

SRC APPROVED
Date 12/10/2015 [Signature]

STATE RECORDS COMMITTEE MEETING

Location: Courtyard Meeting Room, 346 S. Rio Grande Str., SLC, UT 84101

Date: October 8, 2015

Time: 9:05 a.m. to 2:50 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

Telephonic: Holly Richardson, Citizen Representative

Absent: David Fleming, *Chair Pro Tem*, Private Sector Records Manager

Legal Counsel:

Paul Tonks, Attorney General's Office

Absent: Nicole Alder, Paralegal, Attorney General's Office

Executive Secretary: Nova Dubovik, Utah State Archives

Telephonic Attendance:

Roger Bryner, Petitioner

Holly Richardson, Member

Others Present:

Richard Parks, Petitioner

Kevin McDonough, Dept. of Commerce

Daniel O'Bannon, Dept. of Commerce

Jacob Hart, Dept. of Commerce

David Pierson, Dept. of Commerce

Adam Lenhard, Clearfield City

Kelly Bennett, Clearfield City

Brian Brower, Clearfield City

Nancy Dean, Clearfield City

Jeff Hunt, Clearfield City

Catherine Taylor, Dept. of Human Services

Paul Amann, Petitioner

Chris Pieper, Attorney General's Office

Laura Lockhart, Attorney General's Office

Rosemary Cundiff, Ombudsman

Agenda:

- Three Hearings Scheduled
- Approval of September 10, 2015, Minutes
- Report on Appeals Received
- Report on Cases in District Court
- Other Business
 - Discuss Salt Lake City vs. Jordan River Restoration Hearing

I. Call to Order:

Ms. Holly Richardson was not connected telephonically for the first hearing [absent].

The Chair, Ms. Patricia Smith-Mansfield, called the meeting to order at 9:05 a.m. and introduced the parties for the first hearing: Mr. Richard Parks, Petitioner, and Mr. Kevin McDonough, attorney representing the Department of Commerce.

II. Richard Parks vs. Department of Commerce.

Opening-Petitioner

Mr. Parks testified he filed a complaint with the Dept. of Commerce, Division of Consumer Protection, for work performed by a business that came to mitigate mold in his home. He feels the investigation was not accomplished and is petitioning for a copy of the final investigative report.

Opening-Respondent

Mr. McDonough, attorney representing Dept. of Commerce, explained the complaint triggered an investigation by the Division of Consumer Protection. Investigator Mr. Michael Pitts investigated the matter and concluded that there was insufficient evidence to warrant a finding of deceptive act on "Subject Company," as defined by the Utah Consumer Sales Practices Act (CSPA). Subsequently, Mr. Parks submitted a GRAMA request for a copy of the final investigative report. The request was considered and both granted in part and denied in part. The Division provided numerous documents submitted by Mr. Parks, but did not provide the investigative report, notes, or information related to third-party witnesses. The records withheld were classified under GRAMA as protected pursuant to Utah Code § 63G-2-305(10), and private pursuant to Utah Code § 63G-2-302(2)(d). Mr. Parks appealed the decision.

Mr. McDonough briefly outlined another administrating and enforcing statute including, but not limited to, Title 13, Chapter 11 of the Utah Code, the Utah Consumer Sales Practices Act. Commerce is bound by the terms and authority granted under the CSPA. Commerce may not publicly disclose the identity of a person investigated unless the identity has become a matter of public record in an enforcement proceeding or has consented to public disclosure pursuant to Utah Code § 13-11-7(2). Mr. McDonough assured the Committee and Mr. Parks that an investigation was accomplished; however, the report is not subject to be disclosure because of the CSPA statute of limitations.

Testimony-Petitioner

Mr. Parks addressed the statement of fact provided by the Respondent, by listing each page number and paragraph and providing a counter argument. Mr. Parks saying began that a complaint was filed with OSHA and the Federal Trade Commission but he was told to file with Consumer Protection Division. He argued the "Subject Company" is public and Utah Code § 13-11-7(2) is not applicable in this case, in fact, the company has two known complaints on Angie's List.

Mr. Parks alleged there was no investigation accomplished and he wants to see the final report. He wants to know how the investigator concluded, based on evidence provided, that the company did not violate Utah Code §s. In Mr. Parks's opinion, the "Subject Company," Triple AAA, violated a list of Utah laws and, in his opinion, Mr. Pitts did not perform a full investigation. Triple AAA responded to the Dept. of Commerce, but not to the allegations, it was only in legalistic response Mr. Pitts accepted the response and closed the case. Without investigating. Mr. Parks is requesting the final investigative report be sanitized and that he be provided a copy.

Testimony-Respondent

Mr. McDonough commented there are several reasons the investigative report was not disclosed by Commerce. The administrative law judge (ALJ) affirmed the denial because the records were classified as protected and private. In addition, the records fall squarely on statutory provision found in Utah Code § 13-11-7. The Division is charged with enforcing the instructive and controlling statute pursuant to Utah Code § 13-11-7(1). Mr. McDonough summarized Utah Code § 13-11-7 to the Committee and stated the report referenced names and addresses of third-party witness and Title 13 prohibits the disclosure of the report.

The Chair inquired if Commerce could redact the information and not disclose the identity of the person(s). Mr. McDonough explained redacting would not serve the purpose because it is a specialized business entity and has a niche in the market that would be easily identifiable. If the report was released the public would know which company had a complaint lodged against it. In addition, what would prohibit Mr. Parks from writing in the name of the company and then post the report publicly. The Committee does not have the authority to impose a protective order or sanction for violating a protective order only the courts do. In his opinion, redacting the information would not accomplish the results of keeping that investigative report from the public.

The Chair commented there is a quandary because the forum today is an open and public meeting, the company name has been disclosed, and the investigation complete despite Utah Code § 13-11-7. Essentially laws do not always line up. Mr. McDonough responded that the division has been respectful of the statute by not disclosing the company name. As stated before, the statute precludes the authority from publicly disclosing the company.

Committee members offered further observations; Ms. Cornwall stated that Mr. Pitts shared a letter from the company to Mr. Parks. The Attorney explained it was to provide

balance to the interest of the subject of the investigation and the complainant. Mr. Pitts conducted his duties by statute facilitating a consumer complaint. Mr. McDonough concluded Utah Code § 63G-2-305(7) is controlling, as it protects records that contain “information submitted to or by a governmental entity in response to a request for information.” Mr. Pitts’s notes reflect information that he requested and obtained from witnesses; the names were appropriately classified protected and withheld from the Petitioner. Additionally, under Utah Code § 63G-2-305(10)(d), Mr. Pitts’ notes are protected because they were “created...for administrative enforcement purposes” and the release of the notes “reasonably could be expected to disclose the identity of a source.”

Closing-Petitioner

Mr. Parks addressed Utah Code § 13-11-7(1), as Mr. McDonough used it, in a matter of public record enforcement proceeding or consented to public disclosure. The company was known publicly by the Better Business Bureau and there were two previous complaints lodged on AngiesList.com. Furthermore, Utah Code § 63G-2-201(3), Utah Code § 63G-2-201(6)(a-b), and Utah Code § 63G-2-205 suggests the Division can release the information to him because he is not an advertiser and not soliciting under Utah Code § 63G-2-201(5)(b) and (c), he is a complainant. Mr. Parks requested the final investigative report, and argues that he should receive a copy because he is not an advertiser or soliciting under Utah Code § 63G-2-201(5)(b) and (c).

Closing-Respondent

Mr. McDonough stated the investigator concluded that the company did not violate any laws. The records request made by Mr. Parks was properly denied and the records are classified by the ALJ as protected and private. More compelling is that by statutory mandate the Division would be in violation of Title 13 if the records were disclosed. In his opinion, redacting information would not serve the purpose that Mr. Parks is seeking. In conclusion, he mentioned a similar case previously before the Committee, *Truth in Advertising, INC., v. Utah Department of Commerce, Division of Consumer Protection*, Case No. 14-18, and summarized the ruling as applicable to *Richard Parks v. Utah Department of Commerce, Division of Consumer Protection*, Case No. 15-26. He argued the cases are similar enough that a contrary decision in this matter would be indirect derogation to the opinion that was entered in Case No. 14-18.

Deliberation:

Ms. Smith-Mansfield addressed the governmental entity’s comparison of Case No. 14-18 to the current Case No. 15-26. She argued the difference in Case No. 14-18 is that the governmental entity refused to either confirm or deny an investigation was done, therefore the identity of the company was protected. In this case, the identity of the company is known. There is a difficulty in that several laws crossed and in the ALJ decision Utah Code §§ 63G-2-305(10)(e-d) and -302(2)(d) were relied on. The Petitioner has received records to include a copy of the company’s response, provided by Mr. Pitts. In this proceeding, the implicit identity of the company is known and there is an acknowledgment that an investigation was accomplished. The Chair does not believe the Committee can rely on Title 13 in this case.

Mr. McDonough asked if the Committee could examine the report *in camera* and assure Mr. Parks an investigation had been accomplished, and if that would satisfy Mr. Parks.

Motion: A motion was made by Mr. Haraldsen to go *in camera* and seconded by Mr. Misner. The motion passed, 4-1. One dissent, Ms. Cornwall.

Motion: A motion was made by Mr. Misner to go back in to open session and seconded by Mr. Breshears. The motion passed, 5-0.

Ms. Cornwall raised the concern about releasing investigative reports that were not written for public consumption. In her opinion the final reports are different. She leans towards not releasing the record under Utah Code § 13-11-7(2), and Utah Code § 63 G-2-305(10).

Failed Motion: A motion was made by Ms. Cornwall to deny the request pursuant to Utah Code § 63G-2-305(10) and Utah Code § 13-11-7(2) because it is an investigative report and not written for public consumption. No Second.

Motion: A motion was made by Mr. Breshears to grant the final investigative report provided under Utah Code § 63G-2-305(10) with redactions. Amended.

Amended Motion: A motion was made by Mr. Breshears to grant the request for the final investigative report with redaction of identifying information pursuant to Utah Code § 63G-2-305(10)(d), and the name of the company investigated pursuant to Utah Code § 13-11-7(2). Mr. Misner seconded the motion. The motion passed, 4-1. One dissent, Ms. Cornwall.

Motion: A motion was made by Ms. Cornwall that the correspondence records within the investigative file should not be released because they were properly classified under Utah Code § 63G-2-305(10)(d) & (e). Mr. Misner seconded the motion. The motion passed, 4-1. One dissent, Ms. Smith-Mansfield.

5-Minute Break

Ms. Holly Richardson, Committee member, and Mr. Roger Bryner, Petitioner, were telephonically connected to the meeting at 11:00 a.m.

The Chair introduced the parties for the hearing: Mr. Roger Bryner, Petitioner, and Mr. Jeff Hunt, Attorney representing Clearfield City. The Chair explained procedures and asked the Committee members introduce themselves to the Petitioner.

III. Roger Bryner vs. Clearfield City, UT

Opening-Petitioner

Mr. Bryner asked the Committee to address the fee waiver. The statute states the governmental entity is encouraged to fulfill a records request without charge when it

determines the requesting individual is the subject of the records or an individual's rights are directly impacted. In his opinion, the latter two are applicable to his case.

He argued the city clouded the issue of public records by initially responding to his GRAMA request as if it was a criminal case under the Utah Rules of Criminal Procedure (Utah R. Crim. P. 16). The city should be ordered to produce records, segregate information for privacy reasons, and waive the fee.

Opening-Respondent

Mr. Hunt, attorney on behalf of Clearfield City, explained that the case is an access issue. The city located and provided all the records it could find to fulfill the 15 categories of records requests, and made them available with redactions when required. This was a voluminous GRAMA request and required the city to search multiple information platforms and agencies to obtain the records. The city initially responded under Utah R. Crim. P.16. In hindsight it should have responded as a normal GRAMA request. After an attempted mediation and learning curve, the city located supplemental responses and those were provided to Mr. Bryner. Mr. Bryner was provided all the information in which he was the subject of the record free of charge. He was provided radio logs, evidence logs, dash camera video, body camera video, and 83 email communications.

The fees are for records requested that are unrelated to Mr. Bryner's arrest. For example, dash camera footage, evidence logs, and radio logs outside the window of when Mr. Bryner was arrested. In Utah Code § 63G-2-203(4)(c) if one is impecunious it is up to the discretion of the city to deny the records without charge, Mr. Bryner is not impecunious and not the subject of the records.

The Chair asked for clarification if the city under Utah R. Crim. P. 16 charged for discovery. Mr. Hunt explained initially the GRAMA request was processed as discovery then after realizing the mistake the city processed it as a GRAMA request and did not charge Mr. Bryner a fee under either statute for being the subject of the records.

Testimony-Petitioner

Mr. Bryner stated the city incorrectly responded to his GRAMA request as discovery pursuant to Utah Criminal Rule 16. The response was incomplete, and focused on the records that the prosecutor intended to use at trial. He also questioned the city's statement that one of the videos was deleted. He questioned whether the video was deleted before or after the GRAMA request. Mr. Bryner commented that the city is being disingenuous and evasive and he is not satisfied with what has been produced. He wants the city be ordered to provide all documents and communications of which he is the subject.

The Chair asked Mr. Bryner if he wants all the records provided to him under discovery to be duplicated and provided under GRAMA. Mr. Bryner wants all the records pursuant to GRAMA.

Testimony-Respondent

Mr. Hunt addressed the procedural issue the city initially undertook to respond to the GRAMA request. The city originally treated the request as a parallel criminal issue and treated the request as discovery under Utah R. Crim. P. 16. After the ombudsman trained the city attorney and staff on GRAMA, the city has responded with a supplemental response and the records request processed pursuant to GRAMA.

Mr. Hunt stated the case is about a fee waiver, and Mr. Bryner did not justify his position on the fee waiver. Mr. Bryner's legal rights are not implicated, he is not the subject of the remaining documents, it is not in the public interest, and it took a lot of time and resources for the city to put the records together. The city is requesting a reasonable fee of \$33.75, because the remaining records are unrelated to Mr. Bryner, and he does not qualify for a fee waiver under Utah Code § 63G-2-203(4)(c). Mr. Hunt also points to the fact that Mr. Bryner has not identified any records the city has not provided or has withheld. Mr. Hunt concluded that the fee is reasonable and appropriate. The city acted appropriately, made available documents that it was required to, and sustained the denial for the fee waiver of a limited number of documents.

The Committee requested clarification on the procedural issues the city acted on under Utah R. Crim. P. 16 and GRAMA. Mr. Tonks outlined the events that took place and how the city rectified the discrepancy by fulfilling the records request pursuant to GRAMA and under Utah R. Crim. P. 16. Ms. Cornwall listed records requests #1, #2, #5, and #15 as being disputed for the fee waiver.

Ms. Richardson call dropped at 11:38 p.m.

Reconnected Ms. Richardson at 11:47 p.m.

Closing-Petitioner

Mr. Bryner questioned whether the city provided him everything when it searched the email database and video systems for "Bryner." The city admitted the first search was done under criminal discovery not GRAMA and therefore, he does not feel the city is being forthcoming about material that may be withheld and videos that were destroyed. He also questioned fees for material not requested or created. Mr. Bryner claimed that he is impecunious because his income level is below the poverty line. He thanked the Committee member's for their time.

Closing-Respondent

Mr. Hunt addressed the video that Mr. Bryner mentioned as being destroyed. It was explained that the surveillance cameras roll over each other after 30 days, which coincides with the records retention schedule on file. There have been no records willfully destroyed. The dash camera, body camera, and all other records of which he is the subject were provided.

Mr. Hunt concluded the closing by stating the city, in hindsight, should have treated the request as a GRAMA request; however, eventually it recognized the problem, fixed it,

and provided a supplemented response under GRAMA, free of charge. The city feels it is not unreasonable to charge a fee of \$33.75 and there is no evidence for Mr. Bryner's claim of impecuniosity. The city believed that if he wants the additional records that he be required to pay the cost for providing the records.

Motion: A motion was made by Mr. Breshears that the city has done due diligence in searching for responsive records and that all records have been provided except for those that are subject to the fee waiver request (#1, #2, #5, and #15). Denial of the fee waiver request was not unreasonable pursuant to Utah Code § 63G-2-203(6)(a). Ms. Cornwall seconded the motion. The motion passed, 6-0.

Ms. Richardson was disconnected from the meeting at Noon.

15-Minute Break for Lunch

The Chair introduced the parties for the hearing: Paul Amann, Petitioner, and Mr. Chris Pieper, attorney representing Utah Attorney General's Office (AGO). The Chair explained hearing procedures.

IV. Paul Amann vs. Attorney General's Office (AGO):

Opening-Petitioner

Mr. Amann explained that the appeal is related to a workplace harassment accusation against him that was investigated in 2014. Mr. Amann claims that the charge is unfounded. Since the investigation was finalized he has been gathering records to discover what accusations were made and by whom. On January 20, 2015, the Committee granted him records access regarding employee complaints against him, *Paul Amann vs. Department of Human Resource Management*, Case No. 15-03. After that Committee ruling the Attorney General's Office, on behalf of the Department of Human Resource Management (DHRM), appealed the decision to district court, *Utah Department of Human Resources v. Paul Amann*, Case No. 150901160.

Approximately three months ago a colleague advised him to submit a GRAMA request to his workplace, the Attorney General's Office. The AGO has provided some information but he is asking to receive the records that have not been provided or have redactions.

Opening-Respondent

Mr. Pieper commented that Mr. Amann has submitted records requests to three different entities; Department of Commerce, Department of Human Resource Management, and the Attorney General's Office. There has been a consolidation of requests among the departments to fill Mr. Amann's requests. The AGO has recognized that the departments have different interests and has tried to be sensitive by not attempting a mass coordination of records.

He addressed distinct records requests that Mr. Amann is appealing and the portions of the responses that are being appealed; #1, #10, #11 and #12 are grouped together, and #18. The AGO raises the issue of jurisdiction on #1 and #10, Mr. Pieper requested the

Committee to uphold the procedural requirements of GRAMA and consider them procedurally defective for the following reasons:

Records request #1 was “ripe” for appeal and was not appealed to the AGO chief administrative officer until well after the 30-day filing timeframe.

Records request #10, the appellant appealed to the chief administrative officer before receiving a response from the governmental entity. At this time, #10 still has not been properly appealed to the chief administrative officer. The AGO considers #1 and #10 procedurally defective and should not be considered by the Committee.

Testimony-Petitioner

Mr. Amann explained that since the first Committee ruling in his favor, *Paul G. Amann v. Department of Human Resource Management*, Case No. 15-03, the Attorney General’s Office, Department of Commerce, and Department of Human Resource Management have all intervened judicially, although only DHRM was allowed to be party to the proceeding. Mr. Amann has gone to court over records access on three separate proceedings and the court awarded him 224 pages of records that he had sought with some provisions, such as redactions and limited use for litigation procedures.

Mr. Amann summarized the latest Utah Supreme Court ruling, *Schroeder v. AGO*, Case No. 20121057, and compared it to his current appeal in front of the Committee. One distinction argued by Mr. Amann is that the records he seeks are classified private, pursuant to Utah Code § 63G-2-202, and he is the subject of the record unlike *Schroeder vs. AGO* where Schroeder was provided access to private records although he was not the subject of the record. In Mr. Amann’s opinion his records request should be granted based on the recent Supreme Court ruling.

Mr. Amann addressed the untimeliness of records request #1. He stated that Ms. Lockhart granted herself extensions to fulfill the GRAMA requests, and did not answer them in sequential order. In his judgement it would be better to bring all the appeals to the chief administrative officer at once instead of one at a time. He argued that the 30 days to file an appeal is discretionary because of the word use “may” not “shall.” The legislative use of “may” means he does not have to appeal right away or within 30 days. He summarized Section 63G-2-401 and offered his interpretation. The Chair queried about the letter dated May 22, 2015, concerning records request #1, that stated specifically that he had the right to appeal Ms. Lockhart’s decision to the chief administrative officer within 30 days. Mr. Amann stated he did receive it, but the problem is that letters were coming in every week and it did not make sense to him to appeal each one separately.

Ms. Cornwall questioned the private records released to Mr. Amann and restricting his ability to distribute them to the public or be found in contempt of a court order. Mr. Amann stated the Committee also has that authority pursuant to Subsection 63G-2-403(11)(c).

Testimony-Respondent

Mr. Pieper emphasized that the Committee must decide the jurisdiction on requests #1 and #10 as being procedurally defective. These two requests are the only ones in which Mr. Amann is the subject of the record. He is not the subject of the records requests #11, #12, and #18. Mr. Pieper explained that Ms. Lockhart initially responded sequentially as allowed in statute, and she notified Mr. Amann when each request was ripe for appeal. Mr. Amann in turn told her he would like the records as she received them. This request created the out-of-sequential order. Ms. Lockhart provided all requested records except those that pertained to the hiring of a new candidate to replace Mr. Amann.

Records requests #11, #12, and #18 dealt with the hiring of a new employee and are classified private. Mr. Amann is seeking personal notes written by the interviewer, and the statute reads that personal notes are for personal and private purposes pursuant to Utah Code § 63G-2-103(22)(b)(i) and (ix). The personal notes were not circulated or filed at DHRM, they remained in the possession of the interviewer. When the staff was asked to provide all material relating to Mr. Amann's requests the notes were provided in good faith. Another record in question is the pay chart, which was redacted because it displayed name and gross compensation of staff.

The Committee discussed the procedural issues of #1 and #10 and asked for clarification on the time-line and circumstances. A discussion continued on what records for #11, #12, and #18 were not provided to Mr. Amann. The Committee also questioned whether Mr. Amann understood that he may appeal the governmental entities' decisions within 30 days. Mr. Pieper explained that with each response Mr. Amann was provided a letter notifying him when the request was complete and ripe for appeal. Mr. Pieper clarified that "may" is discretionary; however, if the legislature used "shall" it would be mandatory for a petitioner to file an appeal and that is not feasible.

Closing-Petitioner

Mr. Amann counters Mr. Pieper's assumption that the appeal was untimely. He also feels that the out-of-order responses from Ms. Lockhart made the situation confusing. In Mr. Amann's opinion 30 days is ambiguous and it does not mean a petitioner is required to file an appeal in 30 days for each request. He argued that records were still being provided and insisted he could wait until August 10, 2015, to appeal all the decisions. He requested the Committee to disclose the records sought with the parameter that he is not allowed to provide them to anyone else pursuant to Utah Code § 63G-2-403(1)(c).

Closing-Respondent

Mr. Pieper commented that he is trying to protect the privacy of other individuals, the process of GRAMA, and the ability for employees to report workplace harassment. He summarized the records request.

Records request #18 contains records that are not merely names and gross compensation but are tied to the performance of management at the AG. Mr. Amann is not the subject of the records and they are classified protected.

Records requests #11 and #12 are about other potential employees interviewing for a job position and personal notes were handwritten in the course of the interview. The notes fall within the personal notes exemption of the statute.

Records requests #1 and #10 are procedurally defective. Mr. Pieper stated that Mr. Amann is not a layperson, procedure is the kind of thing he deals with every day and he is aware of the deadlines and the importance of meeting them. With regard to the responses by Ms. Lockhart they were explicit as to what procedures were to be taken and, in this case, he was to appeal the denial to the chief administrative officer within 30 days and he did not. These records are classified private and, if released, would pose an unwarranted invasion of privacy.

Deliberation:

The Committee decided to make a separate motion on whether requests #1 and #10 were procedurally defective.

Motion: A motion was made by Ms. Cornwall to uphold denial for record requests #1 and #10 because of procedural deficit pursuant to Utah Code § 63G-2-401(1)(a). Motion seconded by Mr. Misner. The motion passed, 3-1. One dissenting member, Mr. Breshears, and one member abstained, Mr. Haraldsen.

Deliberation:

The Committee discussed the semantics of “may” and “shall” as related to Utah Code § 63G-2-401. The majority of the Committee agreed that if the appellant decided to appeal, the appeal it must be submitted within 30 days after the denial notification. The wording is not ambiguous.

Motion: A motion was made by Mr. Misner to go *in camera* and seconded by Mr. Haraldsen. The motion passed, 5-0.

Motion: A motion was made by Mr. Misner and seconded by Mr. Breshears to go back into open session. The motion passed, 5-0.

Failed Motion: A motion made by Ms. Cornwall to uphold classification on records request #11 and # 12 pursuant to Utah Code § 63G-2-103(22) and records request #18 are appropriately classified private pursuant to Utah Code § 63G-2-302(2)(a). The motion was seconded by Mr. Misner. The motion did not pass, 2-3. Dissenting votes were cast by Ms. Smith-Mansfield, Mr. Breshears, and Mr. Haraldsen.

Motion: A motion was made by Mr. Haraldsen that the denial is upheld on records request #18 pursuant to Utah Code § 63G-2-302(2)(a). The motion was seconded by Mr. Misner. The motion passed, 4-1. Mr. Breshears cast the dissenting vote.

Deliberation:

Committee members considered the definition of the notes specific to the case and whether they are records as defined by Utah Code § 63-2-103(22) or Utah Code § 63G-2-302(2)(a).

Failed Motion: A motion was made by Mr. Breshears that the notes specific to records request #11 and #12 are personal notes and not records as defined by Utah Code § 63G-2-103(22). There was no second.

Failed Motion: A motion was made by Mr. Breshears that records requests #11 and #12 are personal notes and are a public record. The private information (names of the individuals) can be redacted pursuant to Utah Code § 63G-2-302(2)(a). There was no second.

In Mr. Haraldsen's opinion when the personal notes were put in the report they became part of the public record. Ms. Cornwall stated that despite redacting the names it would be easy to reveal the person(s) and expose the privacy of that individual.

Motion: A motion was made by Ms. Cornwall that records requests #11 and #12 are considered private records pursuant to Utah Code § 63G-2-302(2)(a). Mr. Misner seconded the motion. The motion passed, 3-2. Mr. Breshears and Mr. Misner cast two dissenting votes.

V. Approval of September 10, 2015, Minutes:

A motion was made by Mr. Breshears to approve the September 10, 2015, minutes with corrections. Mr. Misner seconded the motion. The motion passed 5-0. (See the attached documents on the Utah Public Notice Website, [SRC Minutes September 10, 2015.pdf](#)).

VI. Report on September and October Appeals:

The executive secretary briefed committee members on the following appeals:

-Scott Gollaher vs. Morgan County Attorney's Office: Mr. Gollaher appealed denial of accounting records. 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. Motion to reconsider was denied.

-Tracy Taylor submitted supplemental material demonstrating the school district raised the fee for a GRAMA request. She has no intention to appeal the district's decision.

-Misty Hitesman vs. University of Utah: Withdrawn, dispute resolved through mediation.

-Patrick Sullivan vs. Insurance Department: Withdrawn, dispute resolved through mediation.

-Dan Harrie, Salt Lake Tribune vs. West Jordan City: Withdrawn, dispute resolved through mediation.

-Patrick Sullivan vs. Utah Department of Corrections: Withdrawn, dispute resolved through mediation.

- Edgar Frye vs. Department of Human Services, Division of Aging and Adult Services:** Pending review and incomplete.
- Patrick Sullivan vs. Department of Corrections:** Parties are in mediation and the October hearing was rescheduled for November 12, 2015.
- Scott Gollaher vs. Morgan County Attorney's Office:** Petitioner is appealing access denial to five photographs.
- Patrick Sullivan vs. Insurance Department:** Parties are in mediation and the October hearing was rescheduled for November 12, 2015.
- Kurt Bailey vs. Perry City Police Department:** Petitioner is appealing access denial to records specific to his police arrest.
- Roger Bryner vs. Davis County:** Petitioner is appealing access denial of financial records of other County inmates.
- Chris McDaniel, Buzzfeed vs. Department of Corrections:** Parties are in mediation and the October hearing was rescheduled for November 12, 2015.
- Tammy Halvorson, Diamond Parking Services vs. Utah State Tax Commission:** Parties are in mediation and the October hearing was rescheduled for November 12, 2015.
- Nestor Gallo vs. Provo City Housing Authority:** Mr. Gallo is appealing access denial to Executive Director's compensation, St. Francis Project financial records, PCHA policy, and code for "net play pen" violation, and financial analysis of benefit reductions.
- John Rice vs. Utah Department of Corrections:** Mr. Rice is appealing access denial to his LEB Background Check Report.
- Denny Niumatalolo vs. Utah Transit Authority:** Mr. Niumatalolo is appealing partial access denial to a video that captured an incident that occurred March 31, 2015. UTA Board of Trustees permitted the inspection of the video and denied the request for a copy.

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

VIII. Report on Cases in District Court:

Mr. Tonks briefed committee members on the following District Court cases:

Amann v. Utah Department of Human Resources, Case No. 150904275, is in 3rd District Court. This case has the potential of being combined with the other GRAMA appeal on file in court, *Utah Department of Human Resources v. Paul Amann*, Case No. 150901160.

Utah Attorney General v. Salt Lake Tribune, Case No. 150904266, the Committee's answer has been filed by Mr. Tonks and the Motion to Intervene filed unopposed by Sheriff Cameron Noel.

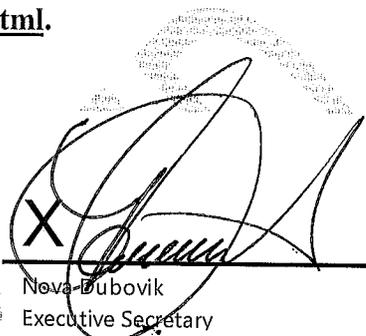
(See the attached documents on the Utah Public Notice Website, [SRC Meeting Handouts October 8, 2015.pdf](#)).

VII. Other Business:

November 12, 2015, is the next scheduled meeting. The executive secretary queried whether 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.

The October 8, 2015, State Records Committee meeting adjourned at 2:50 p.m.

This is a true and correct copy of the October 8, 2015, SRC meeting minutes, which were approved on November 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

STATE RECORDS COMMITTEE