

**SRC APPROVED**

Date *Jan 14, 2016*



State Records Committee Meeting

Location: Courtyard Meeting Room, 346 S. Rio Grande Str., SLC, UT 84101  
Date: December 10, 2015  
Time 9:05 a.m. to 1:15 p.m.

**Committee Members Present:**

Patricia Smith-Mansfield, Chair, Governor's Designee

**Absent:** Marie Cornwall, Citizen Representative

Tom Haraldsen, Media Representative

Cindi Mansell, Political Subdivision Representative

Doug Misner, History Designee

**Telephonic:** 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:**

Holly Richardson, Member

Patrick Sullivan, Petitioner

**Others Present:**

Reed Stringham, Attorney General's Office, Insurance Fraud Division

Julia Kyte, Attorney at Law, STIRBA

Armand Glick, Insurance Fraud Division

Blaine Ferguson, Attorney General's Office

Al Hartman, *Salt Lake Tribune*

Robert Gehrke, *Salt Lake Tribune*

Nate Carlisle, *Salt Lake Tribune*

Lisa Nico, KUTV

Brian Grimmett, KUER

Craig Barlow, Attorney General's Office

Catherine Taylor, Department of Human Services

Rebekkah Shaw, Utah State Archives

Rosemary Cundiff, Utah Government Records Ombudsman

Kendra Yates, Utah State Archives

Mary Siewenie, Utah State Archives

**Agenda:**

- Two Hearings Scheduled
- Retention Schedules, action item
- Approval of November 12, 2015, Minutes
- Report on Appeals Received
- Report on Cases in District Court
- Other Business
  - Next meeting scheduled for January 14, 2015, 9 a.m. to 4 p.m.
  - Review 2016 State Records Committee meeting dates

**I. Call to Order:**

Ms. Holly Richardson was connected telephonically for the meeting.

The Chair, Ms. Patricia Smith-Mansfield, called the meeting to order 9:05 a.m. and she welcomed a new member Cindi Mansell, Utah League of Cities and Town's representative, from Salt Lake City. Ms. Mansell is the current Salt Lake City Recorder.

Ms. Patricia Smith-Mansfield introduced the parties for the first hearing: Mr. Patrick Sullivan, Petitioner, and Mr. Reed Stringham, representing Insurance Department, Fraud Division. The Chair explained procedures and asked the Committee members to introduce themselves to the Petitioner.

**II. Patrick Sullivan vs. Insurance Department, Fraud Division.**

**Opening Petitioner**

Mr. Sullivan requested several records and most had been provided from the Insurance Department but with some redactions. He is arguing that the redacted records should be provided in full. Mr. Sullivan also expressed three items he wished to discuss during his 20-minute testimony regarding email search method, format, and applied fees.

**Opening Respondent**

Mr. Stringham, representing the Insurance Department, addressed the three items listed by the Petitioner. Mr. Stringham explained the department's method of electronic record searching and, in his opinion, the search process is up to the discretion of the department. He commented that Mr. Sullivan is speculating on whether the search had been thorough or not. It must also be noted that the CD format of the emails provided was driven by prison policy. The prison prohibits a large amount of paper in an inmate cell, which forced the Insurance Department to provide the material in electronic format.

Regarding the issue of fees. The Insurance Department waived a large quantity of fees for Mr. Sullivan; furthermore, it has the authority to charge fees when appropriate under the law. Mr. Stringham stated that under the circumstances it was appropriate for the Insurance Department to charge the fees.

**Testimony Petitioner**

Mr. Sullivan stated the records in dispute are pages 144 and 162. He disputed the Insurance Department's assessment that he conspired to injure a prosecution witness the

for department's reasoning for redacting the witness and victims information. He quoted Utah Code § 63G-2-308, and requested unprotected information be provided and the remainder of the record be segregated. He believed the matter in how the email search was conducted is problematic, mainly because the Insurance Department did not use Google Vault to retrieve the archived records. Google Vault is a comprehensive repository for the Department's emails. The emails Mr. Sullivan received came directly from Mr. Armand Glick's computer account and it is possible some had been deleted or missed. In addition, Mr. Glick searched his own email account, redacted information, and provided the records to Mr. Sullivan. Mr. Sullivan stated the Insurance Department's records manager should have responded to the GRAMA request not Mr. Glick.

Mr. Sullivan stated that inmates do not have access to computers and by providing the records in CD format hindered his ability to view the records. He quoted the statute Utah Code § 63G-2-201(11) as evidence his rights being severely hindered and requested the Insurance Department to either provide computer access or provide the records in paper format. He also argued that the applied fees were well above what other governmental entities charged.

The Chair asked if there is a library and computer access available in his housing unit to use. Mr. Sullivan responded that there is no library or computer station in his current housing unit.

### **Testimony Respondent**

Mr. Stringham addressed the two redacted pages. The redactions are to protect the witnesses and victims during the investigation of an allegation that Mr. Sullivan conspired to injure a prosecuting witness. The Department redacted information that identified an investigation source and possible victim. Mr. Stringham also disagreed that that email search method was not properly done. The Petitioner offered no evidence of any kind of deletion or attempt to cover up by the Department. Mr. Stringham referred the Committee to Mr. Armand Glick to provide testimony about the email search methods.

Mr. Armand Glick was sworn in.

Mr. Glick explained the method used to search his email account for records requested by Mr. Sullivan. Mr. Glick is unaware of Google Vault and is unsure where the Insurance Department's email is stored. The search method entailed filtering Sullivan's name and the content of the emails. Each responsive email was printed, scanned, converted to a PDF file, and then redacted using Adobe Professional. It took hours to process the GRAMA request; over 10,000 physical documents, and 60-70 hours of labor that was performed without a fee charge. The Insurance Department had waived the initial fee for the 900 records.

Mr. Stringham commented that Mr. Sullivan's inability to review the records is not the Insurance Department's problem. Mr. Sullivan needs to file a complaint with the Utah Department of Corrections (UDC) if he lacked the ability to view the records provided.

Initially the Insurance Department provided the 900 records in paper format and the UDC returned them and told the Insurance Department to resend the files in an electronic format. Regarding the issue of the fee. The Insurance Department established a fee schedule based on what the department believed is reasonable for records requests.

Mr. Fleming asked Mr. Glick if he was certain no emails about Mr. Sullivan had been deleted. Mr. Glick stated only irrelevant emails to a case are deleted and he would not have intentionally deleted anything in this case. Within his best recollection, no emails were intentionally deleted that were pertinent to Mr. Sullivan's investigation and relative to the work products.

Mr. Sullivan questioned the witness. He asked if it is possible that Mr. Glick could have deleted emails where Mr. Sullivan was the subject. Mr. Glick responded that it certainly is possible but none was deleted intentionally. All emails were provided based on the method used to harvest the subject matter.

The Chair questioned Mr. Glick whether he had worked with a records officer to fulfil the GRAMA request. Mr. Glick explained that the Insurance Department is located in the State Capitol building and the Insurance Fraud Division is in a geographically separate building. His office does not have an independent records officer. In his opinion, the expertise he brings to the table is the best in knowing what should be provided and redacted.

#### **Closing-Petitioner**

Mr. Sullivan stated UDC provided the four records, not addressed during his testimony, without the redactions. The only records there remains an issue is with is pages 144 and 162. Google Vault was discussed at length as to how there might still be records responsive to his request in the repository. In regard to fees, Mr. Sullivan stated that every other entity charges \$0.25 and he believed the Insurance Department fee of \$0.50 per page is too high. He is grateful for all the work the department has done redacting and reviewing the documents; however, he noted that under Utah Code § 63G-2-203(5) it cannot charge for reviewing a record to determine if it is subject to disclosure. He also argued that under Utah Code § 63G-2-203(2) he cannot be charged if it is compiling a record other than that maintained by the governmental entity. Mr. Sullivan stated he did not ask for the records to be compiled in a different format than how they are maintained and believed he should not be charged.

#### **Closing Respondent:**

Mr. Stringham stated that Mr. Sullivan has not provided any evidence that Mr. Glick inappropriately retrieved the emails from his account in lieu of using Google Vault. Mr. Sullivan's allegation that there could be more emails in Google Vault is all speculation. Mr. Glick testified that he does not delete any emails that are pertinent to a case. In this instance, it was a criminal investigation against Mr. Sullivan. In regards to the fees, the argument is moot. Mr. Sullivan has not incurred any damages or been charged \$0.50, in fact, he was charged only \$0.25, and 900 records were provided without a fee charge.

Mr. Stringham offered the disputed records for an *in camera* review and thanked the Committee.

**Deliberation:**

The Chair explained the Google Vault process, used by state agencies, and that not all agencies have accounts. In addition, the employee would know because there is a monthly charge. Generally, Google Vault is provided by the Utah Department of Technology Services and is used if the agency is prone to litigation for discovery. It saves all email independent from the account user's email and it does not matter if the user deletes because Google Vault preserves all emails intact. Mr. Fleming added that it is possible Mr. Glick is unaware he has emails stored in Google Vault.

**Motion:** A motion was made by Mr. Fleming and seconded by Mr. Misner to go *in camera*. The motion passed, 6-0.

**Motion:** A motion was made by Mr. Fleming and seconded by Mr. Haraldsen to go back in session. The motion passed, 6-0.

**Deliberation:**

The Committee discussed three issues-whether the Insurance Department used Google Vault, if the documents that were reviewed *in camera* were properly redacted, and fees. It was also discussed if each issue should be a separate motion. The Committee agreed to separate the each item and make three motions.

**Motion:** A motion was made by Mr. Fleming that the emails were properly redacted under Utah Code § 63G-2-305(10)(d). Mr. Misner seconded the motion. The motion passed, 6-0.

**Motion:** A motion was made by Mr. Fleming that there is some question as to whether Google Vault accounts for the Insurance Department exists. The Committee requested it perform a search through the vault to find any records not already produced and to provide the documents with similar redactions provided at this point. Mr. Misner seconded the motion. The motion passed, 6-0.

The Committee discussed the fees and determined Mr. Sullivan was provided with 900 records free of cost and was provided a reduced fee from \$0.50 to \$0.25 per page. Mr. Sullivan was charged \$25.50 for the remainder of the responsive records.

**Motion:** A motion was made by Mr. Fleming that the fees charged were not unreasonable and the fee waiver request is denied. Ms. Mansell seconded the motion. The motion passed, 6-0.

The Committee discussed the issue of access and format of the records provided to the Petitioner and the restraints it placed on him to view the records in electronic format. The Insurance Department first tried to produce the records in paper format and the Department of Corrections indicated it was required to produce the records on DVD. In

Mr. Fleming's opinion, this is outside the realm of the Insurance Department and a matter that the Department of Corrections needs to address.

### **5-Minute Break**

The Chair introduced the parties for the next hearing: Mr. Robert Gehrke representing the *Salt Lake Tribune*, Mr. Blaine Ferguson, representing the Attorney General's Office, and Ms. Julia Kyte, representing a third party intervenor. The Chair explained procedures of the hearing and addressed the issue of a procedural motion that will be addressed by both parties. Each party is provided 5 minutes to provide its argument.

### **III. Robert Gehrke, Salt Lake Tribune vs. Attorney General's Office (AGO)**

#### **AGO Procedural Motion is addressed.**

##### Motion for Order Implementing Certain Procedures to Preserve Confidentiality:

Mr. Blaine Ferguson, on behalf of the Attorney General's Office, addressed the motion submitted by the Attorney General's Office to implement certain procedures to preserve confidentiality in the appeal. As a rule, GRAMA requires the governmental entity when denying the request, to describe the reason the records that are being denied. However, there are certain circumstances in which the description of the records or statement of the legal authority of non-disclosure cannot be made without compromising privacy or other interests. In those situations, GRAMA prohibits the governmental entity from providing additional information in the notices of denial. Mr. Ferguson quoted Subsection 63G-2-205(a) and (b) and said the section addressed the issue at hand. He also referred the Committee to Utah Code § 63G-2-403(12) (2015). The argument is that the information is supposed to be provided. If the description does not disclose private, controlled, or protected information.

He continued to explain the federal statute and federal regulation that limit information in circumstances provided the citations do not disclose private, controlled, or protected information or information disclosed from exemption, pursuant Utah Code § 63G-2-201(3)(b). There is a comparable provision for the Committee under Utah Code § 63G-2-403(12)(a) and (b).

The Attorney General's Office outlined five requests for the Committee to order that the following procedures immediately be implemented:

1. Present all submissions to the Committee under seal.
2. Submissions be viewed only viewed by Committee members, Committee executive secretary, and Committee legal counsel and not disclosed to anyone else.
3. Counsel for the AGO shall be available to answer questions of the Committee on an *ex parte* basis in a closed hearing.
4. The Committee conducts its review of the submissions and its deliberations *in camera*.

5. The Committee only announces in the decision and order whether it agreed with the AGO denial of the GRAMA request. No other matter which is prohibited by Utah Code § 63G-2-403(12)(a) and (b) is disclosed.

In the public submission, Mr. Ferguson provided examples of the kinds of situations where this limited information denial is appropriate. Situations where there is an ongoing investigation and the risk the investigation would be compromised if disclosed. The AGO explained how even alluding to an investigation and witness exposure can compromise an ongoing investigation, if disclosed. It would be appropriate for confidentiality if the investigation were part of a statutory or judicial order of secrecy. It would be appropriate if it is a closed investigation and no charges were brought. In this circumstance, it could be because reputations and privacy would be an embarrassment. Lastly, this procedure would be appropriate if there has not been an investigation. There also are times when stating there are no records is the only way not to create a pattern that might insinuate there are records and inadvertently disclose information that is not public.

The Attorney General's Office did not acknowledge whether or not there are responsive records. Nonetheless the Petitioner, Mr. Gehrke, has engaged in some speculation and claimed the Attorney General's Office acknowledged it has conducted an investigation. The AGO asked for a confidential setting for the matter to be presented under Utah Code § 63G-2-403(12).

Mr. Ferguson referred to *Steinberg v. U.S. Department of Justice*, 1997 WL 349997 (U.S. District, District of Columbia 1997) as an example in which the court allowed an *ex parte* presentation by the government agency, and further explained why such a presentation was needed. The Attorney General's Office is requesting the ability to have all of its submissions be considered confidential because of the effect of the limiting provisions of Utah Code § 63G-2-205(2)(a) and (b) and Utah Code § 63G-2-403(12)(a) and (b) (2015).

The Chair questioned Mr. Ferguson about Utah Code § 63G-2-205(2)(a) and (b), and why the AGO declined to provide a description and a citation per GRAMA. Furthermore, the AGO also refused to provide a statement on whether or not there are any responsive records. The Chair asked the governmental entity to provide the statutory reference to back the argument because GRAMA provides for description and citation and does not contain provision on what the AGO is arguing for.

Mr. Ferguson responded that it is correct that the AGO does not acknowledge whether or not there are responsive records. The AGO feels the argument falls within Utah Code § 63G-2-205(2)(a) and to release the information, whether or not a record exists, would defeat that Subsection. The Chair clarified the records request is for a closed investigation record. Mr. Fleming requested an explanation pertaining to Utah Code § 63G-2-403(12). It was provided by the Chair.

The Committee discussed the statute and the Respondents arguments for a confidential hearing. The Committee is subject to the Open and Public Meetings Act and the AGO could not provide a statute that provided the Committee the means to hold a closed-door

hearing. The testimony, discussion, deliberation would normally be in a public forum and the AGO asked for a secret meeting to provide its evidence. In a normal meeting, the documents are reviewed *in camera* and returned to the respondent. The Committee reviewed and summarized Utah Code § 63G-2-403(12)(a) and (b).

The Chair introduced Mr. Gehrke.

**Petitioner responded to the AGO procedural motion.**

Mr. Gehrke, *Salt Lake Tribune*, stated that Mr. Ferguson's attempt to close the hearing is unprecedented. The deliberations and hearings have always been open per the Open and Public Meetings Act, and the Committee is governed by that act. Without explicit justification for a closed meeting the Committee lacks statutory authority to do so. The statute that Mr. Ferguson cited has existed in harmony with the rules and conduct of the Committee for a number of years. The Respondent does not provide a justification for a closed proceeding. The rules do not provide a mechanism for a closed proceeding. Furthermore, the statute does not provide an avenue to hold a closed hearing. Mr. Gehrke summarized two sensitive cases that the Committee held in open session and handled without compromising grand jury information or national security records-*Gehrke v. Attorney General's Office*, Case No. 13-10, and *Carlisle v. Bluffdale City*, Case No. 14-03. In recent months, the Committee heard appeals on Division of Child and Family Services records that under statute and are sealed also, without compromising information.

Why the AGO is seeking this extraordinary measure is unclear and it has not provided a justification or statutory authority, or rule, or court order, that justifies it. He summarized and argued the similarity of the *Deseret News Publishing v. Salt Lake County*, Case No. 20060454 to his appeal, and how personnel potentially could have been exposed under the Open and Public Meetings Act, but was not. The procedure to go *in camera* is to provide the confidentiality and still allow the Committee to make an informed decision.

He continued the argument against the motion stating there is no basis or legal mechanism for rewriting the rules the Committee has operated under for years. The unprecedented *ad hoc* hearing the Attorney General proposed obliterates any opportunity for a fair hearing and the *Salt Lake Tribune* cannot meaningfully participate and counter argue any points if the meeting is held *in camera*. The *Tribune* encourages the Committee to reject the Attorney General's request and proceed under the existing rules that have served the Committee well, served the public well, and protected the right of the involved parties.

Ms. Richardson asked the governmental entity why it is trying to create a new procedure. Mr. Ferguson responded that to go into more detail would divulge information and that GRAMA does not allow the AGO to go into a further explanation. She countered that the AGO has released investigative records in the past. The Committee understands the idea of *in camera* and redactions but it is not understood in the particular case why it cannot even be talked about. The response from the governmental entity was that it was not at liberty to elaborate any further.

The Chair announced it was time to consider a motion whether to go into a closed hearing. In her opinion, the Committee did not have the authority to do so. The Committee has a procedure and the Open and Public Meetings Act governs it. The Chair then recognized the third-party intervenor, Ms. Julia Kyte, and allowed her to present the argument for the motion in five minutes.

**Third Party responds to the AGO procedural motion.**

Ms. Julia Kyte, an attorney with the law firm STIRBA, representing Mr. Phil Lyman. Mr. Lyman is the subject of the records request and, unfortunately, Mr. Lyman is involved in a federal matter where there is a sentencing proceeding on December 18, 2015. The reason why that is so critical is that as Chief Parker Douglas already indicated, even the mention of an investigation can have irreparable damage to a person's reputation, particularly where there appears to be unusual media influence prior to the sentencing hearing. The attorneys for Mr. Lyman encourage Committee members to be cautious in their ruling. The firm has a different position than Mr. Gehrke. Mr. Gehrke has argued factually distinguishable cases, and the committee is to rely on those and ignore the ruling in *Steinberg v. U.S. Department of Justice*. Ms. Kyte offered statutory authority for the Committee to consider pursuant to Utah Code § 63G-2-403(9)(a)(i)(B) and (b). She summarized the law and focused on the phrase "members may not disclose any information or record reviewed by the committee in camera." Ms. Kyte then summarized the Steinberg decision as it related to the firm's position in this matter. STIRBA supports the Attorney General's Office position because whether there is a potential record or not, they believe records may not even fall under GRAMA as a public record. Mr. Lyman is a CPA (Certified Public Accountant) and has worked with hundreds of clients since the 1990s and if there was a broad investigation, or subpoena issued, it could have gathered hundreds of personal information or tax records. STIRBA proposed that the Committee review the submission *in camera* and make an informed decision in a confidential manner under Utah Code § 63G-2-403(9)(b).

The Chair inquired whether the sentencing hearing is set before a judge or jury. Ms. Kyte responded it is before a judge. The Chair asked if STIRBA's position is that if the information were to get out it would influence the judge. Ms. Kyte answered that they believe the judge will act in a fair and balanced manner; however, certain reporters of the *Salt Lake Tribune* seem to create a negative publicity against Mr. Lyman to affect a harsher sentence. It is noted by the Chair that Steinberg is a federal ruling and not applicable to the proceedings. Mr. Tonks stated that a FOIA federal case is not binding for the Committee because of the Freedom of Information Act per state.

Mr. Fleming made a point that the Committee does not have the authority to change procedures. The procedure is bound by legislature and he is not convinced by the arguments presented to change the procedure without authorization by the legislature. The Committee continued to discuss the motion and determine whether to go *in camera*. After a lively debate the sentiment is that they do not want to change the current Committee procedures.

**Motion:** A motion was made by Mr. Fleming and seconded by Mr. Haraldsen to deny the Motion of Confidentiality. The motion passed, 6-0.

Ms. Richardson disconnected telephonically from the meeting after the vote.  
The Hearing for *Robert Gehrke, Salt Lake Tribune vs. Attorney General's Office* began.

### **Opening-Petitioner**

Mr. Gehrke, filed a request for documents relating to an investigation conducted by the AGO for Mr. Lyman. He disputes the argument made by the AGO that the records are private and properly classified as investigative material and would create a clearly unwarranted invasion of Commissioner Lyman's privacy if released. There is a clear legal precedent from the courts how to handle these matters. Specifically in the recent ruling by the Utah Supreme Court, *Daniel V. Schroeder v. Utah Attorney General's Office; and Utah State Archives Records Committee*, Case No. 110917703. Mr. Gehrke summarized the case and pointed out similarities to the current appeal. The focus was directed to the investigative reports released by the AGO. He also injected *Deseret News Publishing v. Salt Lake County*, Case No. 20060454, and *Lawrence v. Utah Department of Public Safety*, Case No. 12-22, for arguing against the AGO classification under Utah Code § 63G-2-302(2)(d), clearly unwarranted invasion of privacy.

### **Opening by Respondent**

Mr. Ferguson commented that Mr. Gehrke has stated a position and he has characterized what he understands to be the AGO position; which is to protect privacy in a closed investigation. He continued that Mr. Gehrke stated the position based on speculation that he has been denied access to records because they are part of a closed investigation, and the privacy interest that created access be denied. It is incorrect to state or imply that the AGO has given such reason for its denial. The AGO has consistently stated the request is denied and cannot give any more information about why it has been denied. In an effort to be informative to the requester, and to the Committee, the AGO has provided examples of situations that would show reasons for access denial; however none have been acknowledged as a basis for the case. Since the Committee has decided not to implement procedures to protect the confidentially as requested by the AGO, the office is prevented by governing law not to disclose the information. Utah Code § 63G-2-205(2)(a) and (b), Utah Code § 63G-2-403(12)(a), and Utah Code § 63G-2-403(9)(b). These statutes are legally constrained making any further submission in the public setting impossible. The AGO respectively disagrees with the Committee's decision and will assess legal options.

### **Testimony-Petitioner**

Mr. Gehrke commented that there is not a whole lot to respond to from Mr. Ferguson's opening statement. Rather than engage in speculation he referred to the letter from Parker Douglas where there is a hypothetical denial. It stated if records existed access to the records would clearly pose a clearly unwarranted invasion of privacy. Mr. Gehrke is proceeding on the assumption that investigative records exist because of Missy Larsen's statement that there was an investigation by the AGO. In conclusion, Mr. Gehrke believed it probably would be beneficial for the Committee to review the records *in camera*, if they exist, and proceed forward.

**Testimony-Respondent**

The Respondent had nothing further.

**Closing-Petitioner**

Mr. Gehrke expressed that the case is on principle. It is a public official who holds the public trust, who has had allegations made about the manner he conducted himself to the citizens of San Juan County. There was an investigation done at the AGO. It has been acknowledged it was completed and closed by the AGO spokesperson, Missy Larsen. It would behoove the Committee to weigh the public interest and public trust as the *Deseret News* and Schroeder cases directed and find in favor of *Salt Lake Tribune*. He addressed the point brought up by STIRBA that the reporters are trying to influence the sentencing outcome on December 18, 2015. In his opinion, it is speculative, because the judge must adhere to those sentencing guidelines and presentencing report from back in July 2015. Recommendations for sentencing have already been made. If the Committee does rule in his favor there is a 30-day appeal period in which the AGO has already alluded to its intention to appeal to District Court.

**Closing-Respondent**

The Respondent had nothing further.

**Third-Party Argument:**

Julia Kyte, attorney for Phil Lyman, stated it is Mr. Lyman's request that the Committee uphold the AGO access denial under Utah Code § 63G-2-403. Mr. Lyman is concerned that his role as CPA, and the privacy of his clients, would be compromised if the records were released. The earlier argument was summarized, and the court cases Mr. Gehrke referred to in his opening statement acknowledged as factually distinguishable. It is reiterated that the Committee, if it goes *in camera* to review the records, its members do not disclose any information as outlined under Utah Code § 63G-2-403(9)(b). In conclusion, the third-party intervenor asked the Committee to act fairly and within the legislative intent maintaining the confidentiality and uphold any access denial.

**Motion:** A motion was made by Mr. Fleming, and seconded by Mr. Misner, to go into a closed session to review potential records *in camera*. The motion passed, 5-0

Mr. Ferguson stated, that for the reasons he expressed earlier, he had no responsive records to submit to the Committee for an *in camera* review. The Chair announced there is nothing to review in closed session; therefore, there are no responsive records to review *in camera*. The governmental entity is supposed to bring the records but there are no records to submit to the Committee at this time. The question to the governmental entity is would records be available to submit to the Committee to review *in camera* aside from today? Mr. Ferguson emphasized the question will not be answered. The Committee discussed the issue that the governmental entity is not stating whether or not there are records. The members agreed a decision must be made to allow the parties to appeal to District Court.

**Motion:** A motion was made by Mr. Fleming, and seconded by Mr. Misner, for the governmental entity to produce records responsive to the request. The motion passed, 5-0.

The Chair stated for the record that the intent of GRAMA is to establish a process for records are to be seen by the public and when they are not to be seen by the public. It does not in any way establish whether a records existence can be kept secret. The public records management law also reinforces that one cannot say that a record's existence is secret unless there is some other provision or statute. The Committee continued a light discussion then closed the hearing and sauntered for lunch.

### **15-Minute Break for Lunch**

#### **IV. Approval of Retention Schedules:**

**State Agencies:** Ms. Rebekkah Shaw presented five retention schedules for the Department of Human Services, Office of Social Services.

59944-Client profile records. Retain 7 years after client leaves the center. It is an archived record because there is a great interest in how people are treated and cared for under state care. Researchers need basic information for researching state hospitals, mental health institutions, and prisons.

28760-Consent records. Retain 7 years and then destroy

28767-Incident reports. Retain 2 years.

26523-Liability prevention case files. Retain 2 years.

27942-Treatment logs. Retain 4 years

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

**State Agencies:** Ms. Shaw presented one schedule for the Department of Natural Resources, Division of Oil, Gas, and Mining.

28764-Utah mining oral histories. Retain in Office for 1 year

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

**State Agencies:** Ms. Shaw presented three schedules for the Board of Pardons and Parole.

80134-Criminal History case. Retain 30 years after parole is terminated.

14829-Hearing Recordings. Retain 30 years after parole is terminated.

20374-High-profile criminal history case files. Retain 30 years after parole is terminated.

**Motion:** A motion was made by Mr. Fleming, and seconded by Ms. Mansell, to approve the proposed retention schedules. A vote was unanimous, 5-0.

**Utah State General Records Retention Schedule:** Ms. Shaw presented five series for Fixed Asset Records, Administrative Records, Motor Vehicle Maintenance, and Operations Records.

(Item 4-6) Fixed Asset Records

Mr. Fleming questioned when the flexible retention starts-at date of purchase, depreciated, or the date it goes out of use. Ms. Shaw responded that information was in the schedule but did not make it on the final document and will be added before finalizing. Ms. Mansell would like clarification on the flexible schedule requirements because as currently written is noncommittal. It needs to be stated in the wording where the range should fall. Mr. Fleming asked whether it could be specified that without a designated period between 5-10 years it would default to 10 years. The Committee decided that for all flexible schedules there should be a default if a specific timeframe is not chosen by the governmental agency. Suggested wording by Mr. Fleming “in the absent jurisdiction, specification the longer retention applies.”

(Item 1-79) Executive committee records

(Item 1-78) Internal committee records

(Item 1-77) Permit and licensing records

(Item 9-13) Public transit records

Ms. Mansell brought up a concern about the wording “the disposition of asset,” and questioned the use of asset. How is it being used and could a better word be used in its place. The wording was removed because it was defined in a different section of the schedule.

**Motion:** A motion was made by Mr. Fleming, and seconded by Mr. Misner, to approve general schedules as amended. A vote was unanimous, 5-0.

**Motion:** A motion was made by Mr. Fleming, and seconded by Mr. Haraldsen, to implement a rule that states: when a flexible schedule is applied from the general schedule that the jurisdiction must specify the retention period or default to the longest retention period allowed under the schedule. Motion passed, 5-0.

#### V. Approval of November 12, 2015, Minutes:

A motion was made by Mr. Haraldsen to approve the November 12, 2015, minutes. Mr. Misner seconded the motion. The motion passed 4-0. One member abstained, Ms.

Mansell. (See the attached documents on the Utah Public Notice Website, [SRC Minutes November 12, 2015.pdf](#)).

## **VI. Report on November and December Appeals:**

The executive secretary briefed committee members on the following appeals:

- **Ramon A. Somoza vs. Utah County Attorney's Office:** On November 23, 2015, Mr. Somoza filed a Motion to Reconsider. A courtesy response was sent on November 24, 2015, to notify him in the statute there is no method to appeal the Committee order or decision for reconsideration. The only method of appeal is to the District Court. Utah Code § 63G-2-404.

- **Barbara Anderson vs. Salt Lake County Aging & Adult Services:** Incomplete appeal.

- **Ramon Somoza vs. West Valley City:** Mr. Somoza courtesy copied the Committee on a Motion to Reinstate a 30-day filing date from West Valley City. The requester claimed West Valley City's denial letter was dated September 30, 2015, postmarked October 5, 2015, and not received until November 27, 2015. As a result, Mr. Somoza missed the filing deadline to appeal the denial to the Committee. The Petitioner did not send any appeal material or evidence for the claim to the Committee.

- **Cory Vonberg vs. Iron County Attorney's Office:** Mr. Vonberg is appealing an access denial to an investigative report written on or about November 30, 2003. The County insists the report does not exist and has provided Mr. Vonberg with all public records in the case file. In addition, the attorney's office suggested Mr. Vonberg submit a GRAMA request to Iron County Sheriff's Office. The Chair and Mr. Misner reviewed and declined a hearing pursuant to R35-2-2(2). The petitioner's statement did not provide sufficient facts, reasons, and legal authority in support of the appeal, that the record was maintained by the governmental entity at one time, or that the governmental entity has concealed, or not sufficiently or improperly searched for the record. In addition, the executive secretary reviewed the Commission's minutes and noted the Sheriff's Office stated the case file was destroyed according to the retention schedule.

- **William Sherratt vs. Board of Pardons and Parole:** Mr. Sherratt is appealing the access denial of dissenting opinions of board members; who filed court documents in his file; answer and memo for case #060907262; identity of person in hearing; and the investigative reports from Iron County. On August 12, 2015, Mr. Sherratt was notified the notice of appeal was incomplete and to send required material within two weeks. On December 7, 2015, Mr. Sherratt sent additional paperwork for the original appeal on August 10, 2015. It is outside the appeals timeline to process, pursuant to Utah Code 63G-2-403(1)(a). The Committee Chair recommended re-examining this case before declining a hearing.

- **Azlen Marchet vs. Crime Lab (Unknown Governmental Entity):** Mr. Marchet is appealing an access denial to his serology toxicology DNA results. The notice of appeal does not include the original GRAMA request, governmental denial letter, or appeal to chief administrative officer. At this time it is unclear which governmental entity denied access to his request. The Petitioner was notified of the incomplete appeal.

- **Leslie Chessman, Hepworth Murray & Associates vs. Utah Department of Human Services, Division of Child and Family Services:** Ms. Chessman is appealing an access denial to an investigative file. The Petition was notified of the incomplete appeal.
- **Jordanelle Special Service District vs. Utah State Auditor:** Ballard Spahr, LLP, on behalf of Jordanelle Special Service District is appealing an access denial to records.
- **Annie Knox, Salt Lake Tribune vs. Eight separate higher education institutions:** The Attorney General's Office is conversing with the institutions to recommend combining all the appeals and have one attorney represent the governmental entities to save on resources and time.

At this time, there are ten potential hearings scheduled for January 14, 2016, and ten scheduled for February 11, 2016. (See the attached documents on the Utah Public Notice Website, [SRC Meeting Handouts December 10, 2015.pdf](#)).

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

Mr. Tonks briefed Committee members on the following district court cases:

*Salt Lake City v. Jordan River Restoration Network*, Case No. 100910873, and the two-day trial held December 3<sup>rd</sup> and 4<sup>th</sup> on the issue of fee waiver. The decision from District Court on this case is the denial of a fee waiver request is reasonable. The issue morphed a little from what was before the Committee in that when Salt Lake City was before the Committee, city policy was to deny all fee waiver requests, which the Committee found unreasonable. Salt Lake City has since changed that policy and does grant fee waiver requests, but still put on evidence of other grounds for denying this request, which the judge found reasonable. (See the attached documents on the Utah Public Notice Website, [SRC Meeting Handouts December 10, 2015.pdf](#)).briefed decision.

#### **VIII. Other Business:**

**-January 14, 2016, is the next scheduled meeting.**

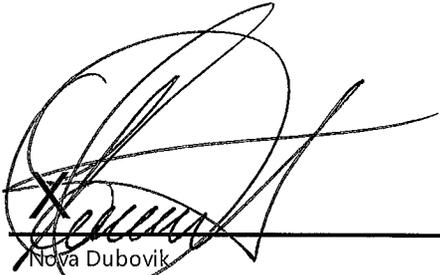
**-Review 2016 State Records Committee meeting dates:**

The Chair asked the members to review the proposed schedule so that it can be approved in January 2016.

The executive secretary queried whether a quorum will be present for the next meeting; Ms. Richardson will participate physically at the January meeting.

The December 10, 2016, State Records Committee meeting adjourned at 1:15 p.m.

**This is a true and correct copy of the December 10, 2015, SRC meeting minutes, which were approved on January 14, 2016. An audio recording of this meeting is available on the Utah Public Notice Website at <http://www.archives.state.ut.us/public-notice.html>.**



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Nova Dubovik  
Executive Secretary

*[Faint, large, diagonal watermark text, possibly reading "SECRET" or similar]*