

State Records Committee Meeting

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

Date: September 8, 2016

Time: 9:00 a.m. -4:20 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

Roger Bryner, Petitioner

Holly Richardson, Committee member

Tom Hill, Ticaboo Utility Improvement District

Chip Shortreed, Ticaboo Utility Improvement District

Others Present:

Michael Clára, Petitioner

Marian Seamons, Petitioner

Mari Broadbent, Petitioner

Becky Gurr, Provo Police Department

Angela Galbraith, Provo Police Department

Chris Black, Provo City

Camille S. Williams, Provo City Attorney

Lee Davidson, *Salt Lake Tribune*

Jeralyn Zimmerman, Utah Department of Corrections

Matthew Anderson, Assistant Attorney General

David Mull, Utah Transit Authority

Helen Redd, Petitioner

Michelle Larsen, Utah Transit Authority

Jessica Miller, *Salt Lake Tribune*

Courtney Tanner, *Salt Lake Tribune*

Lonny Pehrson, Assistant Attorney General

Heather Schriever, Orem City Attorney

Adam Long, Ticaboo Attorney

Marc S. Jenson, Petitioner

Rosemary Cundiff, Utah State Archives

Rebekkah Shaw, Utah State Archives
Rae Gifford, Utah State Archives

Agenda:

- Seven Hearings Scheduled
- Retention Schedules, action item
- Approval of August 11, 2016, Minutes
- Report on Appeals Received
- Report on Cases in District Court
- Other Business
 - Review Annual Report
 - Next meeting scheduled for October 13, 2016, 9 a.m. to 4 p.m.

Call to Order:

Ms. Holly Richardson was called and connected telephonically to the Committee hearing at 9:00 a.m. The Chair, Ms. Patricia Smith-Mansfield, called the meeting to order at 9:00 a.m., and tackled other business while waiting for Mr. David Fleming to arrive to the meeting.

1. Approval of August 11, 2016, Minutes:

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

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

2. Report on August and September Appeals:

The executive secretary briefed the Committee on the following declined hearing.

In Robert Baker vs. Utah Department of Corrections: Mr. Baker is appealing access denial to letters that he provided to the agency. The chief administrative officer's decision is dated June 22, 2016. The Petitioner claimed he did not receive the decision until July 22, 2016. The notice of appeal was received by the Committee's executive secretary on August 22, 2016. The Chair, and second Committee member, Tom

Haraldsen, declined to hear the appeal under Utah Code § 63G-2-403(1)(a).

The executive secretary mentioned that ten potential hearings are scheduled for October, and two in November. (See the attached documents on the Utah Public Notice Website, [SRC Meeting Handouts September 8, 2016.pdf](#)).

Mr. Fleming arrived to the meeting at 9:10 a.m.

3. Retention Schedules:

Utah State Agencies Retention Schedule: Ms. Rae Gifford presented nine retention schedules.

Department of Administrative Services.
28788 Garnishment records. Retain 8 years.

80350 Contractor's prequalification documents. Retain 2 years.

59930 Certificates of insurance. Retain 10 years.

59928 Claims records. Retain 30 years after case is closed.

59929 Insurance policy contract records. Retain 25 years after superseded.

Ms. Mansell commented that the municipal retention schedules are 15 years and that these need to be consistent with the general schedules. Ms. Gifford noted the comment.

59933 Loss control case records. Retain 10 years after final action.

59934 Premium invoices. Retain 10 years.

Transportation Department. Office of Civil Rights. 6247 Disadvantaged Business Enterprise certification eligibility records. Retain 23 years after final action.

Environmental Quality
12695 Hazardous waste management regulatory records. Retain 20 years.

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

4. Michael Clára vs. Utah Transit Authority (UTA). Continuance.

Mr. Haraldsen abstained because he had not reviewed the *in camera* records prior to the hearing.

Motion: Ms. Richardson made a motion to go *in camera*, seconded by Mr. Fleming. The motion passed, 5-0. Mr. Fleming, Mr. Misner, Ms. Smith-Mansfield, Ms. Mansell, and Ms. Richardson voted yea.

Motion: Mr. Misner made a motion to go back in session, seconded by Mr. Fleming. The motion passed, 5-0. Mr. Fleming, Mr. Misner, Ms. Smith-Mansfield, Ms. Mansell, and Ms. Richardson voted yea.

Deliberation:
The Chair asked the Respondent whether the email attachments were provided to Mr. Clára. Ms. Larsen responded that all attachments except for two draft documents were provided.

Deliberation:
The Committee commented on each group of records. The first group of records Bates stamped #48 and #85 deal with GRAMA

requests. The governmental entity classified them under Utah Code § 63G-2-305(10) and (17). The Committee commented that GRAMA is an administrative response and not a trigger to prepare for litigation. A governmental entity is not anticipating litigation when responding to a GRAMA request. Mr. Tonks summarized the *Schroeder v. Utah Attorney General's Office* and the *Southern Utah Wilderness Alliance v. Utah Division of Oil, Gas and Mining* (SUWA) (2006), cases in which the court ruled the records are not created for planning or seeking legal advice but instead were created pursuant to a statutory requirement.

Motion: Mr. Fleming made a motion that records Bates stamped #48 and #85 to be classified as public because they are communications regarding a GRAMA request seconded by Mr. Misner. The motion passed, 5-0. Mr. Fleming, Mr. Misner, Ms. Smith-Mansfield, Ms. Mansell, and Ms. Richardson voted yea.

Deliberation:
The second group of records is Bates stamped #51 and #52. The email exchange discussed a news article in the *Salt Lake Tribune*. The governmental entity classified the records under Utah Code § 63G-2-305(17).

Motion: Mr. Fleming made a motion that records Bates stamped #51 and #52 are not privileged and should be released, seconded by Ms. Mansell. The motion passed, 4-1. Mr. Fleming, Ms. Smith-Mansfield, Ms. Mansell, and Ms. Richardson voted yea. Mr. Misner voted nay.

Deliberation:
The third group of records is Bates Stamped #45. The email correspondence was a discussion about the intent to sue and was classified privileged under Utah Code § 63G-2-305(10)(e), (17), and (18).

Motion: A motion was made by Mr. Misner that records Bates stamped #45 were properly classified under Utah Code § 63G-2-305(10)(e), (17), and (18). Seconded by Mr.

Fleming. The motion passed, 5-0. Mr. Fleming, Mr. Misner, Ms. Smith-Mansfield, Ms. Mansell, and Ms. Richardson voted yea.

Deliberation:

The fourth group of records is Bates stamped #104 (emails of an internal video) and #106 (legal counsel and response). The Committee made separate motions on the two items.

Motion: A motion was made by Mr. Misner that records Bates stamped #104 are properly classified under Utah Code § 63G-2-305(6) and (17). Seconded by Mr. Fleming. The motion passed, 4-1. Mr. Fleming, Mr. Misner, Ms. Mansell, and Ms. Richardson voted yea. Ms. Smith-Mansfield voted nay.

Motion: A motion was made by Ms. Mansell that records Bates stamped #106 were not protected under Utah Code § 63G-2-305(17) and (23) and should be classified public. Seconded by Mr. Fleming. The motion passed, 3-2. Mr. Fleming, Ms. Mansell, and Ms. Smith-Mansfield voted yea. Ms. Richardson and Mr. Misner voted nay.

Deliberation:

The fifth group Bates stamped #77 and #78 contained the remaining records to include whether to review drafts not provided per Utah Code § 63G-2-305(17), (18), and (22).

Motion: A motion was made by Mr. Misner that the records not previously mentioned are classified properly including the draft documents under Utah Code § 63G-2-305(17), (18), and (22). Seconded by Ms. Mansell. The motion passed, 5-0. Mr. Fleming, Mr. Misner, Ms. Smith-Mansfield, Ms. Mansell, and Ms. Richardson voted yea.

Deliberation:

The Committee discussed whether the privilege logs should be public or protected. The statute requires the governmental entity to provide a description of the records and classification.

Motion: A motion was made by Mr. Fleming that the privilege log is public and should be

released to the Petitioner. Seconded by Mr. Misner. The motion passed, 5-0. Mr. Fleming, Mr. Misner, Ms. Smith-Mansfield, Ms. Mansell, and Ms. Richardson voted yea.

5. Roger Bryner vs. Clearfield City

Mr. Tonks briefed that Mr. Bryner was sent an email communication, from the executive secretary, stating approximately what time in the afternoon he would be called and be connected telephonically to the Committee for his hearing. Mr. Bryner's response raised an issue that concerns communications between the Committee's legal counsel and Clearfield City legal counsel should not be privileged and should be released. Therefore, there is a potential conflict of issue for the assigned Committee counsel to provide legal counsel concerning some of the requested records. Mr. Tonks consulted the Attorney General's Office and it recommended that the Committee should continue the hearing until next month. In addition, the volume of scheduled hearings for September has impeded the Committee's ability to hear the seventh scheduled appeal, which is Mr. Bryner's.

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

Ms. Richardson disconnected telephonically from the Committee for the remainder of the meeting.

5-Minute Break

6. Patrick Sullivan vs. Utah Department of Corrections (UDC)

The Chair introduced the parties for the next hearing: Mr. Patrick Sullivan, 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. Sullivan stated that the request made in February 2016 was for emails sent and received by various UDC employees. In the request he specifically asked that Google Vault be the source that would be searched to retrieve the email messages. The governmental entity responded to his GRAMA request claiming extraordinary circumstances, which he does not dispute, however the time that it is taking to comply with the request is unreasonable. He intends to provide evidence to the Committee that will support his argument.

Respondent's Opening Statement

Mr. Anderson stated that the GRAMA request was submitted in February, although at the time it was not in compliance and was resubmitted at the end of March. The request was to search Google Vault for fifty-two separate UDC employee email accounts. There were multiple date ranges to include a list of employees identified only by rank and position. With the current workload, it was not a GRAMA request that could be completed in 10 days. Corrections claimed three extraordinary circumstances: 1) Voluminous number of requested records; 2) Need to cast a wide net to capture the responsive records to review; and 3) and processing a large number of requests. At least 40-50 inmate requests are received weekly and that does not include requests submitted from outside the prison. The records officer made the decision to answer the requests sequentially under Utah Code § 63G-2-204(6)(c). Mr. Sullivan agreed to wait for the completed responses and pay for only one CD. Currently thirty of the fifty-two requests have been completed. UDC respectfully requests that the Committee deny the appeal.

Testimony Petitioner

Mr. Sullivan cited and summarized Utah Code § 63G-2-204(3)(b) and (4)(b). He argued that Corrections did not provide dates as to when the GRAMA request would be completed. Furthermore, Corrections originally explained that it had requested all

employees to search their emails for the responsive records and then would access Google Vault. Mr. Sullivan does not dispute the GRAMA request is time consuming, however duplicating the search wastes time and resources. He explained that Google Vault is a very robust system and if used initially would have greatly reduced Corrections' workload retrieving the records. The long length of time consists of reviewing and redacting the information. He believed waiting another six to twelve months is not reasonable and requests that the Committee make such a finding and demand that Corrections provide the records in a reasonable time.

Testimony Respondent

Mr. Anderson stated that Mr. Sullivan has been apprised numerous times on the progress of the records search. Mr. Sullivan was informed a couple of weeks ago that UDC completed twenty-six email searches. UDC believes it will take only another three-four months to complete the request. The initial search is not the time consuming process-it is sifting through the duplicates, sorting the responsive from the non-responsive records, and, lastly, determining the classification and whether to make redactions and put the records on the CD. That process, depending on the volume of records, can take hours to perform.

Ms. Jeralyn Zimmerman was sworn in and explained her duties as a records officer. In one month, she has processed 175 GRAMA requests and subsequently is working on appeal responses. The lead records officer currently is on extended leave, which has increased the workload for the two remaining records officers. In addition to the GRAMA requests and appeals, the office is also working on a subpoena for 600 files that has taken hundreds of hours to review.

Mr. Sullivan asked the witness who currently is working on his GRAMA request. Mr. Anderson stated that he is personally processing the requests.

Petitioner's Closing Remarks

Mr. Sullivan commented that UDC's argument that it no longer asks employees to search their own accounts is contrary to what the Attorney General's Office stated to him in a written memorandum. Nevertheless, it is more efficient to search Google Vault versus individuals searching their own accounts. Searching Google Vault prevents duplicates and locates the most responsive records.

Mr. Sullivan understands that the request warrants additional time and that a claim of extraordinary circumstances is not unreasonable. He understands that UDC has other responsibilities but requests that the Committee look over the appeal thoroughly and decide on a reasonable response time from UDC to provide the records.

Respondents Closing Remarks

Mr. Anderson explained that, although the Attorney General's Office memorandum mentioned by the Petitioner does discuss searching individual records and Google Vault, the memorandum further stated that it is time consuming to weed through the duplicates, classify content, and redact restricted information. The UDC estimates it will take another four months to complete the remaining twenty requests. Mr. Anderson cited, and argued, the relevance of *Graham v. Davis County Solid Waste Management Energy Recovery Special Service District*, UT App. 979 P.2d 363(1999). He argued that the 1999 case identified the legislative intent in GRAMA that the governmental entity should not be burdened with unreasonable requests.

Motion: Mr. Fleming made a motion that the appeal is denied based on Utah Code § 63G-2-401(1)(b) because extraordinary circumstances do exist and that the time frame specified by the governmental entity is reasonable. Seconded by Ms. Mansell. The motion passed, 5-0. Mr. Fleming, Mr. Misner, Mr. Haraldsen, Ms. Smith-Mansfield, and Ms. Mansell, voted yea.

7. Marian Seamons vs. Ticaboo Utility Improvement District:

The Chair introduced the parties for the next hearing: Ms. Mari Broadbent, representing her mother, Marian Seamons, the Petitioner, and Mr. Adam Long, representing the Ticaboo Utility Improvement District. The Chair explained procedures and asked the Petitioner and Respondent to introduce themselves for the record. Mr. Chip Shortreed, and Mr. Tom Hill, from Ticaboo Utility Improvement District, was telephonically connected to the Committee meeting.

Petitioner's Opening Statement

Ms. Mari Broadbent stated that she has a Power of Attorney from her mother, Ms. Marian Seamons, to represent her interests. The Petitioner provided a summary of the dates when the GRAMA requests were filed beginning in 2015. She explained that the records requested were for copies of contracts. Ms. Broadbent stated that the governmental entity has not provided the records the Petitioner has requested. (See the attached documents on the Utah Public Notice Website, [SRC Meeting Handouts September 8, 2016.pdf](#)).

Respondent's Opening Statement

Mr. Adam Long provided background history on how and when Ticaboo Special Service District (TSSD) was dissolved and Ticaboo Utility Improvement District (TUID) was created. In order to reduce costs and prevent duplication of managerial, administrative, and compliance tasks TSSD was dissolved and its assets and liabilities were reassigned to TUID in 2012. Ms. Seamons requested itemized billings prior to 2012 from TSSD for charges on two lots that she owned. TUID provided on audit history; however, the audit history report begins on August 31, 2012. TUID is not in possession of any records from TSSD and thus is unable to provide these records that Ms. Seamons is requesting for billing prior to August 2012. The district is willing to hand over any records it has or is asked of by the Committee.

Testimony Petitioner

The Chair queried whether the Petitioner was asking for records from TSSD or TUID. The Petitioner explained the records are from TUID because TUID is attempting to collect on a bill from TSSD, in spite of the district's statement that TUID has no billing record. Her mother has paid the outstanding bill in question, but there still is an issue because TUID does not recognize it as been paid. Additionally, TUID cannot produce the bill that it stated her mother still owed from when TUID assumed TSSD liabilities.

Ms. Broadband stated that she would like a readable copy of the contract (service agreement) that was submitted to the Public Service Commission in August 2016. There is writing on the front page and it is unclear whether alterations were made to the contract.

Testimony Respondent

Mr. Long stated that the district has provided everything that could possibly be that relevant to the GRAMA request exists. He further explained that the previous TSSD record keeping was not the best because volunteers ran it. The Chair interjected that although volunteers operated the district it received taxpayer money to do so. Mr. Long continued that when TUID absorbed TSSD liabilities and assets TUID agreed to provide the same services that TSSD previously had provided to the community.

Mr. Chip Shortreed was sworn in and provided the following testimony. Mr. Shortreed is the CEO and manager of the district. He explained written service that agreements (contracts) simply did not exist until 2013. As of 2013, service agreements are sent to all customers; however, a customer may still receive service without the contract because service is provided as "implied." Mr. Shortreed explained that the dissolution of TSSD was quite lengthy and in depth, and the inherited assets of TSSD contained debts by consumers on a balance sheet, no billing records currently exist from the dissolved TSSD.

Ms. Broadband asked the witness about the Zip drive that contained 184 pages of documents but lacked the contracts. Mr. Shortreed stated that the district has provided to the best of its ability all requested documents.

Mr. Fleming stated that this appeal is about a TSSD claim of outstanding debt and the Petitioner is asking TUID to provide evidence that she owes \$758.06. Unfortunately, the only evidence is a record of an inherited balance and this record contains no detailed information. Mr. Shortreed added, and clarified, that all contracts prior to 2013 were implied service agreements.

Petitioner's Closing Remarks

Ms. Broadband closed by stating that the records should be kept by law and available at the time of the request. The Petitioner is requesting a readable copy of the August 2016 contract and anything that would solidify the TSSD billing issue.

Respondents Closing Remarks

Mr. Long asked Mr. Shortreed to explain the unreadable contract that Ms. Seamons is referring to in her appeal. Mr. Shortreed explained that the district received the contract, and it was sent back to Ms. Seamons because it was riddled with errors. A cover letter explained the errors and asked Ms. Seamons to clarify the information. It is not an actual record. It was a service agreement that was submitted incorrectly and returned to be filled out properly and resubmitted. The district will resend a readable version.

Motion: Mr. Fleming made a motion to deny the appeal with the understanding that the governmental entity will reexamine its files to ensure that it provided all existing records including any documents submitted as evidence to the Public Service Commission. Seconded by Mr. Misner. The motion passed, 5-0. Mr. Fleming, Mr. Misner, Mr. Haraldsen, Ms. Smith-Mansfield, and Ms. Mansell voted yea.

30-Minute Lunch Break

8. Jessica Miller, Salt Lake Tribune vs. Orem City Police Department and Provo City Police Department

The Chair introduced the parties for the next hearing: Ms. Jessica Miller, Petitioner, and Ms. Camille Williams, representing Provo City, and Ms. Heather Schriever, representing Orem City. The Chair explained procedures and asked the Petitioner and Respondent to introduce themselves for the record.

Motion to Dismiss: Ms. Williams, attorney for the City of Provo, stated that, under the statute, in order to perfect the appeal before the Committee the Petitioner should have filed on the same day with the Committee and with the governmental entities (Orem and Provo, UT). The governmental entities did not receive notice of the appeal until they had received the hearing notice sent out by the State Records Committee executive secretary. She also pointed out that the denial was based on the investigation currently under way by the Department of Public Safety. Ms. Williams believed that the Department of Public Safety should have received notice of the appeal because it is an interested party under Subsection 63G-2-403(3) and Civil Rules and Procedures 19. Ms. Schriever, attorney for the City of Orem, echoed the same legal stance for the Motion to Dismiss.

The Petitioner, Ms. Miller, responded that she did not realize it was in the statute to send a copy of the notice of appeal to the governmental entities until she had received the hearing notification from the executive secretary. Once she realized the oversight, a copy of the notice of appeal was sent to the City of Provo and the City of Orem.

Deliberation: The Committee reflected that it had heard the same argument in *Holbrook v. West Jordan Council*, Case No. 14-16. The Committee at the time decided to hear the appeal. It was determined that the error of not sending a copy of the notice of appeal was not a jurisdictional defect but procedural and that was remedied by the party. It was not enough to deny the Committee from jurisdiction. In addition, the rules of civil procedure expressly

are for the courts and not for an administrative action.

Motion: A motion was made by Mr. Fleming to deny the motion for dismissal. Seconded by Mr. Haraldsen. The motion passed, 5-0. Mr. Fleming, Mr. Misner, Mr. Haraldsen, Ms. Smith-Mansfield, and Ms. Mansell voted yea.

Petitioner's Opening Statement

Ms. Miller requested on May 25, 2016, the Spillman case access log from numerous organizations in Utah County. She was seeking a record that would detail when police employees at Brigham Young University (BYU) had accessed another police agency's sexually related investigations. The day after the request was sent to police departments in Provo City, Orem City, and other police departments, the Department of Public Safety began an investigation to determine whether BYU police had improperly accessed or shared information from the database with others. Since then Provo and Orem have denied requests for records because of the active investigation. However, in their latest filing governmental entities do offer another reason that will be addressed during the testimony. Ms. Miller requested that the Committee find the records are public and should be released.

Respondent's Opening Statement

Ms. Williams stated that because the arguments by Orem and Provo overlap the attorneys have divided the governmental entities' argument into two sections. Provo City intends to argue whether the request is actually for a record as defined in the law. The City believes the requested access logs do not exist as a record.

Ms. Schriever outlined the argument that the Spillman database actually is owned by the Spillman System User Group. The police chiefs within the multiple agencies make up the executive committee that participate and oversee the system. Additionally, under the executive committee is a technology committee. Among the committee groups, it is unclear who actually owns the access log or

if it is the individual user agencies of the system. The *Salt Lake Tribune* may have filed a GRAMA request to the wrong governmental entities. She argued that the last issue to be addressed is that the Department of Public Safety has initiated and is performing an investigation and releasing the access log would interfere with the ongoing investigation

Testimony Petitioner

Ms. Miller stated that there are two issues to be addressed: (1) the active investigation; and (2) access to the records. First, the action of investigation: the statute puts the burden on the government agencies to prove that record is not public. Records can be protected if they reasonably can be expected to interfere with an investigation. She does not believe that the cities have shown that releasing the records would reasonably interfere with the investigation.

Ms. Miller argued that the affidavit from Mr. Kevin Bolander, Assistant Attorney General for the Department of the Public Safety (DPS), asserts that releasing the logs will identify witnesses who have not yet have been identified. Her understanding of the log is that when a query is performed the only identifier is a username that identifies the police officer. As for the BYU police, they have been notified and are aware that there is an ongoing investigation. The public has the right to know how information is accessed by a multi-agency system that is purchased with public funds.

Testimony Respondent

Ms. Williams questioned whether the access log is actually a record under GRAMA and directs the Committee's attention to Mr. Chris Black. Mr. Black, system administrator, was sworn in and explained that what is being requested from the Spillman system is not an actual record. Ms. Williams read the GRAMA request and asked Mr. Black if the record exists and can be reproduced. Mr. Black responded that the access log that is being requested does not directly exist. The Spillman system logs transactions when a user

searches, views or modifies a record and it notes that action with date and time; however, to export the logged transactions he would need separate software to compile the information requested, and, at this time, he does not have the software or training to use it.

The Committee asked specific questions about the system login features and how that information is useful to the agencies. Mr. Black explained that if there is an incorrect entry the user can access and correct the information. Ms. Schriever explained the audit log retention schedule is 18 months.

The Petitioner did not pose any questions to the witness.

Ms. Schriever addressed whether the *Salt Lake Tribune* submitted the GRAMA request to the proper governmental entity. She argued that there is a server, software program, logged data, and the other data that is input by users themselves; the conundrum is that twenty-two police agencies have the authority to access data. Provo City met with the Utah Valley Law Enforcement Technology Committee (UVLETC), which oversees the system. According to the policy manuals, the participating law enforcement agencies have access to the information on the shared system but do not own or maintain other agency information. Therefore, the *Salt Lake Tribune* should have been referred to the committee that oversees the system. If the Committee does not agree that the information should be provided by UVLETC, then the governmental entities argue that the information that the *Tribune* seeks is properly classified protected under Utah Code § 63G-2-202(4). The Chair questioned whether UVLETC is even a governmental entity as defined in Subsection Utah Code § 63G-2-103(11).

Ms. Schriever is uncertain whether UVLETC is a governmental entity but added that Provo and Orem cities have classified the records protected Utah Code § 63G-2-305(10) due to the investigation initiated on May 25, 2016.

Mr. Kevin Bolander provided testimony relating to the ongoing investigation. He explained that two investigations are open with the Spillman access logs and other related incidents. Releasing the information would identify to the public the identity of potential witnesses. Mr. Bolander explained that the information that was provided to him on the access log would identify the officers who accessed the system. The comment field contains information about various criminal reports or incidents as well as names of witness and details of the case.

The Chair questioned what logs or records Mr. Bolander had received from the agencies. It was explained by Mr. Black that the Department of Public Safety received a copy of the Spillman log from the Utah County Sheriff's Office. The witness clarified that the access log Ms. Miller is requesting, and the record that Mr. Bolander received, are similar but that his office does not have the software to export the data.

Petitioner's Closing Remarks

Ms. Miller amended the original GRAMA request after learning from the governmental entity's testimony what information is captured on the access log. Ms. Miller concluded that it was acceptable for the cities to provide 18 months of access information with the User ID of the officer redacted to make it less burdensome for the governmental entity.

Respondents Closing Remarks

Ms. Williams argued that the *Salt Lake Tribune* has not met its burden and shown that the public interest outweighs the governmental entity's interest to release the information during an ongoing investigation. The Petitioner requested information that is not a record, does not currently exist in a reproducible form, and, that if it were, would be classified as protected. Additionally it could not be disclosed solely by Provo City without the Petitioner obtaining permission from other Spillman users.

Ms. Schriever argued that it is the position of both cities that the *Tribune* has no right to see the records pursuant to Utah Code § 63G-2-305(10) because of the ongoing investigation.

Deliberation:

The Chair offered her opinion about governmental entities claiming electronic databases are not records. Governmental entities manage records in databases and the public has the right to access chronological logs and initial contact reports under Utah Code § 63G-2-301(3)(g). The information in the comment field can be redacted if that information is protected. There are provisions in GRAMA under Utah Code § 63G-2-206 to establish which records are shared among agencies. The Committee agreed that testimony has shown that the targeted records can be exported.

Motion: A motion was made by Mr. Fleming that the requested record is part public and part protected under Utah Code § 63G-2-301(3)(g). The portions of the record that includes the User ID and comment field are protected information under Utah Code § 63G-2-305(10). Seconded by Mr. Misner. The motion passed, 5-0. Mr. Fleming, Mr. Misner, Mr. Haraldsen, Ms. Smith-Mansfield, Ms. Mansell, voted yea.

Motion: A motion was made by Mr. Haraldsen that the governmental entities release the records under Utah Code § 63G-2-301(3)(g). Seconded by Mr. Fleming. The motion passed, 5-0. Mr. Fleming, Mr. Misner, Mr. Haraldsen, Ms. Smith-Mansfield, Ms. Mansell, voted yea.

5-Minute Break

9. *Helen Redd vs. Utah Attorney General's Office (AGO)*

The Chair introduced the parties for the next hearing: Ms. Helen Redd, Petitioner, and Mr. Lonny Pehrson, representing the Utah Attorney General's Office. The Chair explained procedures and asked the Petitioner and Respondent to introduce themselves for the record.

Ms. Redd asked permission to bring up a procedural question about the appeal. She explained that the appeal in front of the Committee stems from an appeal that was filed on June 7, 2016, to the chief administrative officer. The recently filed AGO statement of facts, legal authority, and reasoning includes exhibits that are decisions and events that occurred after June 7, 2016. The later information clouds the appeal and creates a false narrative. She disputed the AGO's inclusion of events post appeal and requested a move to strike portions of exhibits A, D, F, H, and I.

Mr. Pehrson strongly opposed the motion and requested that the Committee review the appeal in whole. The issue before the Committee is whether the office managed the twelve GRAMA requests in a reasonable manner over time.

The Committee made the decision not to strike portions of the exhibits. The objection to the exhibits is noted on its merit and the Committee will take it into consideration. The actions of the governmental entity since the June 7, 2016, appeal is relevant to the hearing.

Petitioner's Opening Statement

Ms. Redd stated that the main issue in front of the Committee is an appeal filed on June 7, 2016, concerning two blanket claims of extraordinary circumstances. The two extensions were based on extraordinary circumstances between the Petitioner's filing of twelve GRAMA requests on May 2, 2016, and filing of an appeal on June 7, 2016. She questioned the AGO's assertion whether the extraordinary circumstances is appropriate for the office to make in response to the records request. The AGO failed to approve or deny any of her individual GRAMA requests for an extraordinary period of time. The repeated failure by the AGO to approve or deny individual requests in a timely manner, or produce any records in more than 35 days is unreasonable and not in good faith.

Related to that, she would like the Committee to order the AGO to produce the documents which her client has requested that are still outstanding; and she argued it is inappropriate for the AGO to bundle the GRAMA requests and answer them sequentially under Utah Code § 63G-2-204(6). Lastly, she claimed that the chief administrative officer is not responding to the appeal and instead is advocating for the AGO. She requested that the AGO comply with the plain language of Part 4 in the statute.

Respondent's Opening Statement

Mr. Lonny Pehrson stated the appeal deals with twelve records requests that were filed simultaneously on May 2, 2016. Prior to those the Petitioner submitted six record requests on April 7, 2016, and four additional requests on June 8, 2016. In total, twenty-two requests were submitted to the Office within less than two months. The primary issue is whether the Office properly applied the claim of extraordinary circumstance as it pertains to the statute.

Mr. Pehrson asserted that the present appeal is similar to the *Patrick Sullivan v. Utah Department of Corrections*, Case No.16-34. He cited statutes that allowed the office to delay approval under Utah Code § 63G-2-204(5)(c), (d), and (e). The Office properly determined that it could not continue to process all the requests at once and, instead, responded sequentially. This action was compliant with the requirements under the statute.

Testimony Petitioner

Ms. Redd outlined the claim of extraordinary circumstance provisions under Utah Code § 63G-2-204(5)(c), (d), and (e) and stated that they were not met by the AGO in a way that allowed it to apply a blanket extension to all twelve GRAMA requests submitted. She asserted that not all the requests were voluminous and that some had already been Bates stamped and provided to other government agencies. Ms. Redd explained that the AGO did not comply with the statute under Utah Code § 63G-2-204(6)(c).

Ms. Redd addressed the issue that the AGO bundled the GRAMA requests and approached the requests sequentially under Utah Code § 63G-2-204(6)(c)(iv)(B). She argued against the AGO's action to bundle the twelve GRAMA requests based on the assumption they directly relate to one another and that it was appropriate to sequence the response. She concluded by requesting the Committee to consider the events prior to June 7, 2016, when making its decision that the AGO did not comply with the statute when it claimed extraordinary circumstances.

Testimony Respondent

Mr. Pehrson explained the reasons the Office claimed extraordinary circumstances under Utah Code § 63G-2-204(5)(c), (d), and (e). At the time, the office had a large number of GRAMA requests to process. The AGO does not have a large reserve of resources to handle GRAMA requests. There is one GRAMA officer and paralegal. Other staff in the office help in-between their own workload. Furthermore, GRAMA requests to the AGO can be very complex. Requests usually entail multiple files, extending the response time.

Mr. Pehrson explained why the AGO bundled the GRAMA requests. The sequential processing allows the Office a reasonable time to respond to multiple requests, and ensures that a single requester cannot blockade governmental entities' ability to respond to other GRAMA requests until after that requester's responses are complete. Mr. Pehrson believed the AGO will complete Ms. Redd's GRAMA requests within a month.

Petitioner's Closing Remarks

In closing, Ms. Redd stated that when the AGO claimed extraordinary circumstances it did not meet the statutory requirements under Utah Code § 63G-2-204(5)(c), (d), and (e) and Utah Code § 63G-2-204(6)(c)(iv)(B).

Respondents Closing Remarks

Mr. Pehrson stated that the Office's decision to respond sequentially to the Petitioner's requests was well founded and within its discretion under Utah Code § 63G-2-

204(6)(c)(iv)(B). He urged the Committee to deny the Petitioner's request and find that the AGO properly complied with the claim of extraordinary circumstances as outlined in statute, Utah Code § 63G-2-204(5)(c), (d), and (e).

Deliberation:

The Chair stated that the important part of extraordinary circumstances should be that an agency is not denying records access and should not be used in a way to deny records access as stated under Utah Code § 63G-2-204(8). One of the requirements of an extraordinary circumstance, and the handling of them, is that the agency discloses the records that are located as it is fulfilling the request to show the governmental entity is responding in good faith.

Mr. Haraldsen addressed the issue of responding sequentially and stated that it makes sense to manage the request in order as received and to answer them in a uniform manner as outlined under Utah Code § 63G-2-204(6)(c)(iv)(B).

Motion: A motion was made by Mr. Fleming that the governmental entity has provided evidence that extraordinary circumstances do exist pursuant to Utah Code § 63G-2-204(5)(c), (d), and (e). Seconded by Mr. Misner. The motion passed, 5-0. Mr. Fleming, Mr. Misner, Mr. Haraldsen, Ms. Smith-Mansfield, Ms. Mansell, voted yea.

10. Report on Cases in District Court:

Mr. Tonks briefed Committee members on the district court cases. (See the attached documents on the Utah Public Notice Website, [SRC Meeting Handouts September 8, 2016.pdf](#)).

11. Other Business:

Approval of 2016 Annual Interim Report

Motion: A motion was made by Mr. Fleming, and seconded by Ms. Mansell, to approve the 2016 Annual Interim Report. The motion passed, 5-0. Mr. Fleming, Mr. Misner, Mr. Haraldsen, Ms. Smith-Mansfield, Ms. Mansell, voted yea.

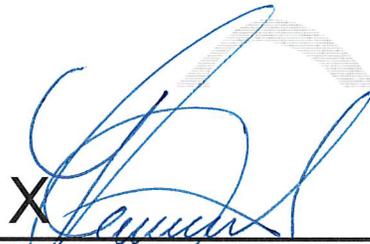
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-October 13, 2016, is the date of the next scheduled meeting.

The executive secretary queried whether a quorum will be present for the next meeting; Mr. Fleming will be absent from the October meeting.

The September 8, 2016, State Records Committee meeting adjourned at 4:20 p.m.

This is a true and correct copy of the September 8, 2016, SRC meeting minutes, which were approved on October 13, 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