

SRC APPROVED  
Date \_\_\_\_\_

## STATE RECORDS COMMITTEE MEETING

Location: Courtyard Meeting Room, 346 S. Rio Grande Str., SLC, UT 84101  
Date: September 10, 2015  
Time: 9:05 a.m. to 10:45a.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  
**Absent:** Holly Richardson, Citizen Representative  
David Fleming, *Chair Pro Tem*, 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:**

**Others Present:**

Joan Andrews, Attorney, Wasatch County School District  
Merry Duggin, Wasatch Taxpayers Association  
Tracy Taylor, Wasatch Taxpayers Association  
Terry Shoemaker, Wasatch County School District  
Dustin Miller, Wasatch County School District  
Rosemary Cundiff, Ombudsman  
Renée Wilson, State Archives  
Kendra Yates, State Archives  
Rebekkah Shaw, State Archives

**Agenda:**

- One Hearing Scheduled
- Approval of Retention Schedule
- Approval of August 13, 2015, Minutes
- Report on Appeals Received
- Report on Cases in District Court
- Other Business
  - Discuss *Schroeder v. Attorney General's Office*, Utah Supreme Court Opinion, Case No. 20121057, 2015 UT 77

**I. Call to Order:**

The Chair, Ms. Patricia Smith-Mansfield, called the meeting to order at 9:05 a.m. Ms. Holly Richardson, Mr. Doug Misner, and Mr. Paul Tonks were absent. The Chair moved to other business that did not require counsel.

**II. Approval of August 13, 2015, Minutes:**

A motion was made by Mr. Haraldsen to approve the August 13, 2015, minutes and seconded by Ms. Cornwall. The motion passed 4-0. One abstention, Mr. Fleming (see the attached documents on the Utah Public Notice Website, [SRC Minutes August 13, 2015.pdf](#)).

**III. Approval of Retention Schedules:**

**State Agency:** Ms. Kendra Yates presented one schedule for Governor's Office of Economic Development, Business Development.

28710- Denied application, Retain 4 years.

**Motion-**A motion was made by Mr. Fleming and seconded by Mr. Breshears to approve the proposed retention schedule. A vote was unanimous, 5-0.

Mr. Doug Misner, Committee member, arrived at 9:10 a.m.

**IV. Report on July and August Appeals:**

The executive secretary briefed the following withdrawn, denial, and incomplete appeals:

**-William Sherratt vs. Board of Pardons and Parole:** Mr. Sherratt is appealing access denial of investigative reports from Iron County. The appeal is incomplete.

**-Judy Fitzgerald vs. Utah Population Estimates Committee:** Ms. Fitzgerald is appealing partial access denial of records used to project Utah population growth. The appeal is incomplete.

**-Patrick Sullivan vs. Department of Technology Services:** Mr. Sullivan appealed access denial from DTS for Corrections' email stored in its repository. The Chair and Ms. Richardson reviewed and declined hearing pursuant to R895-1-4(3) and R35-2-2(2).

**-Scott Gollaher vs. Morgan County Attorney's Office:** Mr. Gollaher appealed access denial of county accounting records for prosecuting him. The Chair and Ms. Cornwall

reviewed and declined hearing pursuant to R35-2-2(4) and Utah Code 63G-2-401(5)(a)(b) and -401(1)(a); the appeal was untimely.

**-Jeff Lambert vs. South Salt Lake Police Department:** Withdrawn. Dispute resolved through mediation.

**-Patrick Sullivan vs. Department of Corrections:** Withdrawn. Dispute resolved through mediation.

**-Patrick Sullivan vs. University of Utah Healthcare:** Withdrawn. Dispute resolved through mediation.

**-Corydon Day vs. Utah Department of Corrections:** Withdrawn. Dispute resolved through mediation.

**-Michael Clára vs. Salt Lake City Corporation:** Withdrawn. Dispute resolved through mediation.

**-Ramon A. Somoza vs. Utah County Public Defense Association:** Mr. Somoza is appealing access denial to his court case records. The UCPDA is a nonprofit organization. The appeal is outside Committee jurisdiction.

**-Patrick Sullivan vs. Insurance Department:** Petitioner postponed September 10, 2015, hearing because parties are in mediation.

At this time, there are nine potential hearings scheduled for October 8, 2015, and three scheduled on November 12, 2015 (see the attached documents on the Utah Public Notice Website, [SRC Meeting Handouts September 10, 2015.pdf](#)).

Mr. Tonks, Counsel, arrived at 9:15 a.m.

The Chair introduced the parties for the hearing: Ms. Tracy Taylor, Petitioner, and Ms. Joan Andrews, representing Attorney for Utah Wasatch County School District. The Chair explained the hearing procedures.

**V. Tracy Taylor, Wasatch Taxpayers Association vs. Wasatch County School District.  
Opening-Petitioner**

Ms. Taylor, representing Wasatch Taxpayers Association, a 501(c)(4) organization, explained what the association does for the community. The Wasatch Taxpayers Association is a volunteer grassroots effort for the citizen of Wasatch County. The association has been in existence for approximately four years. The association has a website and is maintained and updated by volunteers. The mission statement is transparency for public entities and educating the public. The volunteers submit GRAMA requests, attend local government meetings, and video tape meetings for the public to view. Therefore, because its all-volunteers the organization has a very low budget and that is the reason Wasatch Taxpayers Association asked for a fee waiver.

The association hopes to demonstrate to the Committee that obtaining information on government activities and decisions is very difficult to find or difficult to get. Her organization has tried to work directly with the school district by notifying them when information has not been posted on the Utah Public Notice Website, and when it was not in compliant with Open and Public Meetings Act.

**Opening-Respondent**

Ms. Andrews, on behalf of Wasatch County School District, explained the district's position. A GRAMA request was made for a years' worth of email between district superintendent, business administrator, and board members. The request is not easy to comply with, as the petition would make it out to be. There are actual and real costs associated with compiling the information into a format that can actually be produced to the petitioners. The language of the fee waiver statute is clear and non-ambiguous; it is a discretionary statute. It clearly gives the governmental entity authority to impose a fee so that it can recover to some extent its actual costs in complying with a records request of this type. On behalf of the school district, the school district fee waiver denial is reasonable under prior precedence and the plain language of the statute. In addition, the amount of the fee is reasonable. The district has in good faith tried to lay out for the petitioners how those estimates costs were calculated. The district should not be required to incur a deficit to respond to the request where the statute clearly authorized for a reasonable fee to compile the records and tailor it into a format, which meets the request.

**Testimony-Petitioner**

Ms. Merry Duggin was sworn in.

Ms. Duggin is a board member and treasurer for the Wasatch Taxpayers Association. She read a statement and explained why the association made the GRAMA request. The association is an all-volunteer organization and it makes an effort to gather information and distribute to the public via the Wasatch Taxpayers Association website <http://wasatchtaxpayersassociation.com/>. The association exists to provide transparent information for the citizens of Heber Valley, and keep them informed of what the governmental entities are doing in regards of taxes and fees. The Wasatch County School District has a history of not complying with the Open and Public Meetings Act by not posting minutes and recordings of meetings for the public to review on the Utah Public Notice Website. Two weeks ago, Ms. Taylor requested the minutes and recordings be posted on the Utah Public Notice Website. It complied but not by the required deadline. A random sampling of the website was taken prior to the hearing, and Ms. Duggin stated the website still is not in full compliance of the law. She goes on to summarize important budget meetings and work study sessions that the school district has held and failed to make available any minutes of the discussions.

The association requested a fee waiver because they do not have the funding to pay the fee the district has requested. If there were other ways to obtain the information they would, but as mentioned earlier, the district has not posted minutes or recording on the Utah Public Notice Website as required by law.

Ms. Duggin discussed the Netmail management system that the district purchased in May 2014 for \$28,000, and is in current use to manage district email. She commented the district claimed not to have put it in service until March/April 2015. The program is unfamiliar to her, however she surmises the software seems to be designed particularly for organizations that are required to archive and research. Based on the product website,

transitioning to the new program is supposed to be easy but the district has two separate archive systems that overlap the period of the GRAMA request.

Ms. Duggin discussed the other two GRAMA requests for textbooks and pool expenses. In regards to the textbooks a new digital conversion for the textbooks was purchased that was supposed to save money, but the district is unable to provide the cost savings. Instead, the district referred the organization to the Utah Public Finance Website, [www.utah.gov/transparency/index.html](http://www.utah.gov/transparency/index.html). The website is difficult to use and the information is not categorized or organized well. The district also referred them to the USOE (Utah State Office of Education) website, [www.schools.utah.gov/main/](http://www.schools.utah.gov/main/) for financial records; however, she stated, it is very difficult to find information. As for the pool expenses, the district is in the process of deciding whether to bond to build a new pool. It is claimed to have less maintenance costs, but no maintenance records have been provided to compare and contrast the costs. She requested the Committee grant the association's request for a fee waiver. The information is being requested for the benefit of the public and the taxpayers provide the revenue to the district. Every dollar spent comes from a taxpayer and they should be given the access to the information that is being requested.

In closing, Ms. Taylor stated the reason for the requested emails is because the public is unable to access, read, or listen to the discussions on the Utah Public Notice Website. If the public were able to read the information, then the association would not have submitted a GRAMA request for the district emails. The Chair asked if audio is posted for the study work sessions. Ms. Taylor replied some are, but not in a timely manner.

Ms. Taylor explained the association has done a lot of work with the school district, and with no budget, that is the reason for the requested fee waiver. She feels the emails are an integral part of obtaining a true picture of some of the district decisions made in the last year, because there are no posted minutes or recordings as required by law.

Attempted to call and connect Ms. Richardson to the Committee meeting-unsuccessful.

### **Testimony-Respondent**

Ms. Andrews commented that out of the three appeals she was under the impression only the emails were relevant to the hearing. However, the substances for all three arguments are mostly similar, although a few differences do stand out among the three. To obtain emails in the archival system will be logically difficult because there are two different systems and the period overlaps. With respect to the other requests for financial information regarding the pool and textbooks, the district has two different financial archive databases and it will be labor intensive to gather the information. That is the reason for the additional expense of \$75.00 for the pool and textbook records requests. It is labor intensive and technically complex for the district to gather the requested emails, pool maintenance, and textbooks records off the archive databases.

The Netmail system is an archive repository. Prior to its purchase the district used GroupWise messaging and collaboration platform. Students were transitioned to the new

system in 2014 and the staff transitioned recently in March/April 2015. The problems now lie in that the two different archives systems cover the one year of documents that was requested. The documents are not segregated within the archive. A technician must go in create recovery files, create an archive set of documents so there is an original and an archived set. They must segregate the requested accounts from the entirety of the archive. Then create individual folders, isolate, and compile the emails: then classify public, private, and/or protected based on content. The district fully anticipates there would be a significant segregation of files that needs to take place.

GRAMA is clear that if a record can be segregated it should be and that the public portion should be provided, if possible. The prior precedence from the Committee and the courts, is clear that the process of segregation and distinguishing between the information in a record that can be produced and turned over as public, versus that which needs to be redacted. That segregation of the records and the fee chargeable expense is reiterated in *Bryner v. Canyon School District*, Case No. 20100566-CA, 2015 UT App 131. She summarized the case as it pertained to the *Taylor vs. Wasatch County School District* fee waiver denial based on chargeable fees for expenses in segregating and/or redacting the records. The district made a good faith estimate as to the amount of time and expense that will be associated with the process.

She continued that there is certainly public interest in the records, but that does not mean the governmental entity is not entitled to charge a fee; it may grant a fee. The prior decisions of the Committee, even in circumstances where there is an acknowledged public interest, have generally upheld the governmental entity's decision to assess fees.

The Committee discussed the Netmail versus GroupWise systems. Mr. Fleming commented he understood the difficulties and time to retrieve, review, and separate emails having used similar systems. The discussion continued that this is e-discovery and e-discovery is a very complicated process and very expensive. Most of the expense is associated with the time it takes to segregate and classify the records. The district made a good faith estimate for the email search and classifying individual records. Classifying individual records is most of fee. The Committee asked why the information is not on the transparency website for the public to view.

Superintendent Terry Shoemaker was sworn in.

Mr. Shoemaker, Wasatch School District Superintendent, explained why the records were not on the transparency website. When the district purchased the new financial software it was discovered to be difficult and challenging to move information from one system to another. Therefore, records are not readily accessible to the public because of software challenges.

### **Closing-Petitioner**

Ms. Taylor stated if the meeting minutes and recordings were posted there would not be a need to ask for the emails. The public business should be discussed in public. She summarized the promotional online flyer for Netmail, which it claimed to have the ability

to segregate email. She questioned if the school district is not using the \$28,000 system then why should the taxpayers have to pay for it. In the association's opinion, the \$1500.00 fee is excessive for a low budget all-volunteer effort to gather public records that should be posted per the Open and Public Meetings Act and for the public to view.

**Closing-Respondent**

Ms. Andrews summarized the Wasatch County School District's position that the district rate of \$25.00 an hour is reasonable. As recognized by GRAMA's fee provision, the district should not be expected to divert taxpayer dollars from other much-needed uses to respond to onerous requests. The district does not know the volume of the emails between the board, superintendent, and business administrator in the last year. The governmental entity requested the Committee to uphold the superintendent's determination to deny the fee waiver.

**Deliberation:**

The Chair comments that what is before the Committee is emails and some financial records and fee waiver for both. She summarized Utah Code 63G-2-201 and -201(11) as it pertained to the arguments presented by both parties. The transparency law and the Open and Public Meetings Act are not GRAMA but they intersect because the intent of legislation is to get the information on the transparency and Utah Public Notice Website. Ultimately, the legislation eliminates the need for GRAMA request to be made. In this instance, she believes the governmental entity has not upheld its responsibilities in other ways. For example, it has used the electronic form to hinder the rights of someone to inspect the record. In her opinion, they should not be able to charge if it should be online. The information should be online, available to inspect, and free of charge.

The Committee continued to discuss the records requested to include the format and break down of information the petitioner requested. Is the requested information too broad? Other members commented the issue at hand is the email and the cost to retrieve it from the software program, and there has to be some consideration for reasonableness and good faith by the governmental entity. It is a known fact that e-discovery is expensive and the district has tried to make it as affordable as possible to retrieve the records.

Another debate was initiated that if the governmental entity had posted the minutes and audio for the public then the GRAMA request for the emails would not be needed. The counter argument was that the petitioner should have requested the minutes not emails.

**Motion:** A motion was made by Mr. Fleming that request #3 for email fee waiver be denied. Mr. Misner seconded the motion. The motion passed, 5-1. One dissenting, Mr. Haraldsen.

The Committee discussed extensively the transparency requirements for annual expenditures and the breakout of the data. The petitioner requested the information broken down by grades and that would require the governmental entity to create a record. Mr. Haraldsen argued that the pool improvement records should be easy to obtain

because they should have been kept as maintenance records. Other Committee members felt retrieving the records was not the problem, but the cost associated with classifying them, and that the estimate is reasonable. The Chair explained that in GRAMA, Section 63G-2-203, governmental entity may require payment before beginning to process a request if the fees are expected to be exceed \$50.00.

**Motion:** A motion was made by Ms. Cornwall to deny the fee waivers for request #5, improvements to the pool at TIS in the last 7-years, and request #6, total cost of curriculum books, broken down by grades and years, for the entire district from 2000-2007. Mr. Fleming seconded the motion. The motion passed, 4-2. Two dissenting votes, Ms. Smith-Mansfield and Mr. Haraldsen.

#### **VI. Report on Cases in District Court:**

Mr. Tonks briefed to the Committee members on the Utah Supreme Court case decision- *Schroeder v. Utah Attorney General's Officer and the State Records Committee*, Case No. 20151057. The decision on this case ranks alongside *Southern Utah Wilderness Alliance, and the Wilderness Society v. The Automated Geographic Reference Center, within the Division of Information Technology, and the Utah State Records Committee*, Case No. 20060813, and *Deseret News v. Salt Lake County*, Case No. 20060454.

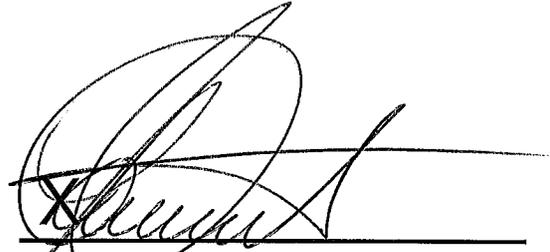
The Utah Supreme Court essentially agreed that the disputed documents were subject to the attorney work product protection, but using the weighing provision in Utah Code 63G-2-404(8) found that the interest favoring access outweighs the interest favoring restriction of access. The case was remanded back to the district court for a determination if attorney fees are warranted, and appropriate redactions for the records ordered to be released (see link to Archives Decision and Order webpage for more copy of document <http://archives.utah.gov/src/srcappeals-2010-2012.html>).

#### **VII. Other Business:**

The next meeting is scheduled for October 8, 2015. The executive secretary queried if there will be a quorum present for the next meeting, Ms. Richardson may have to participate telephonically for the rest of the year due to a scheduling conflict, and Mr. Breshears might be out of the local area for the October meeting.

The September 10, 2015, State Records Committee meeting adjourned at 10:45 p.m.

**This is a true and correct copy of the September 10, 2015, SRC meeting minutes, which were approved on October 8, 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>.**

A handwritten signature in black ink, appearing to read 'Nova Dubovik', written over a horizontal line.

Nova Dubovik  
Executive Secretary