

SRC APPROVED

Date Aug 11, 2011
JLM

State Records Committee Meeting

Division of Archives, Courtyard Meeting Room

July 14, 2011

Salt Lake City, Utah

Members Present: Lex Hemphill, Media Representative
Betsy Ross, Auditor's Designee, Chair
Scott Whittaker, Private Sector Records
Scott Daniels, Citizen Representative
Doug Misner, State History Designee
Ernest Rowley, Elected Public Official

Member excused: Patricia Smith-Mansfield, Governor's Designee

Legal Counsel: Paul Tonks, Attorney General's Office
Ed Lombard, Attorney General's Office

Executive Secretary: Susan Mumford, Utah State Archives

Participating
via telephone: Reginald Williams, petitioner

Others Attending: Matt Anderson, Attorney General's Office
Lindsey Ballard, Attorney General's Office
Joshua Bullough, Archives staff
Rosemary Cundiff, Archives staff
Aaron Espinoza, Archives volunteer
Glen Fairclough, Archives staff
Chase Kirkham, Archives intern
Terri Nelson, Salt Lake County
Greg Peay, Department of Corrections
Gina Proctor, Department of Corrections
Carolyn Rowley, Citizen
Mindy Spring, Archives staff

Ms. Betsy Ross called the meeting to order at 9:00 a.m.

Ms. Ross said she was recusing herself from the hearing because of a conflict of interest. She works at the State Auditor's Office and was involved in an audit that included parties in the hearing. Mr. Hemphill would chair the meeting during the hearing portion of the meeting.

Mr. Hemphill made a motion to approve the minutes of June 9, 2011. Mr. Whittaker seconded the motion. A vote was taken. Mr. Hemphill, Mr. Daniels, Mr. Misner, Ms. Ross, Mr. Rowley, and Mr. Whittaker voted for the motion. The motion passed.

The GRAMA Working Group report is attached to the minutes of June 9, 2011.

Ms. Mumford reported there were nineteen appeals to the State Records Committee during the month. The report is attached to the minutes.

Mr. Tonks reported on the cases in District Court. The report is attached.

Joshua Bullough, Archives' records analyst, reported on the retention schedules ready for approval.

1. Radio licenses, #27728 for the Metro Water District of Salt Lake City and Sandy, are proposed to be kept for ten years. Licenses are generally good for one year and are required to be renewed annually. The federal retention is two years.
2. Medical claims, #08148 from the Department of Health had no approved retention schedule. The department had been holding the records for seven years and wanted to continue with that retention.
3. Nursing facility reports, #27738 from the Department of Health The department requested a retention of four years. Other comparable facility reports were not retained for more than four years.

Mr. Whittaker made a motion to approve the retention schedules as submitted. Mr. Hemphill seconded the motion. A vote was taken. Mr. Hemphill, Mr. Daniels, Mr. Misner, Ms. Ross, Mr. Rowley, and Mr. Whittaker voted to approve the retention schedules. The schedules were approved.

Ms. Ross reported on the pre-hearing conferences and their outcome.

1. Dan Schroeder vs. Utah AG's Office. Mr. Schroeder requested records about an investigation into Envision Ogden. The AG's Office will produce a log of the records denied. The hearing was postponed so that the log could be the basis of decisions made by the Committee.
2. Nate Carlisle vs. the Attorney General's Office. Mr. Carlisle sought subpoenas that the office considered protected. The agreement was that a sample subpoena would be provided so that Mr. Carlisle could see the information it contained. The AG's Office did not think it would provide the information Mr. Carlisle was seeking. The hearing may be rescheduled or it may be dismissed.
3. Jewelya Spencer requested records about herself from Human Services. Human Services asked for more specificity. Discussing the issue, it was determined that Ms. Spencer wanted investigative records. The parties agreed that records would be provided that were available on the database. As a result, Ms. Spencer agreed to cancel the appeal.
4. Jeremy Beckham vs. University of Utah was settled in e-mail conversations. The parties agreed that the records would be provided and the hearing canceled.

Ms. Ross advocated planning pre-hearings for all appeals. The issues could be narrowed if not resolved. Ms. Ross, as a government employee, could hold hearings more easily than members of the Committee in the private sector. Judge Daniels said he would not want to hold pre-hearings as a non-paid volunteer. Mr. Whittaker said he would be willing to hold a pre-hearing once a month. Mr. Tonks said the pre-hearings are arranged at the discretion of the chair of the Committee. Ms. Ross said she conducted the pre-hearings as just one member of the Committee and did not presume to speak for the whole Committee. Ms. Ross excused herself from the meeting.

Mr. Hemphill took the role of chair for the hearing. Mr. Williams was contacted by telephone at the Prison. The representative of the Department of Corrections (UDC) took a place at the table with a microphone. The parties introduced themselves. Mr. Reginald Williams was the petitioner. Mr. Matthew Anderson represented Corrections, the respondent. Mr. Hemphill explained the procedures of a hearing.

Opening statement, petitioner

Mr. Williams thanked the Committee for their time and attention to his request. The issue was the inmate's trust fund account (ITFA). He said the department administers an account for all inmates. The account had been administered by various financial institutions. As one of the depositors, he wanted to know how the fund operated, if it was insured, and if any problems had occurred with the account. His requests had been met with an explanation that such records did not exist.

Opening statement, respondent

Mr. Anderson said Mr. Williams had requested e-mails between Corrections and financial institutions who had submitted bids in response to an RFP issued in 2006. The second part of the request had been for any e-mails that indicated why Zion's Bank had been chosen as the financial institution and the RFP had been withdrawn. Mr. Anderson said two hundred pages of documents had been provided to Mr. Williams and no records responsive to the request had been found that did not duplicate what Mr. Williams had already received.

Testimony, petitioner

Mr. Williams had sent a letter to be distributed before the hearing. Mr. Williams said that while he had originally received 200 documents, the department had later confiscated about one third of them. An e-mail from Brian Argyre contained the information about the withdrawal of the RFP. Mr. Williams had found documents in the released records that informed him of the RFP and the need to resolve some issues related to the ITFA. An e-mail proposed a meeting to resolve issues with the inmates' account and the bank administrative contract. Documentation of the issues and any meetings would seem to have been necessary. A substantial amount of money was involved. The department according to its own rules was required to bid the contract out every three years. Mr. Williams had also requested documentation of the notification to Zion's Bank's of their continued administrative responsibility for the fund. Mr. Williams said he had received no records that revealed why the RFP had been discontinued or how Zion's bank was notified that it would continue to administer the

fund. In lieu of the records themselves, he would accept a certification from all persons involved in the RFP that a thorough search of their computers had been made and no other responsive records had been found.

Testimony, respondent

Mr. Anderson said the records confiscated after they were released to Mr. Williams had been found to be part of a confidentiality agreement with Chase Bank. There were no e-mails between bidders when the RFP was issued. No records currently existed that indicated consultations with state purchasing about the inmate trust fund account. Although a meeting was referred to in a letter from Brian Argyre, no records remain as evidence of a meeting. The records may at one time have existed, but were not kept. There may have been e-mails to Zion's Bank at the time, but the administration of the fund was resolved in 2006. Mr. Anderson said that no records responsive to the petitioner's request existed and therefore cannot be provided.

Closing, petitioner

Mr. Williams said he assumed that documents on such a weighty issue would exist. Notification would have been sent to the bidders that the RFP had been discontinued. He renewed his request for an affidavit from each person involved to check their computers for relevant documents. He said Mr. Anderson had admitted that records were confiscated from Mr. Williams. The District Court had to compel the Department of Corrections to produce records for an appeal. Mr. Williams concluded it was hard to accept UDC's word on the non-existence of other records. An affidavit was acceptable in lieu of the records to verify that a thorough search had been made.

Closing, respondent

Mr. Anderson said he had no more to add to his testimony. He said the court had not compelled UDC to produce anything, but that documents had been found and released to the court when they were requested. Mr. Daniels asked Mr. Anderson if the requested documents may have once existed. Mr. Anderson responded that they may have, but did not at this time.

Deliberation

Mr. Hemphill explained to Mr. Williams, who was participating by telephone that often the Committee would be silent until a member made a motion. Mr. Williams thanked Mr. Hemphill for his consideration.

Mr. Rowley asked if the court had ordered UDC to produce the same documents that were under discussion in the current hearing. Mr. Anderson responded that protected documents were provided to the court for which Mr. Williams had originally asked. They included the terms and conditions of a contract with a financial institution providing banking services for the inmate fund. Mr. Williams had submitted about fifty GRAMA requests in the last six months. By the time one of his appeals got to District Court, he was claiming the request included audits of the ITFA, and any documents that showed why the fund was handled by Zion's Bank. It had become an expanded request.

The Division of Finance had found a file responsive to the RFP. UDC immediately notified the court of the existence of the documents and produced them. The court ordered UDC to release the records to Mr. Williams and subsequently dismissed his appeal. Mr. Williams was given the opportunity to respond. He said the department had a different perspective on the matter than he did. It was not until he, the petitioner, identified the actual contract numbers from the Department of Purchasing website that UDC had admitted the documents existed.

Mr. Rowley said it was difficult to order a release of documents that the agency was unable to find or produce. Mr. Misner said that although documents should exist in some instances, they may have been deleted or destroyed. No production can be ordered in such a case. Mr. Daniels said the order should include the information that the Department of Corrections represented that a thorough search had been made. He made a motion that the petitioner's appeal be denied as the Department of Corrections had made a thorough search and found no more responsive documents. Mr. Rowley seconded the motion. A vote was taken. Voting in favor of the motion were Mr. Daniels, Mr. Misner, Mr. Hemphill, Mr. Rowley and Mr. Whittaker. The motion passed. Mr. Hemphill told the parties that an order would be prepared and sent within five business days. The order would include the right of the parties to appeal.

Mr. Rowley made a motion that the Committee adjourn. The meeting was adjourned by acclamation. The next meeting of the State Records Committee is scheduled for August 11, 2011.