

SRC APPROVED

Date January 12, 2012  
SLM

## State Records Committee Meeting

Division of Archives, Courtyard Meeting Room

September 8, 2011

Salt Lake City, Utah

Members Present: Lex Hemphill, Media Representative  
Scott Daniels, Citizen Representative  
Doug Misner, History Representative  
Betsy Ross, Auditor's Office Representative  
Ernest Rowley, Elected Public Official  
Patricia Smith-Mansfield, Governor's Designee  
Scott Whittaker, Private Sector Records Manager

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

Executive Secretary: Susan Mumford, Utah State Archives

Others Attending: Jesse Alba, Board of Pardons  
Erin Alberty, Salt Lake Tribune  
Lindsey Ballard, Attorney General's Office  
Joshua Bullough, Archives staff  
J. Bartell, Board of Pardons  
Kym Chaplin, Board of Pardons  
Glen Fairclough, Archives staff  
Judy Fahys, Tribune, petitioner  
John Green, Board of Pardons  
Mike Hansen, Community & Culture  
Dan Harrie, Salt Lake Tribune  
Katherine Kinsman, Attorney General's Office  
Jean Mills-Barber, Human Resource Management  
Sheila Page, Attorney General's Office  
Sharel Reber, Attorney General's Office  
John H. Thompson, petitioner  
Jane Van Wagoner, Community & Culture

**Ms. Betsy Ross called the meeting to order at 9:30 a.m.**

**Hearing –J.H. Thompson vs. Department of Human Resource Management**

Mr. Thompson introduced himself as the petitioner. Ms. Jean Mills-Barber, Director of the Department of Human Resource Management introduced herself as the respondent. Ms. Mills-Barber said her office had reviewed the records in question and had reclassified them as public records. The names of the committee members who reviewed the nominees for the Governor’s Awards for Excellence were included in the records for release. Serving on that committee were members of the media, private citizens, and government employees. She said she had the requested records with her with the exception of one nomination for Mr. Aaron Wilmott which she would make available electronically later in the day when she could return to her office. She said all the available records would be released to Mr. Thompson. The only redaction had been third party medical information classified as private. Ms. Smith-Mansfield made a motion to dismiss the hearing. Mr. Hemphill seconded the motion. A vote was taken. Mr. Daniels, Mr. Hemphill, Mr. Misner, Ms. Ross, Mr. Rowley, Ms. Smith-Mansfield, and Mr. Whitaker voted in favor of the motion. The motion passed. The hearing was dismissed. Ms. Ross thanked the parties and expressed satisfaction at the resolution. Mr. Thompson said he had made the request for the three nominees he had submitted from his department. His intent was to see the wording and format of the nominations of award winners. He wanted his nominees to be treated fairly in the awards process.

**Hearing – Jeffrey Gallup vs. Board of Pardons & Parole**

Mr. Jeffrey Gallup was contacted by telephone at the prison. Ms. Sharel Reber represented the Board of Pardons. Ms. Ross explained the procedures for the hearing.

**Opening statement – petitioner**

Mr. Gallup requested that the supplemental information represented by UCA 63G-2-205(2)(b) be excluded from consideration by the Committee because it had not been provided to him prior to the hearing. On September 29, 2009 Mr. Gallup had been committed to the Utah State Prison for two felony DUI convictions, his third and fourth DUI. Also involved were three violations of a protective order which involved illicit telephone contact in an attempt to verify the well being of his son. On April 6, 2010, the Board of Pardons and Parole received a letter from an unknown author urging that Mr. Gallup’s application for parole be denied. The board had not provided Mr. Gallup with notice of the receipt of the letter nor the information contained in the letter. Disclosure information, called a blue packet, is provided to inmates before a hearing. The original hearing was held on April 20, 2010. Five minutes before the hearing, he was provided with a document entitled “summary of confidential information.” The summary stated that the board had received information requesting that parole be denied. He said he had no opportunity to rebut the information submitted to the board.

**Opening statement – respondent**

Ms. Reber said at issue was a confidential letter submitted to the board. Any part of the content of the letter would reveal its author. The Utah Supreme Court case: Labrum vs. Board of Pardons, gave the board broad discretion to protect any communications

received and any person submitting information. Pursuant to UCA 63G-2-201(6)(a), disclosure of the letter was governed by court rule. Any communications received by the board were put into the board file previous to Mr. Gallup's hearing. The only e-mail received by the board was from the petitioner's mother. It had been provided to him. Section two of the board file contained all memoranda prepared by the board staff and board members. The file is sent from one member to the next as the board does not meet together. Information in that file was not given to Mr. Gallup pursuant to UCA 63G-2-104(22)(xi). Protected information covered under UCA 63G-2-305(34) was not released to Mr. Gallup. That information included memoranda prepared by staff and used in the decision making process by a member of the Board of Pardons. A summary of the confidential letter had been provided to Mr. Gallup. Mr. Gallup is an attorney and filed a habeas action regarding the sufficiency of the summary. That action was denied. Mr. Gallup had received everything he was entitled to under Labrum and under GRAMA.

### **Testimony – petitioner**

The argument of the board that Labrum governed the release of the letter was invalid. The ruling was silent on the obligation of the board to provide a summary of the letter and the topic had not been ruled on by the court. The rule was in dispute and was not subject to GRAMA but was covered pursuant to R671-301-11. Mr. Gallup said he had not been allowed argument on the merit of the letter's content. He said his GRAMA request had included all information, correspondence, evaluations, recommendations, and reports submitted to the board in connection with his case. A favorable letter from his father and another from an LDS bishop had not been included in the information released to him. He said he was not a violent individual nor did he pose a threat to any individual as characterized by the board. The protective order had involved illicit telephone contact. Domestic violence as a term is applied to crimes between cohabitants as defined in UCA 77-36-11. It was misleading to claim violence had been involved. The board had denied the records initially based on UCA 63G-2-305(9), which protected records maintained for civil, criminal, or administrative enforcement including audits, discipline, licensing, or certification proceedings, if release reasonably could be expected to reveal the identity of a source not generally known outside of government. That section of the code applied to pre-trial rather than post-conviction proceedings. There was no active investigation involved. The board was a quasi-judicial body and not a civil administrative enforcement body. Mr. Gallup said he had worked for the State of Utah in the Division of Securities and knew that the protection of 63G-2-305(9)(d) applied to active investigations. Section (10) of the same part of the code referred to records that would jeopardize the life and safety of an individual. There was no crime of violence on his record and no instance in the past could be used to accuse Mr. Gallup of harm or threat of harm to any individual. A true summary of the information in the letter would be sufficient. The name of the individual would not be necessary. He had a right to respond to allegations made in the letter. The protective order had been sought on June 17, 2008, and had expired and was not renewed. The Board of Pardons also claimed the record was protected pursuant to 63G-2-305(25), records containing a personal recommendation concerning an individual if disclosure would constitute a clearly unwarranted invasion of personal privacy or disclosure was not in the public interest. In providing a recommendation to a state agency or a court, the provider of the information had no

expectation of personal privacy. Disclosure of the record was in the public interest as it concerned the right to respond to an accusation. The record was not private under UCA 63G-2-302(2)(d) as a clearly unwarranted invasion of personal privacy. The information sought applied to the subject of the communication rather than to the provider of the communication. Labrum determined that due process for setting minimum terms must include providing adverse information in an inmate's file and an opportunity to rebut or explain. Confidentiality of the source may warrant a reasonable summary of the information in the communication. The sixth amendment to the United State Constitution guaranteed an individual the right to confront an accuser. Mr. Gallup said his sixth amendment rights had been violated.

### **Testimony – respondent**

Ms. Reber said Mr. Gallup had minimized his culpability for the crimes for which he was incarcerated. He had repeatedly violated a protective order. The protective order had not been renewed because Mr. Gallup was incarcerated. Release of the confidential letter was controlled by Labrum. Labrum required that an inmate be provided timely knowledge of all information or a summary thereof that the board would consider in making parole determinations. The board was given broad discretion in releasing information. Instances could require that confidentiality of sources be observed. The nature of the letter in question precluded revealing any part; therefore the summary was limited. The main point of the letter was a request to not let the inmate out of prison. Domestic violence was defined as physical harm or threat of violence or physical harm. Mr. Gallup had been convicted of domestic violence offences. Pursuant to UCA 63G-2-201(3)(b), the letter was not a public record. Access was also restricted pursuant to court rule. The court rule was Labrum. The record was protected pursuant to UCA 63G-2-305(9) as a record created for civil, criminal or administrative enforcement purposes if release could reasonably be expected to disclose the identity of a source not generally known outside of government.. By providing the letter, the author would be readily apparent. Redaction of the author's name would not serve to disguise the source of the letter. Protection was provided under UCA 63G-2-305(10). Disclosure would jeopardize the life or safety of an individual. The author had specifically requested the letter not be released. If release were to be an option, the author requested that it not be used. The author was concerned about retaliation by the inmate. UCA 63G-2-305(25) authorized protection of a record such as a personal recommendation concerning an individual if disclosure would constitute a clearly unwarranted invasion of personal privacy or was not in the public interest. The letter met both criteria. It would be a clearly unwarranted invasion of the privacy of the individual who wrote the letter, and was not in the public interest. Petitioner's due process rights had been met. The letter was private pursuant to UCA 63G-2-302(2)(d). It contained data on an individual the disclosure of which constituted a clearly unwarranted invasion of personal privacy. Ms. Reber indicated that all communications used by the board for a hearing were included in the inmate's file. Ms. Kym Chaplin, GRAMA technician, was sworn as a witness by Ms. Ross. She had worked at the Board of Pardons for four years. The letters mentioned by the inmate may have come into the office after the hearing. Ten days prior to a board hearing, new material was released to an inmate. The Committee asked if, in response to a GRAMA request, material received after that time would be released or if the inmate would have

to wait until a date prior to another hearing. Ms. Chaplin deferred to Mr. Green for an answer. Mr. John Green was sworn as a witness. He had worked for the Board of Pardons as an attorney for over nineteen years. He said seven days prior to a hearing the offender received a copy of all documents the board relied on to make a decision in the case. A letter had been received, but not prior to the seven days. It did not get put into the packet. At the time of the hearing, a summary of the letter was given to the offender. At that time, the offender could have requested additional time to review the letter. Mr. Gallup had not requested additional time. If a GRAMA request is made, it is responded to at the time of the request. Mr. Hemphill indicated that the letter in question was received by the board thirteen days before the hearing. Mr. Green responded that if the offender had asked for time to consider the summary of the letter, an extension would have been granted. Ms. Reber reported that a letter from Mr. Gallup's bishop was part of the blue packet which would indicate that he had received a copy. A letter from Mr. Gallup's father was received July 15 and was not part of the packet. Mr. Daniels asked Ms. Reber for the wording in the Labrum case that authorized the board to protect the identity of a source. Ms. Reber said that the discretion authorized to the board was implied and a summary was suggested as a way to protect a source. Ms. Reber said the letter was available for the Committee to review *in camera*.

**Closing – petitioner**

Mr. Gallup said he had an idea of the identity of the writer of the letter. He said he believed it was a former partner, Delano S. Findley. There were reasons for him to have provided false or misleading accusations against Mr. Gallup because of business dealings the two had in common. The violations of the protective order that the board characterized as violent had only involved telephone calls. The violations were not violent. A bar association investigation found the convictions for violating a protective order did not constitute crimes of violence. Mr. Gallup requested a reasonable summary of the letter so that he could respond to any false, misleading, defamatory, or libelous information it contained. He had the right to be able to respond to accusations made against him that had been used to extend his incarceration. He said phone calls he had made were to verify the status and well being of his son and to procure the agreement of his son's mother to modify the protective order so he could see his son. Those violations were labeled crimes of domestic violence even though they involved no physical harm or threat of physical harm. The requested letter was received by the board on April 6, 2010. The blue packet was provided on April 8, 2010. The board had deliberately failed to provide the information in a timely manner. The summary of the letter was provided only five minutes before the hearing. The letter sent to the board in July by his father had not been provided to him even though a GRAMA request was made after the hearing. Another request had been answered with the information he would get the requested records prior to his next hearing. Sound public policy and the sixth amendment right to confront an accuser argued that he should have a reasonable summary of the accusations in the letter. He urged the Committee to order the Board of Pardons to provide a reasonable summary of the letter.

### **Closing – respondent**

Ms. Reber said two laws governed the release of the letter. A ruling of the court signed by Judge Dever addressed the sufficiency of the summary. She emphasized that the case of Labrum vs. the Board of Pardons controlled release of the letter. GRAMA had been complied with entirely. Some records had come in after the packet was prepared and had not been released to Mr. Gallup. Those records were available for release and had only been withheld because of the time issue. The letter was withheld under all of the provisions cited in GRAMA. The privacy interest was a major consideration. The letter's author asked that the letter be discarded rather than released. The board had provided all records possible within the law to Mr. Gallup.

### **Deliberation**

Ms. Smith-Mansfield made a motion to close the meeting to review the records in question. Mr. Hemphill seconded the motion. A vote was taken. Mr. Daniels, Mr. Hemphill, Mr. Misner, Ms. Ross, Mr. Rowley, Ms. Smith-Mansfield, and Mr. Whittaker voted in favor of the motion. The motion passed. The Committee went *in camera* to review the records. The telephone connection to Mr. Gallup was ended.

### **Closed session – 11:04 a.m.**

### **Open session – 11:45 a.m.**

Mr. Gallup was contacted at the prison. Ms. Smith-Mansfield made a motion to return to open session. Mr. Whittaker seconded the motion. A vote was taken. Mr. Daniels, Mr. Hemphill, Mr. Misner, Ms. Ross, Mr. Rowley, Ms. Smith-Mansfield, and Mr. Whittaker voted in favor of the motion. The motion passed. The Committee returned to open session.

### **Deliberation**

The two issues to be considered were the summary of the letter and the packet that had been released to Mr. Gallup. Ms. Smith-Mansfield made a motion that the two issues be considered separately. Mr. Rowley seconded the motion. A vote was taken. Mr. Daniels, Mr. Hemphill, Mr. Misner, Ms. Ross, Mr. Rowley, Ms. Smith-Mansfield, and Mr. Whittaker voted in favor of the motion. The motion passed. Ms. Smith-Mansfield made a motion that the letter had been properly classified as protected pursuant to UCA 63G-2-305(12), Mr. Rowley seconded the motion. Mr. Daniels said he agreed that the petitioner was not given a reasonable summary and his due process rights had been violated. He said protection of the letter might be justified under UCA 63G-2-305(10), as release of the records could jeopardize the life and safety of an individual. Mr. Rowley made a motion to amend the motion to include UCA 63G-2-305(10). Mr. Misner seconded the amended motion. After discussion by the Committee, Ms. Smith-Mansfield withdrew the original motion. Ms. Smith-Mansfield made a motion that the letter was correctly classified by the agency as protected pursuant to UCA 63G-2-305(10). Mr. Rowley seconded the motion. A vote was taken. Mr. Rowley and Mr. Misner voted in favor of the motion. Ms. Ross, Mr. Hemphill, Mr. Daniels, Mr. Whittaker, and Ms. Smith-Mansfield voted against the motion. The motion failed. Mr. Daniels made a motion that the record had been improperly classified as private or protected, was a public document, and should be released. Mr. Hemphill seconded the motion. A vote was taken. Mr.

Daniels, Mr. Hemphill and Mr. Whittaker voted in favor of the motion. Mr. Misner, Ms. Smith-Mansfield, Mr. Rowley, and Ms. Ross voted against the motion. The motion failed. Mr. Rowley made a motion that the Committee go *in camera* a second time. Ms. Ross seconded the motion. A vote was taken. Mr. Daniels, Mr. Hemphill, Mr. Misner, Mr. Rowley, Ms. Ross, Ms. Smith-Mansfield, and Mr. Whittaker voted in favor of the motion. The Committee went *in camera*.

**Closed session – 12:05 p.m.**

**Open session – 12:25 p.m.**

Ms. Smith-Mansfield made a motion that the Committee return to open session. Mr. Whittaker seconded the motion. A vote was taken. Mr. Daniels, Mr. Hemphill, Mr. Misner, Mr. Rowley, Ms. Ross, Ms. Smith-Mansfield, and Mr. Whittaker voted in favor of the motion. The Committee returned to open deliberation. Ms. Smith-Mansfield made a motion that the record had been correctly classified as private pursuant to UCA 63G-2-302(2)(d). Mr. Rowley seconded the motion. Mr. Hemphill said the petitioner deserved a better summary, but under the circumstances he agreed the letter was classified correctly. Ms. Ross said it was not within the power of the Committee to order the board to provide a better summary, although if the Committee could do so, it probably would. Ms. Smith-Mansfield said the board had not acted correctly when it considered the letter rather than sending it back according to the author's request. If the summary of the letter had been adequate, the issue would have been resolved. A vote was taken on the motion. Mr. Hemphill, Mr. Misner, Ms. Ross, Mr. Rowley, and Ms. Smith-Mansfield voted for the motion. Mr. Whittaker and Mr. Daniels voted against the motion. The motion passed. Ms. Ross said an order would be sent to the parties within five business days. She thanked the parties for attending. The Committee took a short break.

**Break – 12:39 p.m. – 12:59 p.m.**

**Hearing – Judy Fahys, Salt Lake Tribune vs. Department of Community and Culture (DCC)**

Mr. Misner, an employee of the Division of History, said that after a review of the material involved, he would recuse himself from the hearing. Ms. Smith-Mansfield, the State Archivist, said she had advised the Division of History on a GRAMA request of a similar nature. Ms. Kathy Kinsman, representing the Department of Community and Culture, handed out an example of a GRAMA request to which the department had responded. Ms. Smith-Mansfield said she was available to help any governmental entity as well as the public on GRAMA issues. While she had not helped DCC with the current request, she offered to recuse herself. Ms. Ross said the parties could weigh in on the participation of Ms. Smith-Mansfield in the hearing. Mr. Dan Harrie, managing editor of the Salt Lake Tribune, said he had just received the documents and could not make a judgment on the contents. Ms. Smith-Mansfield chose to participate as an advisor. She would remain available as a non-voting Committee member.

**Opening statement, petitioner**

Mr. Harrie introduced himself as editor of government and political issues for the Salt Lake Tribune. He said he worked with Ms. Fahys, reporter for the Tribune, on the request. The reason cited by DCC for the denial of the records had been lack of specificity. The records request had been for e-mails, correspondence, and documents between the department, other executive branch offices, the legislature, the Utah Transit Authority, and the Kane County Water Conservancy District, regarding the positions of state archeologist, assistant state archeologist, and physical anthropologist. The request identified by name the three people who had held the positions. The request had been characterized by the department as massive, voluminous, and one that would require extensive time. It would be necessary to go through each individual's e-mails and review them to see if they were responsive to the request. Mr. Harrie said that a query of e-mails using key words could produce the responsive records. He said the Tribune had tried to work with the department and to be flexible. Five documents had been received which were not responsive to the request. The records received were: a legislative audit several years old that could be downloaded from the legislature's website, and some financial documents which could be downloaded from the same site. No emails, no correspondence and no other documents had been received.

**Opening statement, respondent**

Ms. Kathy Kinsman introduced herself. She represented the respondent, the Department of Community and Culture. In June, 2011, Ms. Fahys had submitted a request that was extremely broad and undefined. At the request of the department, two subsequent modifications were made to the request. The request remained broad and not reasonably specific as required by UCA 63G-2-204(1)(b). The request was denied by Mr. Hansen, acting director of the department. His denial was dated July 18, 2011. Even as modified, the request from Ms. Fahys did not meet the standard of reasonable specificity that would allow the department to locate responsive records. Ms. Kinsman distributed two examples of GRAMA requests submitted by Mr. Ronald Rood to the Division of State History, a division of the Department of Community and Culture. The requests had been specific enough that the division was able to fill them. The topic of the requests was similar to that of Ms. Fahys. On June 30, 2011, the department released the archeological surveys and the budget documents to Ms. Fahys. If Ms. Fahys had provided a description of the records that would enable DCC to do a reasonable search, the department could have estimated the cost. In an attempt to resolve the issue, Ms. Kinsman had suggested a pre-hearing conference. Ms. Fahys had responded that her supervisor thought such a conference would be inappropriate. DCC was more than willing to cooperate if clear directions were provided about the records being requested. With staff cuts and limited resources in the department, an extensive search would be difficult, costly, and time consuming.

**Testimony, petitioner**

Mr. Harrie said it was difficult to understand why the Department of Community and Culture had a problem with the request. Instead of cooperation, the department had responded with reasons the records could not be provided. They had cited the difficulties of retrieving the documents, the expense involved, and the lack of staff to do an

extensive search. The Tribune has requested any correspondence or documents related to the positions that were eliminated by the department earlier in the year. The topic was a matter of public interest and had been the subject of news stories in the Tribune. Other motivations for the elimination of the positions had been offered that differed from the official reason. An expensive fishing expedition was not the goal of the Tribune. Ms. Fahys distributed to the Committee a timeline of the request. Ms. Fahys explained that her requests usually began with a phone call. She said she was not in an adversarial situation, but rather had a responsibility to supply information to readers about the workings of government. Her request was consistent with the spirit and the letter of the GRAMA law. She said she asked for records pertaining to the restructuring of the department. The initial response had come from State History although she had written the request to Michael Hansen. She was told one of the reasons her request was problematic was that in 2006, the state archeologist position had been eliminated. She was asking about a position that no longer existed. She then changed the request to name the people who had held the positions that had been eliminated. Rather than asking for e-mail correspondence from and to Michael Hansen, she then asked for correspondence from and to anyone who had the executive director's role and had been part of the decision making process. She looked forward to having the help of the Committee to refine the request process. Mr. Harrie read from GRAMA the legislative intent of the law. He said the intent of the law included the public's right to easy and reasonable access to unrestricted public records. He said he believed the department could comply with the request and that it was a reasonable request. Mr. Harrie said Mr. Gehrke of the Tribune frequently asked for e-mails and correspondence based on a particular subject. Agencies then ran a query for pertinent records. Mr. Harrie said Community and Culture had asked if they could bring a sample of pertinent records to the hearing. If the agency were able to find a sample, at least some records existed and could be released. Ms. Ross said that while a pre-hearing conference could perhaps have been helpful, the issue of e-mail access applied broadly to governmental entities and should be discussed by all the members of the Committee.

### **Testimony, respondent**

Ms. Kinsman read the original request from Ms. Fahys dated June 27, 2011. It included communications written and electronic between Community and Culture, the Division of History, other executive branch offices, the Utah State Legislature, the Utah Transit Authority, and Kane County Water Conservancy District regarding the positions of state archeologist, assistant state archeologist, and physical anthropologist. The department asked Ms. Fahys to narrow the request. On June 30, a date range of 2001 to 2011 was added to the request. The request was changed to say it was a request for copies of documents written and electronic concerning the state archeology program within the department from July 1, 2005 through to the present regarding the positions previously held by Kevin Jones, Ron Rood and Derinna Kopp. With these minor changes, the request was still vague and expansive. The request Ms. Kinsman handed out as an example specified correspondence concerning State History policies, duties, functions, and budget between September 2, 2010 and June 23, 2011. Ms. Jane Van Wagoner was sworn as a witness. She was the current GRAMA officer for DCC and was familiar with the Tribune's request and the denial from Mr. Hansen. She said she had explored the

request and the process of retrieval with the IT director. Anyone in DCC meant 200 employees. Anyone in an executive office meant 19,000 employees. Anyone in the legislature and anyone in the Utah Transit Authority meant another thousand or so. A query using the three names would have to be made on each e-mail account and examined to see if the subject matter was relevant to the request. E-mails of past employees were not maintained. Any non-public information would have to be redacted. The cost of such a search would be incalculable. The estimate only included a search for electronic records. Ms. Kinsman said she had not brought a sample because there was no way to begin such a search without a more meaningful narrowing of the request. Ms. Ross said that it seemed evident what the request was about. The agency could have helped the petitioner to narrow the request of the topic and the people who would have been involved. Ms. Kinsman said she had hoped to do that in a pre-hearing conference and that she had received the files just a week before the hearing. It was not the department's job to define a records request for the petitioner. Ms. Van Wagoner said that a search using multiple key words was not possible in GroupWise, the platform used for e-mail by the state. Keywords would have to be entered separately in each of the employees e-mail accounts. Ms. Patricia Smith-Mansfield, State Archivist, was sworn as a witness by Ms. Ross. Ms. Ross asked Ms. Smith- Mansfield what the possibilities were for such a search. Ms. Smith-Mansfield said the state did use GroupWise for electronic mail, and it was not a records management system. She said guidelines were posted on the Archives Website for governmental entities to use in managing e-mail. She testified about the nature of the e-mail accounts for state employees and the possibility of breaking a voluminous request into segments in order to respond. When an employee left, e-mail accounts were closed and the information was not kept. The receipt of a voluminous request did not lessen the obligation under GRAMA to provide records. There were provisions in GRAMA to extend the time required to perform a search and retrieve records. The petitioner was looking for information specific to the antiquities office. Some assumptions could have been made about which accounts would contain relevant information. Ms. Smith-Mansfield said that the Department of Community and Culture had a rule requiring that media requests be sent to the public information officer of the department. From there, a request could be sent to a particular division. Ms. Smith-Mansfield emphasized that GroupWise, the e-mail platform used by the state, was not a records management system. Any assistance provided by the Department of Technical Services to retrieve archived records for an agency would be accompanied by a fee. Ms. Smith-Mansfield said that the State Archives was available to help any agency understand and respond to GRAMA requests. Ms. Kinsman said the department remained willing to work with the petitioner to identify the records requested.

### **Closing, petitioner**

Mr. Harrie said the agency had not shown willingness to work with the Tribune, but had repeatedly impeded the process. He said it was frustrating to hear Ms. Kinsman, who had come into the process recently, characterize the process as cooperative. Ms. Fahys said she had made a FOIA request when former governor Mike Leavitt was being considered for a position with the Environmental Protection Administration. A phone call to the offices had clarified the reason for the request and had removed barriers to providing the records. She had ultimately received records from the White House that had been

distributed to legislators in the process of vetting Governor Leavitt for the position. Ms. Fahys said her original request to DCC had not included a date range. The History staff suggested that be added. Mr. Hansen had added the information that correct terms for the positions were not being used. Mr. Rood, one of the former employees, had informed Ms. Fahys that the correct term for his position had been Program Manager III., and for the other position, Program Manager II. She had received no other suggestions from the department of how to refine her request to get the information she wanted. Mr. Harrie said that some decision from the Committee would be appreciated to facilitate a response from the department. The goal of the Tribune was to elicit a reasonable response to the request.

### **Closing, respondent**

Ms. Kinsman said she was very concerned that if the Committee were to rule that the request had been reasonably specific, it would not apply only to her client but to all governmental entities that get GRAMA requests. If the request had been for records that explained the reason the three individuals had been let go, that would have been a more reasonable GRAMA request. The request as it was received by the department did not meet the standards of reasonable specificity. The Department of Community and Culture was willing to work with Ms. Fahys and the Tribune. It was implicitly understood what information was sought. If the request had been clear, Ms. Kinsman said, her client could have done a search to find records responsive to a reasonably specific request.

### **Deliberation**

Mr. Hemphill made a motion that the denial of records by the Department of Community and Culture be overturned and that pursuant to UCA 63G-2-204, the request was specific enough to merit a response. Mr. Whittaker seconded the motion. A vote was taken. Mr. Hemphill, Mr. Daniels, Ms. Ross, Mr. Rowley, and Mr. Whittaker voted in favor of the motion. The motion passed. Ms. Ross said an order would be issued within five business days.

### **Business**

#### **Approval of minutes**

Mr. Hemphill made a motion that the minutes of the State Records Committee for August 11, 2011, be approved. Mr. Whittaker seconded the motion. A vote was taken. Mr. Hemphill, Mr. Daniels, Ms. Ross, Mr. Rowley, Mr. Misner, and Mr. Whittaker voted in favor of the motion. The minutes were approved.

### **Retention schedules**

Mr. Joshua Bullough presented the following series for approval by the Committee:

1. #23860, Board of Education, Utah Professional Practices Advisory Commission case files, an existing series, formerly retained for 35 years, proposed retention is 50 years.
2. # 25634, Board of Education, Utah Professional Practices Advisory Commission investigative files, a new series, the proposed retention is 50 years.

3. # 24287, Department of Health, Mental health cost settlements and audits, created in 2002, proposed retention of 15 years.

Mr. Hemphill made a motion that the three series be approved. Mr. Whittaker seconded the motion. A vote was taken. Mr. Hemphill, Mr. Daniels, Ms. Ross, Mr. Rowley, Mr. Misner, and Mr. Whittaker voted in favor of the motion. The series retention schedules were approved.

Mr. Bullough presented a draft of a retention schedule for meeting recordings. The approved meeting minutes were the official record of a meeting. The audio recording may be destroyed after three years. Closed meeting audio recordings are not generally transcribed nor are minutes of closed meetings the official record. Therefore, the closed meeting audio recordings are retained permanently.

#### **Administrative Rule Discussion**

The addition of an administrative rule was proposed in a previous meeting. The proposed rule was that a log of denied records be required when a governmental entity came before the State Records Committee in a hearing. Mr. Whittaker made a motion that the rule be drafted. Mr. Rowley seconded the motion. A vote was taken. Mr. Hemphill, Mr. Daniels, Ms. Ross, Mr. Rowley, Mr. Misner, and Mr. Whittaker voted in favor of the motion. Ms. Smith-Mansfield abstained from voting. Mr. Tonks said that a rule would be drafted and circulated to members of the Committee. Acceptance of the rule would be an action item for the next meeting.

4. # 27748, Kaysville, UT, Failed initiative petitions and signature sheets, State General Schedules for petitions exist. For municipalities, the schedule is 18-20 and for counties, the schedule is 14-32. Petitions are retained for five years after an issue is resolved or a decision is made. Records are then transferred to the State Archives. Failed petitions were not addressed. Kaysville asked to retain failed petitions for one month and then destroy. Ms. Smith-Mansfield spoke against the separation of successful and failed petitions. She recommended a permanent retention for both successful and failed petitions. She suggested in-office retention of five years and then a transfer to the Archives. Ms. Smith-Mansfield made a motion that the retention schedule not be approved. Mr. Hemphill seconded the motion. A vote was taken. Mr. Hemphill, Mr. Daniels, Ms. Ross, Mr. Rowley, Mr. Misner, Ms. Smith-Mansfield, and Mr. Whittaker voted in favor of the motion. The motion passed.

#### **Appeals received during the month**

Nine appeals were received during the month. Three hearings were scheduled for October.

#### **District Court cases**

Mr. Tonks reported on cases in District Court. See attached report.

**Adjournment 3:10 p.m. – next meeting scheduled for October 13, 2011.**