report on Appeals Received
- Report on Cases in District Court
- Other Business

I. Call to Order:

The meeting was called to order at 9:05 a.m. by the Chair, Ms. Patricia Smith-Mansfield. The Chair introduced the parties for the first hearing: Mr. Maximino Arriaga, Petitioner, and Ms. Susan Mumford assisting Mr. Arriaga as his interpreter. Representing Utah Department of Corrections was Mr. Matthew Anderson, Attorney General's Office. The Chair explained the hearing procedures to the parties.

II. Hearing: Maximino Arriaga vs. Utah Department of Corrections (UDC)

Opening-Petitioner

Ms. Mumford assisted Mr. Arriaga with interpreting his opening statement to the Committee. Mr. Arriaga requested itemized copies of medical bills for medical services provided to another inmate whom Mr. Arriaga had been found guilty of assaulting the previous year. Mr. Arriaga is seeking the individual's medical records to show the dates of medical procedures and the medical charges. The information is being collected for a possible civil action and is part of the discovery process.

Opening-Respondent

Mr. Matthew Anderson, from the Attorney General's Office on behalf of the Utah Department of Corrections, addressed the Committee. He explained the initial request was for medical records on another inmate that was a victim of an assault that Mr. Arriaga eventually was disciplined for and part of that discipline was to pay restitution for the inmate's medical expenses. Mr. Arriaga requested the medical records of the inmate and was denied because they were classified as "private;" however the records officer provided an itemization showing the costs that were charged and redacted the medical service descriptions that were provided to the victim. The position of UDC is that the classification of the requested records is private and therefore cannot be given to Mr. Arriaga.

Testimony-Petitioner

Ms. Mumford assisted Mr. Arriaga with interpreting his testimony to the Committee. Mr. Arriaga wants to know exactly what medical expenses UDC is charging and feels the charges need to be described. He states the other person began the fight and he was only defending himself and is the actual victim. Given that he believes himself to be the actual victim of the assault and is being charged by UDC for the other inmate's medical expenses, he wants the itemization of the expenses.

Testimony-Respondent

Mr. Anderson explains the Department does not have any other evidence to present other than a copy of the record for the Committee to review and will reserve the rest of the testimony in the closing.

Closing-Petitioner

Mr. Arriaga did not provide a closing statement.

Closing-Respondent

Mr. Anderson notes Mr. Arriaga probably is seeking a review of the disciplinary action and, if that is the case, there are methods for him to seek that information by using Rule 65B, extraordinary relief petition, and the 42 U.S.C. § 1983 action at the federal court if there were some damages he incurred as a result of the action. The UDC's position is that GRAMA is fairly clear the information is private so it asks the Records Committee to uphold the UDC classification.

Deliberation

The Committee discussed the fact that the law clearly states that medical records and history are private and cannot be revealed, in addition the petitioner needs to pursue other avenues to obtain the information sought.

Motion- A motion was made by Ms. Cornwall to deny in accordance to Utah Code § 63G-2-302(1)(b). The motion was seconded by Mr. Breshears. The motion passed 6-1, with Mr. Fleming dissenting.

Committee continued with other business until next petitioner could be reached by telephone.

III. Approval of December 11, 2014, Minutes:

Ms. Cornwall announced that she submitted changes. A motion was made by Ms. Richardson to approve the December 11, 2014, minutes with the corrections, and seconded by Mr. Fleming. The motion passed 7-0. (See the attached documents on the Utah Public Notice Website, [SRC Minutes December 11, 2014.pdf](#)).

IV. Other Business:

Appropriate Annual Monthly Meeting Dates

The Committee reviewed the monthly meeting dates scheduled throughout the year and agreed they should be kept on the second Thursday at 9:00 a.m. The Committee changed meeting date March 12th to March 19th due to conflict with the legislative session.

Motion-A motion was made by Ms. Richardson and seconded by Mr. Haraldsen to approve the proposed annual monthly meetings. A vote was unanimous, 7-0.

Appoint an Executive Secretary

Motion-A motion was made by Mr. Fleming and seconded by Ms. Richardson to appoint Ms. Nova Dubovik as the executive secretary. A vote was unanimous, 7-0.

Appoint a Chairman *pro tem*

Motion-A motion was made by Ms. Smith-Mansfield and seconded by Mr. Haraldsen to nominate Mr. Fleming to serve as *pro tem*. A vote was unanimous, 7-0.

V. Report on Cases in District Court:

Mr. Tonks briefed committee members about the cases in District Court. (See the attached documents on the Utah Public Notice Website, SRC Meeting Handouts January 8, 2015.pdf).

VI. Report on December and January Appeals:

The executive secretary reported that the following hearings were resolved and canceled prior to the hearing: Sheri Mandell vs. Dammeron Valley Fire Special Service District was resolved with ombudsman mediation; Richard Gunn vs. UDC and Robert Baker vs. UDC appeals were denied because subject of appeal has been found by the committee in previous hearings involving the same government entity; and lastly P. Robert Augason vs. University postponed and rescheduled for February 12, 2015. At this time there are two hearings scheduled for February (See the attached documents on the Utah Public Notice Website, SRC Meeting Handouts January 8, 2015.pdf).

VII. Approval of Retention Schedules:

State Agencies:

Ms. Kendra Yates presented one record for the Department of Environmental Quality, Division of Environmental Response and Remediation, and five records for the Department of Health, Center for Health Data and Informatics, Office of Vital Records and Statistics.

- 14851-Underground storage tank records-retain 8 years.
- 28618-Adoption registry-retain 100 years.
- 28617-Gestational carrier files-retain 100 years.
- 28620-Hemp extract registry-retain 25 years.
- 28621-Report of birth files-retain 100 years.
- 28623-Witness protection files-retain permanently.

Motion-A motion was made by Mr. Fleming and seconded by Mr. Misner to approve the proposed retention schedule. A vote was unanimous, 6-0. Ms. Richardson stepped out and was not available to vote.

Utah State General Records Retention Schedule:

None to report this month.

Resumed Hearings:

The Chair introduced the parties: Mr. Scott Gollaher, Petitioner, and Mr. Dwayne Baird, GRAMA Officer acting on behalf of the Department of Public Safety. The Chair explained the hearing procedures to the parties.

Mr. Gollaher states that he did not receive notice from Ms. Dubovik regarding the hearing but believes he is prepared enough to go forward with the hearing. Mr. Tonks requests the Chair to have the executive secretary explain the circumstances which led to Mr. Gollaher's lack of notification.

Ms. Dubovik explained the notices were sent out on December 29th, but Mr. Gollaher's, because of an address mistake, was returned as undeliverable. She resent the notice along with an apology letter and in the meantime continued to coordinate with Salt Lake City County Metro Jail for Mr. Gollaher to be available for the hearing. Mr. Gollaher accepted the explanation and agreed to go forward with the hearing.

VIII. Hearing Scott Gollaher vs. Department of Public Safety, Division of Peace Officer Standards and Training (POST)

Opening-Petitioner

Mr. Gollaher addressed the Committee explaining the background of the GRAMA appeal to POST. The appeal was in regard to a retired Detective William Z. Wentland of Morgan County Sheriff's Department. Mr. Gollaher sought from POST any potential disciplinary action that it either knew about or should have known regarding Det. Wentland's retirement or resignation. In the initial GRAMA request Mr. Gollaher sought the following records: the drug test leading to Det. Wentland's resignation on September 28, 2013; a report of any record held by POST relating to Det. Wentland where drugs or other violations claims were found true or false in the last 10 years; and a list of specific training reported to POST that related to Det. Wentland's specializing in child abuse cases. POST was not responsive to his initial GRAMA request and the subsequent appeal to the chief administrative officer (CAO) failed to make a determination which is equivalent to an order denying the GRAMA request.

Opening-Respondent

Mr. Baird read the Division's response sent to Mr. Gollaher stating that in regard to the training in Mesquite, NV, POST does not have any record of that training because POST was not the sponsor of the event. The Division is not required to keep any records of that training or anything that would have been done at that training regarding Det. Wentland.

Testimony-Petitioner

Mr. Gollaher addresses the Committee beginning with the statement that POST may not have the responsibility to know what occurred in Mesquite, however it has the duty to maintain oversight on the police force, keep track of training records and any issues of complaints and disciplinary actions. POST should have a record of Det. Wentland's records because he was an officer of POST at the time of the infraction. The Morgan County Sheriff should have reported, under the rules of Utah Code 53-6-209 and 53-6-211, to POST Det. Wentland's retirement or resignation. Mr. Gollaher wants POST to answer why they do not have the information if an infraction occurred and why there was no subsequent investigation since alerting POST to the situation.

Testimony-Respondent

The Chair requests Ms. Baird to clarify why POST does not have any records concerning Det. Wentland's training. Mr. Baird states the letter from the POST administrative secretary, Shauna McCleve, to Mr. Gollaher dated December 17, 2014, and explains that POST does not possess any records that may be responsive to the GRAMA request. He continues that Mr. Gollaher has referred to two sections of the criminal code and insinuated that POST should somehow know who the individual is based on retirement and/or resignation protocol carried out by the Sheriff in Morgan County.

The Chair questions would POST have any records of the training that the Det. might have taken? Mr. Baird responded that POST does not retain the training records unless it sends the officers and sponsors the training. Mr. Baird summarizes the statutes and states that if POST did not get anything more than the individual retired it would not have any reason to investigate his certification as a Peace Officer.

Closing-Petitioner

Mr. Gollaher acknowledges the information Mr. Baird provided to the Committee and he states that POST has the responsibility to follow-up on any investigation. If indeed Morgan County Sheriff did not properly notify POST then it is clear POST would not have records that are responsive to his GRAMA request. However he notified POST and it now has an obligation to follow up with an investigation to either acknowledge or not acknowledge that the Morgan County Sheriff did not properly submit and notify POST of Det. Wentland's infraction that resulted in his resignation or retirement. Although POST does not possess any records pertaining to the Mesquite conference it has been notified of the infraction and it should have generated an investigation of the incident regarding Det. Wentland. Mr. Gollaher acknowledges that POST does not have the records he seeks.

Closing-Respondent

Mr. Baird closed by stating that much of what Mr. Gollaher is referring to is not contained in statute. Mr. Baird restates that POST has not received any of Det. Wentland's records. In addition when a Peace Officer's status changes due to retirement he is no longer a Peace Officer and is no longer governed by POST.

Deliberation

Due to conflict of interest, Counsel suggests Mr. Breshears recuse himself from the Committee's decision on this hearing. Mr. Breshears states his name and recuses himself from the proceedings.

The Committee members discussed the fact that the requested records do not exist at POST.

Motion-A motion was made by Ms. Cornwall that recognized the governmental entity has been responsive and has found no records to provide, therefore the Committee cannot order the release of any records because there is nothing to order for release. The motion was seconded by Mr. Fleming. The motion passed 5-0. Mr. Breshears was recused and Ms. Richardson was absent during the vote.

5-Minute Break

The Chair introduced the parties: Mr. Harshad P. Desai, Petitioner, and Mr. Barry Huntington, Garfield County Attorney. The Chair explained the hearing procedures to the parties.

IX. Hearing Harshad P. Desai vs. Garfield Co.

Opening-Petitioner

Mr. Desai explained that in September 2013 an appraisal was accomplished by the State of Utah Tax Commission and there were three employees who came from the State of Utah and appraised his three commercial properties. He wants to know who the employees are, where they work, what are their qualifications and credentials for appraising commercial property. His GRAMA request is to find out the qualifications and credentials of the individuals sent out to his properties.

Opening-Respondent

Mr. Barry Huntington addressed the Committee and explains that Mr. Desai is asking for records that Garfield County does not maintain or possess. In accordance to Utah Code § 63G-2-201, Garfield County is not required to create a record for what the qualifications and work the people were doing for the county. Garfield County's position is that Mr. Desai is asking the wrong governmental entity.

Testimony-Petitioner

Mr. Desai addressed the Committee stating that Mr. Joe Thompson is an elected official and he knows what his qualifications and credentials are for assuming the position. Nevertheless, according to Utah Administrative Code R884-24P-19 a certification and license is issued by WSATA (Western States Association of Tax Administrators) or AQB (Appraiser Qualification Board of the Appraisal Foundation), an assessor, county employee, or state employee must hold the appropriate designation to value property for *ad valorem* taxation purposes. There are courses the appraiser must successfully complete to attain and maintain state licenses or as a state certified appraiser. Mr. Desai wants to know if Mr. Thompson and the other employees sent to his properties are certified to appraise commercial property, because an appraiser who possesses a residential license is not qualified to appraise commercial property unless they have gone through the training. It is his right to know when someone comes out to the properties if they are actually qualified to appraise them for taxation purposes.

A second GRAMA request pertained to an individual that Garfield County hired as a contractor, Mr. Bruce Bunker, the Board of Equalization (BOE) Officer. Mr. Desai wants to know his qualifications and credentials and if Mr. Bunker holds an appraisal license for commercial property.

The third GRAMA request pertained to a Ms. Kimberly Lacy, a state employee who visited Garfield County. He wants to know her qualifications and credentials to do commercial appraisals.

Testimony-Respondent

Mr. Huntington explained that Mr. Joe Thompson is an elected official of Garfield County, elected by the people, and he is a licensed appraiser. The county provided the record to Mr. Desai, even though it does not maintain the record, however Mr. Desai is was not satisfied with the response. Mr. Bruce Bunker was hired through a recommendation from a neighboring county. Garfield County does not have a license or resume because it was never provided to the county when he was hired nor was it required. Garfield County does not maintain any records on Mr. Bunker. On the matter of Ms. Kimberly Lacy, she works for the State of Utah and if Mr. Desai wants to know her licensing information he should go to the state for that record. Garfield County does not maintain any records on Ms. Lacy.

Mr. Huntington continues that Mr. Desai asks for these records and he is told that Garfield County does not have them, yet he continues to appeal instead of going to the governmental entity that actually maintains the records.

Closing-Petitioner

Mr. Desai restates he wants to know if the individuals sent to the three properties are qualified and have credentials to do the job of assessing commercial real estate. If the individuals are accredited then they will have a WSATA or AQB license and that is the record he seeks.

Closing-Respondent

Mr. Huntington restates Garfield County does not maintain any records for Mr. Bunker because he was hired on recommendations from a neighboring county. The county has provided Mr. Desai with the amount the county paid Mr. Bunker but Mr. Desai is not satisfied with the information. In addition Mr. Thompson is a licensed appraiser, meets state code, and that information was provided to Mr. Desai.

Deliberation

The Committee discusses how to interpret what records the petitioner is requesting. Ms. Cornwall states that it is difficult to know what the petitioner is asking for because the request is not specific. Mr. Fleming adds that although there is a lack of clarity there is an implication that the information he is requesting is a record. The reason for the Records Committee is make a finding if a record exists and whether or not it was provided, and if Garfield County acted in good faith and was responsive.

Motion-A motion was made by Ms. Cornwall that the governmental entity does not have the records that are being requested and is not required to create a record pursuant to Utah Code 63G-2-201(8)(a)(i). The motion was seconded by Mr. Haraldsen. The motion passed 6-0. Ms. Richardson was absent during the vote.

The Chair introduced the parties: Mr. Harshad P. Desai, Petitioner; Mr. Gale Francis, Assistant Attorney General on behalf of the Tax Commission; Dolores Furniss, Disclosure Officer; Denny Lytle, Director of Property Tax Division, and explained the hearing procedures to the parties.

V. Hearing Harshad Desai vs. Utah Tax Commission

Opening-Petitioner

Mr. Desai explains this hearing essentially is the same as the one with Garfield County. In September 2013, a commercial property appraisal was accomplished by two employees who came from the Utah Tax Commission. Mr. Desai wants to know who the employees are, where they work, and what are their qualifications and credentials for appraising commercial property. Mr. Desai explains that after 6-7 months he finally was provided the names of the individuals who were sent by the state to assess his property, they were Mr. Gerald Osborne and Mr. Benjamin Holt. His GRAMA request is to find out the qualifications and credentials of these individuals. In addition he has requested in a previous GRAMA request the Tax Commission's final report of the property assessment and has not received it.

Opening-Respondent

Mr. Francis, acting on behalf of the Tax Commission, begins by noting that the Commission did not received the current request made in September of 2014 until November. The executive director and Ms. Furniss consulted him on how to respond to Mr. Desai's GRAMA requests. Mr. Francis stated that it is very difficult to read Mr. Desai's GRAMA request and identify the actual records he seeks. Nonetheless, once the department felt it understood what Mr. Desai was requesting Ms. Furniss, after being notified by the Records Committee executive secretary, prepared a response and sent it to the government records ombudsman. The Tax Commission assumed the records sent to the ombudsman were forwarded to Mr. Desai.

Mr. Francis explains the Tax Commission, in good faith, contacted and asked Mr. Justin Barney at the Department of Commerce, to send the records Mr. Desai requested which summarize and identify the following individuals as licensees of the Division of Real Estate: Gerald Osborne, Kimberly Lacy, Joseph Thompson, Kade Fullmer, and David Bruce Bunker. The documents that were provided by the Department of Commerce are not the records that the Tax Commission has or maintains, but they do exist and in good faith the Tax Commission acquired and provided the documents.

Testimony-Petitioner

Mr. Desai restates all he wants to know is if the Commission employees are qualified and possess credentials to perform commercial property tax assessments and do they have the training, certification, including WSATA or AQB licenses. He stated that as of right now no records have been provided by the Tax Commission.

Testimony-Respondent

Mr. Francis clarifies the Commission's position that the hearing is for the GRAMA request dated November 19, 2014, pertaining to the employees not the final Tax

Commission report. In addition, there is an appeals process available for property owners who have any disputes with the annual appraisals and appraisers to appeal the decision to the County Board of Equalization. After it has been heard by the Board of Equalization it goes to the Tax Commission for final review. Mr. Desai has not been denied of due process to use those avenues appropriately for appealing whatever he thinks is wrong with the appraisal itself; including the qualifications of the individuals who appraised the properties.

Ms. Furniss and Mr. Lytle are sworn in by the Chair.

Mr. Francis asks Ms. Furniss to explain what she did in response to the November 19, 2014, GRAMA request. Ms. Furniss explains that after reviewing the request her office looked through the files and verified they had been responsive in sending Mr. Desai the appraisals and an investigation report. Mr. Francis clarifies that Ms. Furniss is referring to the other GRAMA request dated September 2014. The Tax Commission feels it has already responded to the GRAMA requests and that the subsequent submittals were duplicates. The documents provided by the Department of Commerce were sent to the government records ombudsman not Mr. Desai directly. Mr. Lytle explains that the Commission does not maintain copies of the appraiser's licenses, but his office was trying to be responsive and that is the reason for obtaining the records from the Department of Commerce for Mr. Desai.

The Chair asks if there are different kinds of license for different types of properties to Mr. Lytle. He responded that for *ad valorem* tax evaluation purposes the individual only has to be licensed and that is through the Division of Real Estate.

Ms. Cornwall asked the Respondents why the Utah Tax Commission is involved with Mr. Desai's property and not Garfield County. The Respondents explain that the Commission has two functions within the County, one is technical assistance and second is oversight to ensure properties are treated fairly and consistently.

Mr. Francis restates the Tax Commission has attempted to comply with the subject matter of today's hearing and would like to submit the copy of the licenses the Commission obtained from the Department of Commerce.

Closing-Petitioner

Mr. Desai restates he wants to know if the individuals sent to the properties are qualified and have credentials to do the job of assessing commercial real estate. If the individuals are accredited then they will have a WSATA or AQB license and that is the record he seeks.

Closing-Respondent

Mr. Francis summarizes by stating that the Tax Commission has attempted to be responsive to Mr. Desai's GRAMA requests.

Deliberation

The Committee discussed the state licensing process and what the statute requires for an appraiser. There is comment that a lot of testimony has been heard that points to the fact that the Tax Commission does have the records. The Chair reminds the Commission that within 10 business days some kind of response should be forwarded to the petitioner even if a record does not exist or if more time is needed to locate the record. If a response is not provided by the governmental entity or chief administrative officer it is considered a denial and the petitioner can appeal to the Records Committee. It is prudent that if a GRAMA request is not understood to contact the petitioner and request clarification on the type of records sought.

Motion-A motion was made by Mr. Fleming that there are no documents responsive to the request pursuant to Utah Code 63G-2-201(8)(a)(i) and they are not required to create a document. The motion was seconded by Mr. Misner. The motion passed unanimously, 7-0.

5-Minute Break

The Chair introduced the parties: Mr. Paul Amann, Petitioner, and Ms. Debbie Cragun, Executive Director of Utah Department of Human Resource Management. The Chair explained the hearing procedures to the parties.

VI. Hearing Paul Amann vs. Department of Human Resource Management (DHRM)

Opening-Petitioner

Mr. Amann explained his stellar work history with the Attorney General's Office and the different assignments he has undertaken over the years, the last being in the Division of Securities. This is where he worked with a DHRM employee, who filed a workplace harassment complaint against him that later was found to be without merit. He is seeking all the complaint records filed by the DHRM employee on or about October 7, 2014, alleging "workplace harassment," and any and all records which support her complaint including but not limited to any documents kept by the employee. In addition, he asked for any and all communications to or from Division employees regarding the complaint, communications between Division employees and the Attorney General's Office, and communications between the complainant and the Department of Human Resource Management. Mr. Amann had not received any documents from the Division of Securities or DHRM until an appeal was filed with the State Records Committee. That is when Mr. Amann received some documents from DHRM but not everything that is in the GRAMA request. In a letter dated December 30, 2014, he indicated his desire to continue with the hearing because DHRM's insufficient response begs the question whether they have been fully responsive in fulfilling the GRAMA request. He continues to explain that as recent as today DHRM provided him more documents that it had initially said did not exist. The documents he still seeks are the notes and investigative report that were prepared by DHRM and the Attorney General's Office.

Opening-Respondent

Ms. Debbie Cragun, Executive Director of DHRM introduced Mr. Robert Thompson, Director of Labor Relations of DHRM, and addressed the Committee. She received a GRAMA request from Mr. Amann on October 21, 2014, for five listed items and have provided those to him. The Department did find five more emails after performing a second search and those were provided to Mr. Amann prior to the hearing. It is the position of the Department that they have completely provided all the records from the October 21, 2014, GRAMA request. In regard to the final report, Mr. Amann did not ask for the copy of the report until December 3, 2014.

Mr. Thompson did the initial review of the GRAMA request dated October 21, 2014, and wrote a denial because at that time there was an open investigation. Ms. Cragun upheld that denial because it was still an open investigation when she received the appeal. It was around that time frame when the email came in on December 3rd requesting the final report. This email added a request and it was treated as a new GRAMA request. The Department believes the hearing pertains only to the October 21, 2014, GRAMA request not the subsequent email on December 3rd requesting the final report. Further, Mr. Thompson denied the request for the final report but Mr. Amann has not appealed to Ms. Cragun and therefore this hearing today should pertain only to the October 21st GRAMA request and that DHRM has already satisfied that request.

The Chair comments and requests clarification about the investigative report not being part of the current appeals hearing because the original request was on December 3rd. Ms. Cragun explains that DHRM considers the investigative report to be a new GRAMA request and has been answered and denied by Mr. Thompson and Mr. Amann has not appealed that denial. Ms. Cragun explains that there is some debate whether DHRM even maintains the report or if it is maintained by the Attorney General's Office. DHRM assisted the Attorney General with the investigation but they do not feel they have legal authority to release the report.

Testimony-Petitioner

Mr. Amann provides a brief sketch of his background consisting of a stellar record at the Attorney General's Office. When he was moved into the Division of Securities it was against his will but while in that capacity he has accomplished things for the Division of Securities that had not been done before; one being that he won trials for the Division. Prior to him coming on board the Division had lost all those trials. There were no complaints about his work other than by one DHRM employee. Mr. Amann explained he kept emails displaying her lack of professionalism and went to his immediate supervisor because the work atmosphere was becoming very difficult to work in. Not long after the employee filed the workplace harassment complaint. Those records and emails were provided prior to the hearing by DHRM and Mr. Amann questions whether they have been fully responsive.

The records he is looking for now are the results of the investigation and the notes. DHRM claims they do not keep the record although they have a copy of the report and the DHRM investigator's notes. That information is vital to him because he needs to

know what sort of statements were said or made about him during his capacity as an Assistant Attorney General. The complaint has already been found without merit. These records are vital to find out what steps are needed to restore his reputation because harm has been done to his reputation as an attorney. He is requesting that DHRM provide him a copy of the notes and investigative report that they have indicated they have but will not provide a copy. DHRM claims it is not the keeper of the record, however the record was created by a DHRM employee and DHRM should be ordered to provide a copy.

Testimony-Respondent

Ms. Cragun refers to the opening remarks that Mr. Amann submitted a GRAMA request on October 21st for five specific documents. That request originally was denied by Mr. Thompson, then appealed, and denied at her level because of the open investigation. Then DHRM received a second request on December 3rd and treated it as a new GRAMA request because it included the investigative report. Mr. Thompson responded to the request on December 17th with a denial. Mr. Amann has not appealed the denial to the CAO. DHRM believes the investigative report should not be discussed in the Committee hearing because it has not been through the appeals process and the jurisdiction for the hearing should be only for the first GRAMA request.

Mr. Robert Thompson is sworn in by the Chair.

Mr. Thompson adds that due process allows DHRM the opportunity to address the second GRAMA request for the investigative report. It was not within the first request and at this point DHRM is not comfortable releasing the report until it has had time to coordinate and review the request. Statutorily the second request for the investigative report and notes is not properly before the Committee because it has not gone through the full appeals process.

Closing-Petitioner

Mr. Amann provides closing remarks to the Committee. He explains it was not until December 3rd that the investigation report was generated and provided to Ms. Cragun. Mr. Amann wrote to Ms. Cragun on December 3rd to supply him the requested documents. He considered it an appeal to her based on the fact that at the time he had received no records from DHRM. He wrote again on December 12th, asking to renew his GRAMA request for documents and he advised her that the investigation was complete. None of the records were provided until he appealed to the State Records Committee. Mr. Amann explains that he has also asked for documentation that was generated through the investigation to include the notes. DHRM maintains the records and he is asking the Committee to order it to provide the records.

Closing-Respondent

Ms. Cragun maintains that they were responsive to the original request and provided all the documents. The matter of who maintains the records is very complicated and there are lots of varying opinions on the subject. She continues that there has not been an appeal to her concerning the second GRAMA request for the investigative report and she has not had the opportunity to do research and seek legal advice to decide who between

the Attorney General's Office and DHRM maintains the record. Just because DHRM has a copy of a record does not mean it has the legal right to distribute it other individuals or entities.

Deliberation

The Committee discussed if there should be a continuance or rule strictly on the original request. Multiple motions were made, failed, and withdrawn before the Committee made a final ruling to focus and rule on the first GRAMA request made on October 21, 2014.

Motion-A motion was made by Ms. Richardson that Mr. Amann's October 21, 2014, GRAMA request be granted and that the Department of Human Resource Management supply any and all documents that they may have in their possession that are responsive to that request. The motion was seconded by Mr. Fleming. A vote was unanimous, 7-0.

XI. Other Business:

The next meeting is scheduled for February 12, 2015. The executive secretary queried if there will be a quorum present for the next meeting there are no scheduled absences.

Annual Report

The executive secretary briefed the Committee on the annual report. A draft copy is posted on the Utah Public Notice Website and the final copy will be available to the public on the State Archives website in February (See the attached document on the Utah Public Notice Website, [SRC 2014 Annual Report DRAFT.doc](#)).

The January 8, 2015, State Records Committee meeting adjourned at 1:44 p.m.

This is a true and correct copy of the January 8, 2015, SRC meeting minutes, which were approved on February 12, 2015. An audio recording of this meeting is available on the Utah Public Notice Website at <http://www.archives.state.ut.us/public-notice.html>.


X

Nova Dubovik
Executive Secretary