

State Records Committee Meeting

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

Date: August 11, 2016

Time: 9:05 a.m. -2:46 p.m.

Committee Members Present:

Patricia Smith-Mansfield, Chair, Governor's Designee

Vacant, Citizen Representative

Tom Haraldsen, Media Representative

Cindi Mansell, Political Subdivision Representative

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:

Patrick Sullivan, Petitioner

Kevin Berry, Petitioner

Reginald Williams, Petitioner

Barry Huntington, Panguitch City Attorney

Harshad P. Desai, Petitioner

Others Present:

Michael Clára, Petitioner

Mike Hogle, Utah Department of Corrections

Matthew Anderson, Assistant Attorney General

Deputy Warden Robert Powell, Utah Department of Corrections

Tom House, Utah Department of Corrections

Lonny Pehrson, Assistant Attorney General

Bill Evans, University of Utah

Scott Smith, University of Utah

David Mull, Utah Transit Authority

Michelle Larsen, Utah Transit Authority

Jerry Rogers, Utah Department of Environmental Quality

Gina Proctor, Utah Department of Corrections

Jeralyn Zimmerman, Utah Department of Corrections

Rosemary Cundiff, Utah State Archives

Rebekkah Shaw, Utah State Archives

Rae Gifford, Utah State Archives

Mary Siewiene, Utah State Archives

Agenda:

- Seven Hearings Scheduled
- Retention Schedules, action item
- Approval of July 14, 2016, Minutes
- Report on Appeals Received
- Report on Cases in District Court
- Other Business
 - Next meeting scheduled for September 8, 2016, 9 a.m. to 4 p.m.

Call to Order:

The Chair, Ms. Patricia Smith-Mansfield, called the meeting to order at 9:05 a.m.

1. *Patrick Sullivan vs. University of Utah Medical Center and Patrick Sullivan vs. University of Utah Medical Center* (Combined)

The Chair introduced the parties: Mr. Patrick Sullivan, Petitioner, and Mr. Bill Evans, representing the University of Utah.

Petitioner's Opening Statement

Mr. Sullivan stated that the appeal is in regard to two separate requests for emails. In response to the first request the university claimed that the requested emails could not be located. Mr. Sullivan has proof that the emails did exist at one point and, per university's retention schedule, they should have been retained for at least seven years.

The second request is for emails from two university attorneys and a fee waiver. Mr. Sullivan was told that he did not qualify for a fee waiver and that if he wanted the records there would be a fee associated with redacting the information. Mr. Sullivan argued that the government shall not charge a fee for reviewing and determining whether it is subject to disclosure under Utah Code § 63G-2-203(5).

Respondent's Opening Statement

Mr. Evans stated that in respect to the first request most of it has been resolved and records provided. The brief disparity indicated in Mr. Sullivan's appeal is that one email is missing one element of

communication that the Department of Corrections provided to Mr. Sullivan.

The university has made good faith and extensive efforts to find the requested record in full but has determined that it no longer exists. It is a *de minimus* portion of the communication that is missing and the university could provide only what it possessed.

On the matter of the fee waiver, this is the sixth records request made by Mr. Sullivan in the last year and one half. For the most part the records requests have been provided without charge; in fact, when Mr. Sullivan was charged \$6.00, and the university received only \$1.25, it still provided the records. This particular request embodies 1,800 pages of records that include medical information that requires redacting. It will take over 15 hours of staff time at the estimated cost of \$107.90, and that is a conservative estimate. It is a reasonable fee and the public deserves to receive some compensation for what has become a very extensive request.

Testimony Petitioner

Mr. Sullivan explained that the main issue with the appeals is that the emails have not been provided. In the first request, he actually was provided the responsive email by the Utah Department of Corrections not from the university. Since the university could not duplicate the email it demonstrates that it is not properly trained and following the mandated retention schedule. That email in question shows that events were not done properly concerning scheduling Mr. Sullivan for surgery. If the email does not exist then

what other emails do not exist but should exist. For example, he was never provided emails from the doctor; however, it is clear that at one time they did exist but were not retained.

Mr. Sullivan summarized the guidelines of the state records retention schedules for executive, administrative, and transitory correspondence. He continued to state that the university is a state agency and that it does not train its employees properly, which resulted in the emails in question not being retained appropriately according to the retention schedules.

Mr. Sullivan summarized the statute stating that the governmental entity shall not charge for reviewing a record to determine if its subject to disclosure under Utah Code § 63G-2-203(5)(a). He agreed that the governmental entity could charge a fee under Utah Code § 63G-2-203(2). However, the university should be charging him only for how long it takes to the click the mouse and redact whatever needs to be restricted. The emails directly implicate his legal rights and he is impecunious.

Testimony Respondent

Mr. Evans requests that Mr. Smith (co-counsel) discuss the university's email retention, document review, and records training to the Committee.

Mr. Smith explained that there is a lot of training in the office for email retention and there are office policies for retaining electronic and paper records. The emails usually are not part of the medical records, the content of the emails mainly is scheduling and meetings. The office does its best to train employees and, because there are so many users, it is difficult to monitor everyone's email retention practices. The university has not formally adopted a retention schedule but the legal advice is to keep the records for seven years.

Mr. Evans assured the Committee that there was no malicious act by any staff member to

delete the emails responsive to Mr. Sullivan's request. He also explained that GRAMA permits a reasonable cost and it includes formatting and redacting. Mr. Smith explained the redacting process and the amount of staff time it takes.

[Remaining testimony inaudible due to excessive background noise emitting from background conversations on the telephonic connection.]

Petitioner's Closing Remarks

Mr. Sullivan stated that the University of Utah Medical Center should be retaining emails as the law requires, unfortunately it is not following the law and, therefore, not was unable to provide an important communication between the doctor and staff about why his surgery was not accomplished in 24 hours as needed, but instead four days later. The university has a duty to retain important emails and it failed to do so. In addition, the fee should be reduced because he has no income and his family provides what is received in the prison account. In addition, his legal rights are implicated and he should be provided some sort of waiver or reduction of fees.

Respondents Closing Remarks

Mr. Evans stated that the fee is enormously fair, and the fee waiver is discretionary. The university cannot locate the responsive record. The university's record policies generally are effective and the university requests that the Committee uphold its position and deny Mr. Sullivan's request.

Deliberation:

Mr. Fleming requested that the Chair explain the legal requirement for retaining email correspondence. The Chair explained the retention schedules and the obligation that the agencies should be following the records management practices under Utah Code § 63G-2-604.

The Committee discussed at length with the Respondent whether the emails were considered part of the medical records, and

what guidance was used to determine whether an email was part of a medical records or fell under the Health Insurance Portability and Accountability Act (HIPAA) under Utah Code § 63G-2-107. Mr. Smith stated that the emails normally are not part of the medical records; however, within the content there may be medical information that would need to be redacted. If a person requests medical records, a different system uploads the records and stores them for 30 years. There is a complicated medical records retention schedule at the hospital, which not only follows the state guidelines but the federal as well.

The Committee agreed that the records should have been preserved but the university does not possess it and it was not discarded maliciously.

Motion: Mr. Fleming made a motion that the request for a fee waiver is not an unreasonable denial under Utah Code § 63G-2-203(2)(a). Seconded by Ms. Mansell. The motion passed, 6-0. Mr. Fleming, Mr. Misner, Mr. Haraldsen, Ms. Smith-Mansfield, Ms. Mansell, and Ms. Richardson voted yea.

Motion: Mr. Fleming made a motion that the medical records are not subject to GRAMA under Utah Code § 63G-2-107. The Committee is persuaded that no records were found that were responsive to the Petitioner's request during the governmental entity's good faith search. Although evidence was presented that some records should have existed based on the retention schedule, the Committee cannot order a governmental entity to produce records without a finding that the records actually exist. Accordingly, the Committee recommends that the governmental entity review its retention schedule with employees to ensure that all documents are kept during the entire time they should be retained. Mr. Haraldsen seconded the motion. The motion passed, 6-0. Mr. Fleming, Mr. Misner, Mr. Haraldsen, Ms. Smith-Mansfield, Ms. Mansell, and Ms. Richardson voted yea.

2. Retention Schedules:

Utah State General Records Retention Schedule: Ms. Rebekkah Shaw presented one: Human Resource Records (Item 14-67) Verification of employment eligibility.

Motion: A motion was made by Mr. Fleming, and seconded by Ms. Mansell, to approve the proposed schedule as written. The motion passed, 6-0. Mr. Fleming, Mr. Misner, Mr. Haraldsen, Ms. Smith-Mansfield, Ms. Mansell, and Ms. Richardson voted yea.

State Agencies: Ms. Rae Gifford presented three retention schedules.

Department of Technology Services (DTS)
83970 Policies and procedures manuals.
Retain until superseded.

Ms. Gifford addressed the Committee's question from the July 14, 2016, SRC meeting. She explained that DTS requested a different retention schedule than the general retention schedule, but does not have an answer as to why there was a three-year retention scheduled. DTS believed it was common practice in its office and suggested that the general retention schedule be updated to include superseded in the language or three years.

Motion: A motion was made by Mr. Haraldsen, and seconded by Mr. Fleming. The motion passed, 6-0. Mr. Fleming, Mr. Misner, Mr. Haraldsen, Ms. Smith-Mansfield, Ms. Mansell, and Ms. Richardson voted yea.

Department of Workforce Services
28897 Administrative Services grant and contract records. Retain 7 years after expiration of contractual agreement.

Department of Workforce Services
28898 Administrative Services operational accounting records. Retain 7 years after final action.

Motion: A motion was made by Mr. Fleming, and seconded by Ms. Richardson, to approve

both proposed retention schedules. The motion passed, 6-0. Mr. Fleming, Mr. Misner, Mr. Haraldsen, Ms. Smith-Mansfield, Ms. Mansell, and Ms. Richardson voted yea.

5-Minute Break

3. Approval of July 14, 2016, Minutes:

A motion was made by Ms. Richardson to approve the July 14, 2016, minutes. Mr. Haraldsen seconded the motion. The motion passed 5-0. (See the attached documents on the Utah Public Notice Website, [SRC Minutes July 14, 2016.pdf](#)).

Mr. Fleming, Mr. Haraldsen, Ms. Smith-Mansfield, Ms. Mansell, and Ms. Richardson voted yea.

Mr. Misner was not available to vote on the motion to approve the minutes.

4. Report on July and August Appeals:

The executive secretary mentioned that ten potential hearings are scheduled for September, and seven in October. (See the attached documents on the Utah Public Notice Website, [SRC Meeting Handouts August 11, 2016.pdf](#)).

5. Report on Cases in District Court:

Mr. Tonks briefed Committee members on the following district court case: In *Roger Bryner v. Utah Dept. of Health et.al.*, counsel filed an answer on behalf of the Committee and a motion to dismiss against Ms. Smith-Mansfield, Ms. Cundiff, and Ms. Dubovik. (See the attached documents on the Utah Public Notice Website, [SRC Meeting Handouts August 11, 2016.pdf](#)).

6. Kevin Berry vs. Utah Department of Corrections (UDC)

The Chair introduced the parties for the next hearing: Mr. Kevin Berry, Petitioner, and Mr. Matthew Anderson, representing the Utah Department of Corrections. The Chair explained procedures and asked the Petitioner and Respondent to introduce themselves for the record.

Petitioner's Opening Statement

Mr. Berry stated that he has requested mental health records and evaluations from doctors and therapists in the mental health field, and has been denied because the records are classified controlled. The UDC has failed to specify why the records are classified controlled and has not searched for the responsive records under the names of the doctors he has provided. He wants to know why the records are classified controlled.

Respondent's Opening Statement

Mr. Anderson stated that the records at issue are mental health records and have been reviewed by the mental health staff and properly classified under Utah Code § 63G-2-304. The mental health professionals understand the evaluations and treatments in a correctional setting and, therefore, appropriately classified the records as controlled. Corrections asked the Committee to uphold its classification.

Testimony Petitioner

The Chair prompted Mr. Berry by asking him to explain why he requested the email correspondence between the Attorney General's Office and prison staff. Mr. Berry stated that at a court hearing one of the assistant attorneys general referred to an email that they had received from one of the staff members at the Corrections records department. It was mentioned at that time that on numerous occasions there were communications with the records department about Mr. Berry, which aroused Mr. Berry's curiosity as to what those communications contained.

Mr. Berry explained what he meant about the names of the providers being changed for records that he sought. When he filed the GRAMA request, he wrote on the request "doctor", and even though it is in reference to a now-deceased clinical social worker, Corrections misinterpreted that to be the prison medical doctor. Mr. Berry is not seeking records from the medical doctor, he wants mental health records from the clinical

social worker that had seen him for over a year.

Testimony Respondent

Mr. Anderson addressed the Committee and stated that none of the communications that Mr. Berry is referring to exist. The staff performed an extensive search and found nothing that was responsive to his request. He also addressed the confusion about which emails and doctor that Mr. Berry had been referring to in the GRAMA request. Mr. Anderson recommended that Mr. Berry submit a new GRAMA request with more specificity for the records officers to search.

Mike Hogle, Director of Mental Health Services with the Utah Department of Corrections was sworn in.

Mr. Hogle provided insight as to how mental health records are classified by the staff in his office. He provided a basic overview of the process of determining what is considered private or controlled information, and the reason for not releasing controlled records to the subject of the records. Mr. Hogle stated that if inmates want to know what is in their records they can request a face-to-face conversation with a mental health care provider. The reason controlled records are not provided to the subject of the record is because there could be misunderstanding and misinterpretation of the diagnosis, notations, evaluations, and raw data entered into the records by the therapist and nurses. Misreading the information would be detrimental to the individual's well-being and there could be subsequent risk to those around the inmate. Mental health providers interact daily with the inmates, including walking around the population, and safety is the number one concern for the providers.

In the past inmates have reacted violently to diagnose they felt were incorrect. Mr. Hogle provided an example of an incident that involved a female staff member being assaulted by an inmate because of a diagnosis. For that reason, Mr. Hogle stated, releasing Mr. Berry's mental health records to him

would be detrimental to Mr. Berry's well-being and a safety risk to those around him.

Mr. Berry asked a couple of questions of the witness about what he knew about Mr. Berry's mental health history. Mr. Anderson objected to the questioning because the questions already had been addressed and were on record.

Petitioner's Closing Remarks

Mr. Berry provided no closing remarks.

Respondents Closing Remarks

Mr. Anderson stated the standard for mental health records is that they are classified controlled and meet the provisions under Utah Code § 63G-2-304. They are records that the agency reasonably believes that, if released, would be detrimental to the subject's mental health or the safety of an individual. The process that the agency goes about to determine the classification is not done through the agency's records officer but directly through the director of mental health services at the Utah Department of Corrections. Mr. Anderson argued and cited relative Committee decisions and orders as evidence to his position: *Walter E. Brantzeg v. Utah Department of Corrections*, Case No. 95-03; *Roger Humphries v. Washington County School District*, Case No. 00-02; and *Charles Watkins v. Utah Department of Corrections*, Case No. 99-02.

Motion: Mr. Fleming made a motion that the records were appropriately classified as controlled under Utah Code § 63G-2-304, and were based on previous decisions and orders. Mr. Misner seconded the motion. The motion passed, 6-0. Mr. Fleming, Mr. Misner, Mr. Haraldsen, Ms. Smith-Mansfield, Ms. Mansell, and Ms. Richardson voted yea.

5-Minute Break

7. *Reginald Williams vs. Utah Department of Corrections (UDC)*

The Chair introduced the parties for the next hearing: Mr. Reginald Williams, Petitioner,

and Mr. Matthew Anderson, representing the Utah Department of Corrections. The Chair explained procedures and asked the Committee, Petitioner, and Respondent to introduce themselves for the record.

Petitioner's Opening Statement

Mr. Williams stated that the requested record consisted of emails between members of the Department of Corrections, specifically emails regarding how an officer was placed inside of a privileged meeting between the Petitioner and his attorney. He is seeking these emails to determine the procedure that required the officer to be present during the meeting. He requested the emails and the Department has denied access.

Respondent's Opening Statement

Mr. Anderson explained that this appeal does not involve an outright denial of the emails but the redactions of the emails that were provided to Mr. Williams. There were two emails, one dated February 23, 2016, that discussed one of the participant's medical condition, disability, and security measures. It was classified private and protected. The other email was dated February 26, 2016, and contained a conversation between the officer and a supervisor about the security measures for the participant with a medical condition and disability. The latter email is exempt from GRAMA under Utah Code § 63G-2-106 and protected under Utah Code § 63G-2-305(13). Mr. Anderson requested the Committee to uphold the decision of the redacted portions of the records.

Testimony Petitioner

Mr. Williams explained that the meeting took place at the Central Utah Correctional Facility and, according to the law, when a meeting takes place with an attorney discussing privileged legal material it is done in confidentiality. The Prison chose to violate that law by stationing a prison guard inside of the meeting room. As a result, the prison created emails that memorialized the meeting and facts. The Petitioner is seeking the emails that show that the incident did occur. The Petitioner wants to expose massive systematic

institutional corruption throughout the prison system.

Testimony Respondent

Deputy Warden Robert Powell was sworn in and stated that he had reviewed the February 26, 2016, email and that it is properly classified protected and should not be disclosed. In the email there were specific discussions, decisions, and constraints that were made by the warden's office regarding the level of security needed to allow the meeting to occur. Deputy Warden Powell stated that both parties agreed to the arrangement prior to the visit. However, on the day of the meeting, when the parties arrived, the individual officer made a decision to allow concessions to the security constraints for the visit to occur. These were decisions and concessions made above what the warden had already approved. Those decisions created vulnerability, and could allow inmates to take advantage of the officer in the future. In addition, it is important that officers can maintain open communication with their supervisors via email and not fear that the communications will be disclosed to the public and compromise the security of the prison.

Mr. Williams asked Deputy Warden Powell if he had been at the meeting on February 26, 2016 Warden Powell stated no, although he had reviewed the email.

Petitioner's Closing Remarks

Mr. Williams stated that the entire justification for non-release of the records actually is a rigged system. Corrections' wants to communicate wrongdoing through email and not be challenged on it because it can hide behind the notion of security.

Respondents Closing Remarks

Mr. Anderson is a bit unclear which records are being discussed but believed, based on Mr. Williams' testimony, that they are the February 23rd and 26th emails. One contains communication that took place before the meeting, and the second one after the meeting. The records are classified private

and protected because they contain medical and security information under Utah Code § 63G-2-301(1)(b), Utah Code § 63G-2-302(2)(d), and Utah Code § 63G-2-305.

Motion: Mr. Fleming made a motion to go *in camera*, Mr. Misner seconded it, and the motion passed, 6-0. Mr. Fleming, Ms. Patricia Smith-Mansfield, Mr. Misner, Mr. Haraldsen, Ms. Mansell, and Ms. Richardson voted yea.

Motion: Mr. Misner made a motion to go back in session, Mr. Fleming seconded it, and the motion passed, 6-0. Mr. Fleming, Ms. Patricia Smith-Mansfield, Mr. Misner, Mr. Haraldsen, Ms. Mansell, and Ms. Richardson voted yea.

Motion: Mr. Fleming made a motion that the classification of the emails is upheld under Utah Code § 63G-2-106 and Utah Code § 63G-2-305(11) and (13), Utah Code § 63G-2-302(2)(d). Ms. Richardson seconded the motion. The motion passed, 5-1. Mr. Fleming, Mr. Misner, Mr. Haraldsen, Ms. Mansell, and Ms. Richardson voted yea.

Ms. Patricia Smith-Mansfield voted nay because, in her opinion, the protected information could have been more narrowly redacted and is not persuaded it falls under Utah Code § 63G-2-106, but understands the Committee's motion.

Twenty-Minute Lunch Break

8. Michael Clára vs. Utah Transit Authority (UTA)

The Chair introduced the parties for the next hearing: Mr. Michael Clára, Petitioner, and Mr. David Mull, representing Utah Transit Authority. The Chair explained procedures and asked the Committee, Petitioner, and Respondent to introduce themselves for the record.

Petitioner's Opening Statement

Mr. Clára stated that he was a UTA employee for twenty years and was wrongfully

terminated in November 2015. He was a transit planner in charge of bus stops and emergency management type of issues. He was terminated because he would not authorize the installation of new bus stops and upgrades until they met the federal guidelines of the American with Disabilities Act (ADA). Mr. Clára was terminated when he did not return on time to work from a two-week vacation. On the last day of his vacation he was called and told he was being terminated due to job abandonment. Mr. Clára claimed that he is impecunious because he was terminated by UTA, has no job or income, and, therefore, cannot afford the fee for the requested records.

Respondent's Opening Statement

Mr. Mull stated that UTA's position is that there is nothing unreasonable about the denial of the fee waiver. Mr. Clára has not shown any clear sign that he is truly impecunious as that word is defined, and, for that reason, it is entirely proper for UTA to expect him to pay at least a portion of the cost for the voluminous records request. UTA already has produced numerous pages of records at no cost to Mr. Clára. At some point UTA, in consideration of taxpayer funds, has to ask the requester to bear some of the cost associated with the production of the records.

Testimony Petitioner

Mr. Clára highlighted and summarized the vast majority of UTA's statement of facts, legal authority, and reasons for not providing the records. He rebutted each section of the letter that discussed reasons for the termination and UTA's claim that the fee waiver denial was not unreasonable. Mr. Clára claimed that he is impecunious because UTA terminated his employment, and he does not understand what other information UTA needs to recognize that he is impecunious. He believed the records were matter of public interest and, therefore, should be released.

Testimony Respondent

Mr. Mull stated the focus for Mr. Clára really is his wrongful termination claim against UTA. It clearly is a deeply personal issue in

which he is very committed to fighting UTA and exposing what UTA has done wrong. This is not about the public interest Mr. Clára used claims of discrimination, fraudulent, and nefarious acts by UTA because he is looking for the smoking gun to substantiate his claim that he was mistreated. Mr. Mull emphasized that Mr. Clára's personal issues are not before the Committee. There are two issues: that the denial of the fee waiver is unreasonable and that the classification of the records is proper or improper.

Mr. Mull explained the issue of the fee waiver. A governmental entity is not required to waive fees. If its denial of the fee waiver is unreasonable then the Committee can overturn it; however, it is not a requirement that UTA waive fees. It may waive the fees if a certain criterion is met and if releasing the records and waiving the fees primarily benefits the public rather than an individual. Mr. Clára is not primarily looking to benefit the public. There may be some ancillary public benefit but that is not the primary reason the records were requested. The records never were requested while Mr. Clára was an employee only after he was terminated. Receiving the records and getting them free is for personal gain.

Mr. Mull addressed the bus stop improvements along the 200 South corridor that Mr. Clára mentioned. The mere fact that Mr. Clára was working on the bus stop project and now is seeking those records does not mean that he is the subject of those records under Utah Code § 63G-2-203(4)(b). Mr. Clára previously was provided 533 free documents in which he was the subject of the records.

Lastly, Mr. Mull explained that Mr. Clára was gainfully employed with UTA for twenty years and does not meet the definition of impecunious in GRAMA. Mr. Clára is not homeless, not incarcerated, and certainly should have saved some money over the course of twenty years. Impecuniosity does not mean unemployed. Impecuniosity means

having little or no money. UTA believed it is reasonable to deny the fee waiver.

Ms. Michelle Larsen was sworn in and explained to the Committee the amount of work that went into redacting and citing 695 restricted records that were responsive to Mr. Clára's request.

Mr. Clára asked the witness if the classified records were separate from the public records. She answered yes.

Petitioner's Closing Remarks

Mr. Clára wants to know what UTA's standard is for one declaring to be impecunious. He understands that UTA is not required to waive the fee but if he is impecunious there should be some consideration. He believed the records are a benefit to the public, and therefore is requesting a fee waiver.

Respondent's Closing Remarks

Mr. Mull reiterated that before the Committee is the question of the fee waiver and he urged the Committee to uphold the governmental entity's denial of the fee waiver.

Deliberation:

Motion: Mr. Fleming made a motion that the fee waiver denial is reasonable. Mr. Misner seconded the motion. The motion passed, 6-0. Mr. Fleming, Mr. Misner, Mr. Haraldsen, Ms. Smith-Mansfield, Ms. Mansell, and Ms. Richardson voted yea.

The Committee was concerned the case would be remanded back if Mr. Clára challenged the decision and order in district court because the Committee did not make a decision about whether the records were properly classified. The Committee decided to be preemptive and motioned for a continuance allowing Mr. Clára to pay the fee for the records, review them, and, if not satisfied, can come back to the Committee to review whether the records were properly classified.

Motion: Mr. Fleming made a motion for a continuance if there is a records classification challenge. Mr. Misner seconded the motion. The motion passed, 6-0. Mr. Fleming, Mr. Misner, Mr. Haraldsen, Ms. Smith-Mansfield, Ms. Mansell, and Ms. Richardson voted yea.

Ms. Richardson left the meeting after the motion was made at 2:00 p.m.

9. *Harshad P. Desai vs. Panguitch City and Harshad P. Desai vs. Panguitch City* (Combined)

The Chair introduced the parties for the next hearing: Mr. Harshad P. Desai, Petitioner, and Mr. Barry Huntington, representing Panguitch City. Both parties participated telephonically. The Chair explained procedures and asked the Committee members, Petitioner, and Respondent to introduce themselves for the record.

Petitioners Opening Statement

Mr. Desai explained what records he is seeking from Panguitch City. The first appeal is for public officials' educational background and experience under Utah Code § 63G-2-301(2)(b). The second appeal is for the total population in the Panguitch City area in a 40-mile radius under Utah Code § 52-3-4. Mr. Desai also asked what the City's appeal process is.

Respondent Opening Statement

Mr. Huntington stated that the City does not have the employment and education records on city council members and does not need them because there are no credentials needed for being on the board. In addition, no record exists or there is no requirement for the City to count how many people live outside the 40-mile radius of the City. The Census Bureau provides that information and it is in the public domain. Mr. Huntington then explained the City's process for filing a GRAMA request to the City Manager/Recorder and the decision may be appealed to the Mayor.

Testimony Petitioner

Mr. Desai repeated his two records requests and stated that he had the right to that information, and the burden was on the City to produce it. He cited statutes Utah Code § 63G-2-301(2)(b) and Utah Code § 52-3-4 as evidence the records should exist.

Testimony Respondent

Mr. Huntington reiterated what was stated in the opening statement that the City does not have the records, does not have to create a record, and city council members do not need credentials to serve. Anti-nepotism laws are in place to ensure that relatives are not hired, nevertheless the City does not have the burden to count people and create a record. The Committee should uphold the City's decision and deny the requests.

Petitioner's Closing Remarks

Mr. Desai repeated the earlier testimony that he has a right to the records and that the City should provide them under Utah Code § 63G-2-301(2)(b) and Utah Code § 52-3-4.

Respondent's Closing Remarks

Mr. Huntington stated that the Census Bureau provides the citizen count and it is not the City's duty to count citizens, and a resume is not required for elected positions. The City is not required to create a record. The City requests the Committee uphold the denial.

Deliberation:

The Committee discussed the intent of Utah Code § 63G-2-301(2)(b) and determined that it was names and business information of employees and does not include elected officials. The record request for the population of the 40-mile radius under Utah Code § 52-3-4 is not applicable in this case because this is not a proceeding challenging the City's hiring practices. The records do not exist.

Motion: Mr. Fleming made a motion to deny both cases and that the City of Panguitch does not maintain the record or need to create a record. Ms. Mansell seconded the motion. The motion passed, 5-0. Mr. Fleming, Mr.

Misner, Mr. Haraldsen, Ms. Smith-Mansfield, Ms. Mansell voted yea.

10. District Court Update

Mr. Tonks discussed the latest summons by Mr. Roger Bryner served upon the individual members of the Committee to include Ms. Dubovik and Ms. Cundiff. The summons refers to the June 9, 2016, remand, *Roger Bryner v. Clearfield City*, Case No. 15-27. Mr. Tonks will respond on behalf of those served.

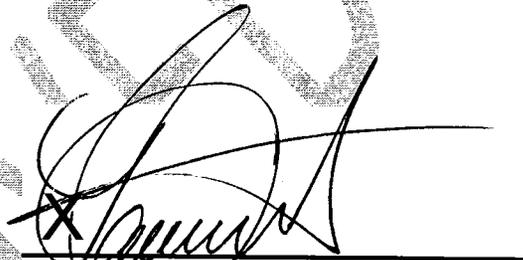
11. Other Business:

-September 8, 2016, is the next scheduled meeting.

The executive secretary queried whether a quorum will be present for the next meeting.

The August 11, 2016, State Records Committee meeting adjourned at 2:46 p.m.

This is a true and correct copy of the August 11, 2016, SRC meeting minutes, which were approved on September 8, 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

APPROVED