

State Records Committee Meeting

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

Date: June 9, 2016

Time: 9:10 a.m. to 10:18 a.m.

Committee Members Present:

Absent Patricia Smith-Mansfield, Chair, Governor's Designee
Marie Cornwall, Citizen Representative
Tom Haraldsen, Media Representative
Cindi Mansell, Political Subdivision Representative

Absent Doug Misner, History Designee
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:

Roger Bryner, Petitioner

Others Present:

Lou Theurer, University of Utah
Kelley Marsden, University of Utah
Nancy Dean, Clearfield City Recorder
Stuart Williams, Clearfield City Attorney
Rosemary Cundiff, Utah State Archives

Agenda:

- Two Hearings Scheduled
- Retention Schedules, action item
- Approval of May 11 and 12, 2016, Minutes
- Report on Appeals Received
- Report on Cases in District Court
- Other Business
 - Next meeting scheduled for July 14, 2016, 9 a.m. to 4 p.m.

I. Call to Order:

Mr. David Fleming, *Chair Pro Tem*, called the meeting to order at 9:10 a.m. and introduced the parties for the first hearing: Mr. Roger Bryner, Petitioner, and Mr. Stuart Williams, representing the City of Clearfield. Mr. Fleming asked the Committee members to introduce themselves to the parties. The hearing is a matter referred by Second District Court, Case No. 50701062: *Bryner v. Clearfield*, State Records Committee Order No. 15-27. <http://www.archives.utah.gov/src/srcappeal-2015-27.html>

II. *Roger Bryner vs. City of Clearfield:*

Mr. Bryner was telephonically connected and stated he had a jurisdictional objection to the hearing.

Mr. Fleming requested legal counsel to explain the District Court's remand to the Committee and how it should be handled. Mr. Tonks provided background information that the issue argued previously on the appeal was a fee waiver denial by the City of Clearfield. It was determined at that time that the fee waiver denial by the City was not unreasonable. Mr. Bryner filed an appeal in Second District Court on the issue of the fee waiver. The City of Clearfield requested a dismissal of the case beforehand because it granted the fee waiver; therefore, rendering the appeal moot. The records were provided by the City to Mr. Bryner in December 2015, with nonpublic information redacted. Mr. Bryner disputed the redactions and requested the District Court to give him the unredacted records. The District Court determined that issue had never been heard by the Committee and ordered the case be remanded back to the Committee to discuss the records issue access. The Court has ordered the Committee to determine whether the City of Clearfield provided all records responsive to Mr. Bryner's GRAMA request.

Mr. Tonks requested the Chair to allow the Petitioner to address the jurisdictional objection.

Mr. Bryner stated that Mr. Tonks' characterization of the hearing was wrong. The remand is not an issue of redactions. During his summary testimony in Court he had indicated to the judge that there were additional records that were not provided. Mr. Bryner stated that when this appeal was before the Committee in October 2015 the Committee ignored the access issue.

Mr. Bryner went on to explain his jurisdictional objection. He cited the law and quoted the Committee's duties and jurisdiction under Utah Code § 63G-2-404 and 408. Mr. Bryner stated he has not filed anything with the Committee and only the City has filed. His intention was to work with the Committee and City but the Committee's legal counsel and executive secretary set a hearing date disregarding his rights. In his opinion, since the Committee and the City are all defendants in an appellant case, there is a conflict of interest and questions the ability of the Committee to judge and make a decision on the appeal. He concluded by asking whether the Committee was going to provide a written decision and order.

Mr. Fleming asked counsel for point of order whether this is a regular Committee hearing. Legal counsel responded that it is a State Records Committee hearing and procedures will be followed per the statute. The Chair explained the proceedings to the parties.

Legal counsel clarified that the notice of appeal was filed August 6, 2015, and that appeal is to the decision from the chief administrative officer of the City of Clearfield, and it is the basis for the Committee's decision and order. The District Court specifically stated that it will retain jurisdiction on the case and is only remanding for the issue that all records are responsive to Mr. Bryner's request. The Committee will render written decision and order in seven business days after its decision.

Petitioner's Opening Statement

Mr. Bryner repeated his jurisdictional objection.

Respondent's Opening Statement

Mr. Williams stated the City's position is that this hearing was for the redaction issue. The prior order issued by the Committee discussed the fee waiver being upheld for the documents that were produced in December 2015. The documents provided to Mr. Bryner had some nonpublic information that was redacted. The redactions are what the City believed to be the issue remanded to

the Committee. However, based on what Mr. Bryner stated earlier what is now before the Committee is the completeness of the records in response to his July 10, 2015, GRAMA request. In response to the completeness of records, the City has provided a Declaration of the City Recorder that states that all records were provided to his July 10, 2015, GRAMA request. No other records exist.

Testimony Petitioner

Mr. Bryner repeated his jurisdictional objection. He believed the Committee is in a difficult position because it is guessing at what records are being sought since he provided no relief-sought statement to the Committee for review. Mr. Bryner stated that he was denied the ability to cross-examine the witnesses that provided the Declaration.

The Chair asked Mr. Bryner if he feels that the City has provided all the requested records. Mr. Bryner responded that he believes there are other records that have not been provided in electronic and paper format. He wants the Committee to order the City to provide the alleged records or provide a sworn affidavit that the records do not exist. He believed there is a correspondence between the City and the lab that he has not been provided. He wants everything that the City produced at his arrest on June 3, 2015.

Testimony Respondent

Mr. Williams directed the Committee to Exhibit H, the Declaration from Ms. Nancy Dean, City Recorder. In the sworn Declaration, it stated the following, "The City has produced all known paper documents responsive to Mr. Bryner's July 10, 2015, GRAMA request." That includes any known paper documents on June 9, 2015, and any other date. The City has answered Mr. Bryner's request by providing a sworn affidavit through the Declaration.

Mr. Tonks asked the City about the redacted records provided to Mr. Bryner. The City responded that the redactions were straightforward. There were records requested by Mr. Bryner that he was not the subject of the record and redactions were made to protect the unwarranted invasion of personal privacy. Mr. Williams stated that there was a dashboard camera video recording from an officer capturing his entire evening, which was produced to Mr. Bryner with the exception of one case because it involved a juvenile.

Petitioner's Closing Remarks

Mr. Bryner questioned and stated that this is the first time the City has mentioned that not all dashboard camera video was provided. He continued that this is a First Amendment grievance because the governmental entity did not provide all the responsive records, and that the Committee is guessing what is hidden behind the locked doors of the municipality. The hearing is a fundamental violation of his First and Fourteenth Amendment by not allowing him to provide evidence that the records actually exist. It is up to the municipality to declare under oath what it has--anything else is just a perversion of the law designed to shield the corruption.

Respondents Closing Remarks

Mr. Williams responded and clarified that in regard to the dashboard camera video, that it was provided in response to the July 10, 2015, GRAMA request. He did not purposely try to mislead the Petitioner. It is the complete dashboard camera video recording response to the July 10, 2015, GRAMA request, except for the redacted juvenile case. The City's sworn Declaration speaks for itself. The City has provided all known paper documents and other documents that are responsive to Mr. Bryner's July 10, 2015, GRAMA request.

Deliberation

The Chair asked if any members wanted to go *in camera* to review records. Ms. Cornwall argued against going *in camera* and instead stated that the Committee should affirm the City's legal statement--that all documents have been responsive to Mr. Bryner's GRAMA request. There has been no indication from the Petitioner that the issue is redaction. Mr. Bryner wants a legal statement that the City has responded, and the Committee needs to recognize that the City has responded.

Motion: Ms. Cornwall made a motion that all public documents responsive to Mr. Bryner's request have been provided and that the Committee is convinced there are no other records responsive to the request based upon the Declaration from the City by the City Recorder. Ms. Richardson seconded the motion. The motion passed, 5-0.

The executive secretary attempted to connect Mr. Sullivan telephonically to the Committee for his hearing. The attempt was unsuccessful and the Committee moved on to other business.

III. Approval of May 11 and 12, 2016, Minutes:

A motion was made by Mr. Haraldsen to approve the May 11 and 12, 2016, minutes. Ms. Richardson seconded the motion. The motion passed 5-0. (See the attached documents on the Utah Public Notice Website, [SRC Minutes May 11 and 12, 2016.pdf](#)).

IV. Report on Cases in District Court:

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

Roger Bryner v. Utah Department of Health, Case No. 160903244, Third District Court, filed May 23, 2016. Mr. Bryner has not serviced on any of the defendants (Dept. of Health, Dept. of Technology Services, State of Utah, Patricia Smith-Mansfield, Preston Fretas, Matt Slawson, Rosemary Cundiff, Nova Dubovik, and the State Records Committee). Mr. Bryner filed a request to waive filing fees on May 23, 2016, but then filed a request for an extraordinary *writ of mandamus* in the Utah Supreme Court against Judge James Gardner and Judge Paul Maughan regarding the fee waiver request. The Administrative Office of the Court will handle the Supreme Court case. Other matters may be on hold until there is resolution on the Supreme Court case.

(See the attached documents on the Utah Public Notice Website, [SRC Meeting Handouts June 9, 2016.pdf](#)).

The Chair readdressed a previous question raised during the motion to approve the May 11 and 12, 2016 minutes. The executive secretary was asked if there were any edits submitted from Committee members not present at the meeting. The executive secretary stated that no edits were received.

V. Retention Schedule:

Utah State General Records Retention Schedule: The retention schedules and policy were cancelled for review.

VI. Report on May and June Appeals:

There were two denials and two pending appeals briefed to the Committee members.

Daniel Ortiz vs. Utah Department of Corrections (UDC): Mr. Ortiz is appealing an access denial to his medical/mental health records from 2004-present day. The Chair and a second Committee member reviewed and determined that the subject of the appeal has been found by the Committee in a previous hearing involving the same governmental entity to be appropriately classified as private,

controlled, or protected under Utah Code § 63G-2-403(4)(b)(i). See Decision and Order, *Watkins v. UDC*, Case No. 99-02. <http://archives.utah.gov/src/srcappeal-1999-02.html>

Raymond Valdez vs. Utah Department of Corrections (UDC): Mr. Valdez is appealing an access denial to his Mental Health notes and Evaluation. The Chair and a second Committee member reviewed and determined that the subject of the appeal has been found by the Committee in a previous hearing involving the same governmental entity to be appropriately classified as private, controlled, or protected under Utah Code § 63G-2-403(4)(b)(i). See Decision and Order, *Watkins v. UDC*, Case No. 99-02. <http://archives.utah.gov/src/srcappeal-1999-02.html>

Kevin Berry vs. Utah Department of Corrections (UDC): Mr. Berry is appealing a partial access denial to his psychological evaluations, all medications prescribed, housing unit staff comments, clinical evaluations, therapists comments and notes, communications Attorney General's Office to UDC staff from June 1992 to February 2016.

The Committee will not be able to hear the records denial of the psychological evaluations. This subject has been found to be appropriately classified (see Decision and Order, *Watkins v. UDC*, Case No. 99-02); however, the remaining requested records have not come before the Committee. It is the recommendation of the executive secretary to grant a hearing for the remaining records access denials. The Committee unanimously granted the Petitioner a hearing for the remaining records access denials.

Al Coggeshell vs. Utah Department of Corrections (UDC): Mr. Coggeshell is appealing an access denial to records related to Incident Report #307342. Petitioner did not file a notice of appeal with the executive secretary no later than 30 days after the date of issuance on April 19, 2016, of the decision being appealed per Utah Code § 63G-2-403(1)(a). The appeal is untimely to the executive secretary by seven days as it was received May 26, 2016.

The Committee did not grant the Petitioner a hearing due to the untimeliness of the filed appeal pursuant to Utah Code § 63G-2-403(1)(a). See *Lambourne v. Provo City*, Case No. 160901346, <http://www.archives.state.ut.us/src/Lambourne-v-Provo.pdf>

The executive secretary mentioned that ten potential hearings are scheduled for July, five in August, and one in September. (See the attached documents on the Utah Public Notice Website, [SRC Meeting Handouts June 9, 2016.pdf](#)).

VII. *Patrick Sullivan vs. University of Utah, Medical Center:*

The caseworker contacted the executive secretary and relayed that Mr. Sullivan would not be able to attend the hearing due to a Temporary Restriction Order. The appeal will be rescheduled for August 11, 2016.

Motion: Ms. Richardson made a motion for a continuance to provide the Petitioner the opportunity to testify, present evidence, and comment on the issues pursuant to Utah Code § 63G-2-403(8). Ms. Cornwall seconded the motion. The motion passed, 5-0.

VIII. Other Business:

-July 14, 2016, is the next scheduled meeting.

The executive secretary queried whether a quorum will be present for the next meeting; Ms. Cornwall's last attendance will be July 14, 2016.

SRC Minutes June 9, 2016

The June 9, 2016, State Records Committee meeting adjourned at 10:18 a.m.

This is a true and correct copy of the June 9, 2016, SRC meeting minutes, which were approved on July 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>.



X
Nova Dubovik
Executive Secretary

APPROVED