

SRC APPROVED
Date Mar. 17, 2016

State Records Committee Meeting

Location: Courtyard Meeting Room, 346 S. Rio Grande Str., SLC, UT 84101
Date: February 11, 2016
Time 9:00 a.m. to 2:45 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

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:

Reginald Williams, Petitioner

Others Present:

Bridget Romano, Attorney General
Helen Redd, Attorney, Petitioner
Amanda Mendenhall, Attorney
Blaine Ferguson, Attorney General
Kevin Bolander, Department of Public Safety
Michael Clára, Salt Lake County School Board, Petitioner
Pilar Shortsleeve, Department of Public Safety
Joan Andrews, Attorney Salt Lake County School District
Annie Knox, *Salt Lake Tribune*, Petitioner
Geoffrey landward, USHE
Bill Evans, Attorney General, Higher Education
Karen Clemes, Utah Valley University
Tim Vitale, Utah State University
Allison Hess, Weber State University
Maria O'Mara, University of Utah
Joel Campbell, Brigham Young University
Jenny Erazo, Utah State University
Melissa Frost, Utah Valley University
Michael Carter, Attorney General, Dixie State University
Morris Haggerty, Attorney General, Higher Education
Lori McDonald, University of Utah
Barbara Snyder, University of Utah
Kelley Marsden, University of Utah
Robert Payne, University of Utah

Rae Gifford, Utah State Archives
Rebekkah Shaw, Utah State Archives
Rosemary Cundiff, Utah Government Records Ombudsman
Kendra Yates, Utah State Archives

Agenda:

- Five Hearings Scheduled
- Retention Schedules, action item
- Approval of January 14, 2016, Minutes
- Report on Appeals Received
- Report on Cases in District Court
- Other Business
 - Next meeting scheduled for March 17, 2016, 9 a.m. to 4 p.m.

I. Call to Order:

Ms. Holly Richardson and Ms. Marie Cornwall were absent for the meeting.

The Chair, Ms. Patricia Smith-Mansfield, called the meeting to order at 9:00 a.m. and introduced the parties for the first hearing: Ms. Helen Redd, Petitioner, and Mr. Blaine Ferguson, representing the Office of the Attorney General. The Chair explained procedures and asked the Committee members to introduce themselves to the parties.

II. Helen Redd, for and on the behalf Marc Jensen vs. Attorney General's Office

Petitioner's Opening Statement

Ms. Helen Redd, stated that her client was wrongfully denied a GRAMA request, seeking records that asserted that Marc Jensen paid no restitution in case No. 051905391. The AGO informed her that the request lacked specificity and denied it on that basis. Ms. Redd read the original GRAMA request to the Committee "*Any and all documents that would support representations of the Officer of the Attorney General at the August 23rd 2011 hearing, Jan. 30, 2012, letter to the Board of Pardons and Parole, and on any other occasion wher[e] the AG Office made statements that Marc Jensen paid no restitution in Case no. 051905391, (filed 3rd Dist[ri]ct] Utah)*"

Ms. Redd argued the GRAMA request has the elements of reasonable specificity. It contains two exact dates and two discrete circumstances requested in the document. The subject matter is a single case and the requested documents were relied on by the AGO to make statements that Marc Jensen has paid no restitution. Scott Reid was the only prosecutor from the Attorney General's Office who made the representations and wrote the letter being sought. She asked the Committee to focus on the specific language of the request.

Respondent's Opening Statement

Mr. Ferguson, representing the Office of the Attorney General, stated that this is one of three GRAMA requests that Ms. Redd submitted. The request being questioned today was denied because it was not reasonably specific. Although the other two requests are not before the Committee today, it is appropriate to mention them to provide context to the situation. Mr. Ferguson is the government records counsel for the AGO, he responds to most of the GRAMA requests. However, because of the high volume of requests and complexity, the responsibility for responding to some is delegated to others in the office. The other two requests were delegated to another attorney in the AGO. Due to an oversight, that attorney did not respond by the deadline and the requests were deemed denied. Those requests are deemed a closed matter because Ms. Redd never appealed to the chief administrative officer and the time to appeal has expired. However, even though the other two requests are closed the AGO is willing to respond if Ms.

Redd wishes to resubmit the GRAMA requests. The GRAMA requests must be stated with reasonable specificity. Mr. Ferguson concluded that he would address the claim of specificity in his testimony.

Petitioner's Testimony

Ms. Redd, stated she cannot understand how the AGO can assert that the GRAMA request is not sufficiently specific. The GRAMA request has specific dates, times, circumstances, defined scope restitution, and the case number 051905391. She believed no reasonable person could find that the GRAMA was not a specific request. Ms. Redd read the GRAMA request and argued the examples the AGO used for its position are not comparable. The issue is whether the GRAMA request was reasonably specific, and whether GRAMA was appropriately denied for a lack of sufficient specificity. Her office is asking for documents that the AGO relied on to make assertions that Marc Jenson did not pay restitution. She is asking for the documents that Attorney Scott Reid selected and relied on to substantiate the AGO claim.

Respondent's Testimony

Mr. Ferguson stated that when the Petitioner read the request to the Committee she characterized it differently. He argued that the Petitioner glossed over the written portion of the GRAMA request "any other occasions" and that statement is not reasonably specific. Now if Ms. Redd, requested the prosecutor's hearing file then she could see what evidence the prosecutor had ready to present at the hearing. That could possibly provide the evidence relied on for that specific hearing, but that is not what she asked for. She asked for all documents that the AGO used that would support its position. In a case, there are voluminous documents of which a particular hearing is one slice in time. When the office is asked for all documents that supported its position it would have to gather all Marc Jenson records that were marked restitution, to include those records that support or do not support the position of restitution. The request asked for all documents that support the AGO position of restitution and that requires an analysis of all documents and GRAMA does not require the office to go through that process.

Petitioner's Closing Remarks

Ms. Redd restated that the request contained sufficient specificity to locate records.

Respondent's Closing Remarks

Mr. Ferguson explained that specificity was needed for the AGO to respond to the request and, as written, the GRAMA request was ambiguous.

Deliberation

The Committee discussed that more communication between the parties is central to understanding what the Requester was asking for and to provide the specificity the AGO required.

Motion: Mr. Haraldsen made a motion that the Petitioner's request was reasonably specific according Utah Code § 63G-2-207(7)(b) and should be fulfilled with a good faith effort. Mr. Fleming seconded the motion. The motion passed, 5-0.

Five-Minute Break

Other Business

III. Approval of January 14, 2016, Minutes:

A motion was made by Mr. Fleming to approve the January 14, 2016, minutes, with the corrections provided on page 13 to change "Mr. Mansell to Ms. Mansell." Mr. Haraldsen

seconded the motion. The motion passed 5-0. (See the attached documents on the Utah Public Notice Website, [SRC Minutes January 14, 2016.pdf](#)).

IV. Retention schedules.

Utah State General Records Retention Schedule: Ms. Rebekkah Shaw presented three series for Child and Family Services.

(Item 1-34) Family case records.

(Item 1-1) Client case files.

(Item 1-27) Foster parent provider eligibility files.

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

The Chair introduced the parties for the next hearing: Mr. Michael Clára, Petitioner, and Ms. Joan Andrews, representing the Salt Lake City School District. The Chair explained procedures and asked the Petitioner and Respondent to introduce themselves for the record.

V. *Michael Clára vs. Salt Lake City School District*

Petitioner's Opening Statement

Mr. Clára, member of the Salt Lake City School Board, stated that he filed five GRAMA requests and received five denial responses from the Salt Lake City School District.

The Chair requested clarification whether he is claiming to be a "person" making a GRAMA request. Mr. Clára responded that he is not seeking records under GRAMA as a member of the public but as an elected official.

Mr. Clára continued that during his first three years on the board, the GRAMA requests submitted were granted when he requested information in order to cast a vote on budgetary issues. He summarized sharing records under Utah Code § 63G-2-206, and pointed out that it states records can be shared among governmental entities and elected officials. In addition, as an elected official he should not have to pay to receive records that are needed to make legislative decisions. This creates a barrier for him to perform official duties when records are not provided and he is required to pay a fee. Mr. Clára feels he is entitled to the records and the information in order to perform his elective duties.

Respondent's Opening Statement

Ms. Andrews, Attorney for Salt Lake City School District, stated the issue is that the district has the right under GRAMA to treat Mr. Clára as a member of the public. He has not shown anything to the contrary that he is requesting on behalf of the school board. The Salt Lake City School District has complied with the requirements of GRAMA. Mr. Clára referenced his status as an elected official, but nowhere in GRAMA does it state that an elected official has special rights or access privileges under the law. The definition of elected official provides that officials cannot disclose private or protected information. There is no general right of access by elected officials. In the records sharing provision (Utah Code § 63G-2-206), it speaks specifically in terms of the legislature. The core of the issue is that the district believes it has the right to treat GRAMA requests made by Mr. Clára just as it would treat a request made by any other member of the public. Mr. Clára has not shown anything to the contrary in his argument.

Testimony Petitioner

Mr. Clára referred the Committee to the Salt Lake City School District's position statement and addressed the issues presented during the Respondent's opening statement. He summarized the contents emphasizing how the district, prior to 2015, responded to his GRAMA requests. At that time, the district made attempts to streamline the process of providing him with documents that he was not entitled to review pursuant to GRAMA, but which he could nonetheless receive and review as a member of the Board of Education pursuant to Board policies. Now, the district has changed its policy and he does not have the ability to access information through GRAMA even though that is the only avenue he has to ask for information to make policy decisions.

He contested the argument by the Respondent that he should not be granted a fee waiver because he is not acting on the behalf of the board. Mr. Clára stated he is seeking information in order to take action as member of the board and vote to make policy. He summarized the big picture issues between the board and district and the difficulties accessing information in order to make policy and vote appropriately on important issues.

Testimony Respondent

Ms. Andrews outlined the five specific GRAMA requests. In preparing the material for the Committee and reviewing the denials and the appeals it appeared to her that two appeals are untimely. Requests #3 and #4 were submitted outside the 30-day window to appeal the chief administrative officer's denial. The appeals are not properly in front of the Committee for consideration. The remaining appeals involve two with fee waivers (#2 and # 5), and one appeal on records access (#1).

She addressed the big picture issues stating it is not a problem if Mr. Clára elects to use GRAMA it is his right and prerogative. It is also the district's prerogative to respond as required by GRAMA-and within the constraints and parameters set forth within the law. It is the district's position that the plain language in the law simply does not give Mr. Clára the right that he is asserting in front of the Committee.

On the issue of fee waiver, the governmental entity may grant a fee waiver. However, the voluminous requests dealt with a lot of computer programing. The way the GRAMA request for documentation involving the Horizonte Alternative High School (#5) was worded was so incredibly broad that it was getting into electronic discovery. Thousands of documents had to be reviewed and narrowed down to find the documents were relevant and responsive to the request. There is a lot of intense work, analysis, and segregation that is recognized by GRAMA as being an appropriate cost for the governmental entity to try to recoup. There is no compelling reason why the fee waiver should be granted under the circumstances noted. The request relating to #1, access was denied because of attorney-client privileges. Ms. Andrews closed by stating all issues have been addressed and that she would be happy to answer any questions.

Petitioner's Closing Remarks

Mr. Clára restated his argument that as a board member he should have access to the records without having to go through GRAMA, but since the district will not provide the records GRAMA is the only alternative.

Respondent's Closing Remarks

Ms. Anderson remarked the district will follow the procedures under Utah Code § 63G-2-204(5) and (6). Mr. Clára is more than welcome to ask and submit requests for information under the board policy to get the information he needs; however, if he is going to make GRAMA requests the district will respond under GRAMA.

Deliberation

The Committee discussed and agreed that Mr. Clára was not requesting records for and on behalf of the Salt Lake City School Board and therefore he is considered a “person” under the definition in GRAMA, pursuant to Utah Code § 63G-2-103(17). More discussion ensued about record sharing between the governmental entities, however that was outside the Committee’s jurisdiction. The Committee agreed to segregate the requests and make motions on the fee waiver, records classification, and whether two of the appeals were untimely.

Motion: Ms. Mansell made a motion that it was not an unreasonable denial of a fee waiver by the governmental entity, pursuant to Utah Code § 63G-2-203(6)(b). Mr. Haraldsen seconded the motion. The motion passed, 5-0.

Mr. Tonks recommended the Committee to review the records in request #1 *in camera* by passing them among members without discussion. If discussion is needed then the Committee can go into closed session. The Committee reviewed record request #1 *in camera* with no discussion.

Motion: Mr. Fleming made a motion that the record was properly classified as protected under Utah Code § 63G-2-305(17) and (18). Mr. Misner seconded the motion. The motion passed, 5-0.

Motion: Mr. Fleming made a motion that appeals #3 and #4 are untimely are therefore were not jurisdictional. Ms. Mansell seconded the motion. The motion passed, 5-0.

VI. Azlen Marchet vs. Utah Department of Public Safety, Bureau of Forensic Services

Mr. Marchet, Petitioner, was unable to be connected telephonically because Gunnison Prison went into lockdown. Mr. Kevin Bolander, representing the Department of Public Safety, was available and the Committee determined the hearing could be accomplished by written testimony submitted by the Petitioner.

Respondent’s Opening Statement and Testimony

Mr. Bolander, representing the Department of Public Safety, stated the record the Petitioner is seeking does not exist. The Petitioner requested results from the testing of the sexual assault evidence kit (SEAK). The evidence in the kit was collected in 2003. The law enforcement agency holding the kit submitted it to the Bureau of Forensics Services on September 18, 2015. The kit has not been tested and is among approximately 500 other SEAKs that await testing. It is estimated it will be tested in approximately one year, if funding is provided. It can be tested sooner with a court order. Furthermore, the Petitioner’s name is not associated with the kit at this time, and the SEAK is classified protected.

Deliberation

Committee concluded there is no evidence that the record exists.

Motion: Mr. Haraldsen made a motion that no records exist and there is no requirement for the government entity to create a record under Utah Code § 63G-2- 201(8)(a). Mr. Fleming seconded the motion. The motion passed, 5-0.

Five-Minute Break

VII. Retention Schedules:

State Agencies: Ms. Kendra Yates presented two schedules-one for the Governor, Office of Economic Development; and the other for the Labor Commission, Labor and Anti-discrimination Division.

Governor. Office of Economic Development. Retain 10 years.
28800-Audit work papers.

Labor Commission/Labor and Anti-discrimination Division
28757-Employment of minors investigation file. Retain 10 years.

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

CANCELLED: Attorney General's Office, Civil Department. State Agency Counsel
28798- Legal counsel records for the Department of Human Services. Retain 10 years.

VIII. Report on Cases in District Court:

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

Perry City v. Kurt Bailey, Case No. 150100150, is in First District Court. An appeal from the Committee's decision regarding release of dash camera video from a Perry City police vehicle. Mr. Tonks attended the hearing and the parties agreed to a voluntary dismissal of the case. However, due to Mr. Bailey requesting extra language being put into the judge's order, the case will proceed.

Paul Amann v. Utah Department of Human Resources, Case No. 150904275, there is nothing to report.

Swen Heimberg v. Utah Department of Public Safety, Case No. 150904273, the Committee was not served until December 28, 2015, even though the case was filed in June 24, 2015. Mr. Tonks filed an answer on behalf of the Committee on January 19, 2016, and is waiting for the Department of Public Safety to file its response.

Robert Baker v. Utah Department of Corrections, Case No. 150903610, is in Third District Court. Counsel for Corrections is seeking dismissal for failure to serve the parties. Mr. Baker filed late and the Committee did not receive a copy until December 31, 2015.

Salt Lake City v. Jordan River Restoration Network, Case No. 100910873. The Jordan River Restoration Network filed an appeal on January 29, 2016, indicating that it intends to have the District Court's decision reviewed by either the Utah Court of Appeals or the Utah Supreme Court.

The Chair introduced the parties for the next hearing: Mr. Reginald Williams, Petitioner, and Mr. Blaine Ferguson, representing the Attorney General's Office. The Chair explained procedures and asked the Petitioner and Respondent to introduce themselves for the record.

IX. *Reginald Williams vs. Attorney General's Office (AGO)*

Attorney General's Office Procedural Motion is addressed.

Motion for Order Implementing Certain Procedures to Preserve Confidentiality:

Mr. Ferguson, on behalf of the Attorney General's Office, stated that this motion for procedures is somewhat different from the last one before the Committee (*Gehrke vs. Attorney General's Office*, Case No. 15-34). The AGO requested the opportunity to present the Committee with the records under seal but with no argument. When a governmental entity is denying a GRAMA request, there are certain circumstances in which the statute prohibits it from providing additional

information in its notice of denial. That prohibition applies when disclosing the description of requested records or stating the legal authority for nondisclosure or a record will compromise privacy or other interest, or violate the other law, pursuant to Utah Code § 63G-2-205(2)(a)(b) and Utah Code § 63G-2-403(12). This motion pertains to one part of Mr. Williams's GRAMA request. The AGO would like to present the reasons to the Committee without disclosing information pursuant to Utah Code § 63G-2-403(9)(b) and (12)(a)(b).

Mr. Williams objected to the motion and provided the following reasons. There is no Committee rule governing this situation and contrary to AGO's argument. In addition, it is a similar argument as was made in the earlier *Gehrke v. Attorney General's Office* ruling, and the Committee rejected that earlier motion. The AGO is stating it does not want to be in a position to say it has responsive records with the Petitioner not present to challenge the validity of the statement. Mr. Williams asserted the information he is asking for is in the public domain.

The Committee acknowledges the differences between the two confidentiality motions but, on principle, it is similar. In this circumstance the AGO requested to present the sealed records to the Committee, in the *Gehrke v. AGO* it had requested to hold an *in camera* hearing.

Motion: Mr. Fleming made a motion to deny the motion, and it was seconded by Mr. Misner. The motion passed, 4-0. Mr. Haraldsen abstained.

Petitioner's Opening Statement

Mr. Williams stated a record request regarding a public employee was submitted to the Attorney General's Office. The AGO declared the records were private and failed to disclose the appropriate citation in the law to justify the denial.

Respondent's Opening Statement

Mr. Ferguson stated that because the Committee has decided not to implement the procedures to preserve confidentiality as requested by the AGO the office is prevented by governing law, including Utah Code § 63G-2-205(2)(a) and (b) and the necessary application of Utah Code § 63G-2-403(12)(a) and (b), from submitting its evidence and arguments in support of its limited information denial of part of Mr. Williams's request in this public setting.

Mr. Ferguson was able to respond to the other requests and provide substantive arguments. First, Mr. Williams provided the office with a list of 11 named persons and asked for the employee service history available in the Human Resource Enterprise database under the "Service" tab. There was one person named on the list who the office identified as an AGO employee. In the AGO response the public information was provided to Mr. Williams. The remaining information in the database was private pursuant to Utah Code § 63G-2-302(2)(a) and (d). The other information that the tab contains includes leave accrued date, probation end date, adjusted service date, and employee ID number. None of those are within the description of public records of employees under Utah Code § 63G-2-301. The records are all properly classified as private pursuant to Utah Code § 63G-2-302(2)(a) and (d). There was another named person and the office has no responsive records for that person.

Petitioner's Testimony

Mr. Williams stated that on October 15, 2015, he submitted a GRAMA request for several AG employee service histories. All the persons listed have been publicly identified as AG employees. He submitted to the Committee a ledger of expenses for a public grant that involved the employees and claimed the record is public under Utah Code § 63G-2-201. The employees were not serving under cover at the time of the grant implementation, and they can be located on online

job search sites. Mr. Williams summarized the definition of a record under Utah Code § 63G-2-103(22). Mr. Williams seeks the original record and hire date of the identified employees. All other information that is not public information can be redacted.

Respondent's Testimony

Mr. Ferguson addressed the record provided to Mr. Williams. The request asked for the employee service history it did not ask for a print out. Mr. Williams was provided a summary that stated the employee was hired in 2009. Mr. Ferguson brought the entire record for the Committee to review *in camera*.

Mr. Ferguson continued without acknowledging whether the office has any responsive records to the part of the request other than that involving Jacob Taylor and the one person it does not have a record on. If to assume hypothetically that the records Mr. Williams wants are undercover employees under Utah Code § 63G-2-301(2)(b)(i) and (ii), then that means those records are protected and private and excluded from disclosure. There is no justification to have that information disclosed to Mr. Williams and have it within the prison system.

Petitioner's Closing Remarks

Mr. Williams stated the information that AGO released did not contain the original and current hire dates which are included on the records. None of the records that the petitioner is seeking had any information about the employees working for the state of Utah much less about employees being under cover. The information he is requesting is in the public domain because the persons are identified on the grant documentation, which is available through FOIA.

Respondent's Closing Remarks

Mr. Ferguson stated that, extending the hypothetical, Mr. Williams is incorrect in saying that a governmental entity that has undercover law enforcement personnel would need to give that information as part of its response about those personnel, pursuant to Utah Code § 63G-301(2)(b)(i) and (ii).

Deliberation

The first issue is the Jacob Taylor summary and if the AGO should provide the original copy with redacted information.

The Chair recommended that the Committee review the records *in camera* by passing them among members without discussion. The Committee reviewed the records *in camera* with no discussion.

Motion: Mr. Fleming made a motion that the record be produced regarding Jacob Taylor, with the proper redactions, specific to the name and dates of hire that is public information. Mr. Misner seconded the motion. The motion passed, 5-0.

Motion: Mr. Fleming made a motion that if the requested records exist, that they were properly classified by the Attorney General's Office as private pursuant to Utah Code § 63G-2-301(2)(b) and Utah Code § 63G-2-303(2)(a). Mr. Haraldsen seconded the motion. The motion passed, 5-0.

The Chair introduced the parties for the next hearing: Ms. Annie Knox, Petitioner, and Mr. Bill Evans, Assistant Attorney General, representing the eight colleges and universities that make up the Utah System of Higher Education (USHE). The Chair explained procedures and asked the Petitioner and Respondent to introduce themselves for the record.

X. *Annie Knox, Salt Lake Tribune vs. University of Utah, et al.*

Petitioner's Opening Statement

Ms. Knox explained that the Utah public colleges and universities have denied one portion of her GRAMA requests. If given the information it will shed light on how colleges handle violence and allegations of assaults. She is looking for trends in violence and sexual assaults at Utah higher education institutions. Allowing access to the information will do three things. First, when and how often reports of violence are referred to police. Second, it will help determine whether the school policies are evenly applied to different students, and, lastly, it will show whether a pattern of violence continues if the student transfers and if schools sanction repeat offenders. Colleges are allowed to release this information under a very specific exemption in the Federal Family Educational Rights and Privacy Act (FERPA). The law keeps student records private in almost every case but not for violent or sexual offenses. In these cases, the sanctioned student's name and penalty issued are public. The state of Utah law does not specifically prohibit the release of the information. The colleges have partially responded; however, they denied access to the names of college students who were responsible for the infraction.

Respondent's Opening Statement

Mr. Evans, representing the University of Utah, et al., stated that the issue at hand is the names of the students who have been disciplined in some way for violations of student codes related to sexual assault and violence. The institutions are doing everything they can to keep the campuses safe and illuminate this most horrible aspect of sex discrimination. However, the Respondents do not believe providing the names of the individuals that is public under FERPA, in this circumstance. There is a revision that makes it optional, but not prohibited, to release the names, although it does provide discretion. In his opinion, the law refers to students who are in the criminal justice system that are charged with a crime. It is also believed that it is a clearly unwarranted invasion of privacy and could create a deeply chilling effect on the investigation under Title IX. The results would be deeply damaging to students whose names are linked to crimes on campus, and have not had any due process.

Petitioner's Testimony

Ms. Knox stated she is seeking information only for cases that were sustained, not for outcomes where students merely were accused and no action was taken. She is also not asking for information about victims or witnesses. Only the names of students who were found responsible by the disciplinary board and the school saw fit to penalize the student.

Mr. Joel Campbell was sworn in.

Mr. Campbell, representing Utah Headliners Chapter of the Society of Professional Journalists, began by analyzing the portion of the GRAMA request that was denied to determine whether the information requested is public or nonpublic and covered by GRAMA. He believed the specific information is exempt from the federal law, FERPA, and therefore subject to GRAMA.

Mr. Campbell discussed a 1998 congressional consideration and summarized the action as it pertained to Ms. Knox's appeal. He addressed the content of the handouts he provided to the Committee for consideration on the matter. A handbook for journalists covering campus crime and related stories about how preferential treatment is sometimes provided to student athletes because the school does not want an incident to tarnish its good name. He restated that FERPA does not pertain to this GRAMA request and because it does not then it falls back to the state and GRAMA would be the legal authority.

Respondent's Testimony

Mr. Evans brought three witnesses to be sworn in. Jenny Erazo, Utah State University; Melissa Frost, Utah Valley University; and Lori McDonald, University of Utah, were sworn in.

Jenny Erazo, Utah State University, SAAVI Coordinator, is a victim's advocate who works with survivors of violent crimes. She explained the major barrier is that students do not want to report the crimes or disclose the information because it is so personal. They do not want to be viewed differently by their peers, and, because it is a small community, they do not want their names released. The Title IX reporting process allows the student to report and obtain some sense of closure to their horrible experience. The victim's name and the perpetrator's names are not released, and there is nothing identifying the person(s) involved. However, it does allow the university to identify and track the students that were involved internally and take action against those students. The victims can report a crime to law enforcement and to the Title IX office. The university also allows an anonymous reporting, which gives the university no authority to investigate. If victim's needs medical care they can go to the hospital, and that would generate a law enforcement report.

Melissa Frost, Utah Valley University, Director of the Office for Equal Opportunity and Affirmative Action, Title IX Coordinator, discussed the federal laws Title IX, SAV Act, and Clery Act. In addition, she provided a tutorial on how those laws interact with each other, promoting public safety on every college and university campus. All schools must comply with federal the Acts to support the right of students to remain anonymous. She concluded by reading a letter from an anonymous victim.

Lori McDonald, University of Utah, Dean of Students, Title IX Coordinator, addressed the broader student conduct and behavior administration process. It is a process of determining whether a student enrolled at a university has violated a university policy. If it is determined that a student violated a policy then the school remedies the situation before any more harm is done. In many regards, college is the first opportunity for students to become adults and deal with conflict and sometimes they do make poor decisions. Releasing the responsible student's names would severely impede the university's disciplinary process, which will have a negative impact on both the students involved as well as campus support generally. The process must remain private and confidential. They rely on Title IX coordinators to observe patterns, release information on the types of violations, and sanctions, but not to identify the individuals involved.

Mr. Evans concluded that providing the names would create an unwanted barrier and it would deter people who really need help from reporting. The Title IX coordinator decides how to address the situation based on the laws that are in place. It is not in the public interest to release the student's name and the request should be denied.

Petitioner's Closing Remarks

Mr. Campbell summarized an investigation by *The Columbus Dispatch* Student Press Law Center investigation of college campuses (see <http://www.dispatch.com/content/stories/local/2014/11/23/campus-injustice.html>). He does believe the *Salt Lake Tribune's* intention is to make the perpetrators feel somehow attacked or victimized. The *Tribune's* goal is to do watchdog journalism and hold schools accountable, observe trends, and ensure that students are safe. Ms. Knox wants to take the names, not publish them in the newspaper, but to go into the court database and research trends. The names are the key to performing the research.

Ms. Knox concluded that federal law allows the institutions to release the information; and furthermore, the state law does not prevent it. The *Tribune* has a long history of careful and responsible reporting. It looks into allegations all the time, which does not mean names automatically appear in the newspaper. The *Tribune* has strict standards for not naming sexual assault victims unless that person comes forward and requests that their name appear in the paper. She wants to hold schools accountable for the things they have said they are doing, such as observing trends and making sure students are safe.

Respondent's Closing Remarks

Mr. Evans stated that the Title IX coordinators, by federal law, are the ones who have the responsibility and the necessary information to make these kinds of decisions. The question of the interplay between FERPA and GRAMA is one that is ambiguous. One protects everything but a few things, and the other makes everything public except for a few things. There is a difference between criminal findings and due process. Universities are not courts and the procedures at these institutions are as much to educate and to rectify as they are to punish, or find guilt or wrongdoing. Those procedures do not provide the same criminal protections that would justify even an innuendo in a newspaper or newscast that the person has been found guilty of an assault or battery or worse.

Deliberation

The Chair commented the only way the Committee can use the weighing provision is to view the records *in camera*.

Motion: Mr. Fleming made a motion that the records are properly classified under Utah Code § 63G-302(2)(d) and Utah Code § 63G-2-305(10) and (11). Ms. Mansell seconded the motion. The motion passed, 3-2. Ms. Smith-Mansfield and Mr. Haraldsen dissented.

Motion: Mr. Haraldsen made a motion to go *in camera*. Mr. Misner seconded the motion. The motion passed 4-1. Mr. Fleming dissented.

Motion: Mr. Fleming made a motion to go back in session, which was seconded by Mr. Haraldsen. The motion passed, 5-0.

Motion: Mr. Haraldsen made a motion that the records are properly classified but under public interest be released. The motion failed.

XI. Report on November and December Appeals:

The executive secretary briefed committee members on the following appeals:

- *Calvin Johnson vs. Utah Department of Public Safety, Bureau of Forensic Services*: Incomplete appeal.

- *Lynn P. Heward, Robert J. Debry & Associates vs. Utah Transit Authority*: Incomplete appeal.

- *Patrick Sullivan vs. Utah Department of Corrections*: Appeal withdrawn.

- *Patrick Sullivan vs. Utah Department of Corrections*: Appeal withdrawn.

- *Patrick Sullivan vs. Utah Department of Human Resource Management*: Appeal withdrawn.

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- *Tammy Halvorson, Diamond Parking Services, LLC vs. Utah State Tax Commission*: Appeal rescheduled for March 17, 2016.

- *Leslie Chessman, Hepworth Murray & Associates vs. Utah Department of Human Services, Division of Child and Family Services*: Appeal withdrawn.

- *Reginald Williams vs. Attorney General's Office*: Appeal withdrawn.

- *Michael Clára vs. Utah Transit Authority (UTA)* Appeal withdrawn.

- *Michael Clára vs. Utah Transit Authority (UTA)* Appeal withdrawn.

At this time, seven potential hearings are scheduled for March 17, 2016. (See the attached documents on the Utah Public Notice Website, [SRC Meeting Handouts February 11, 2016.pdf](#)).

XII. Other Business:

-March 17, 2016, is the next scheduled meeting.

The executive secretary queried whether a quorum will be present for the next meeting; Ms. Mansell will not be in attendance.

The February 11, 2016, State Records Committee meeting adjourned at 2:45 p.m.

This is a true and correct copy of the February 11, 2016, SRC meeting minutes, which were approved on March 17, 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>.


Nova Dubovik
Executive Secretary