

SRC APPROVED

Date February 15, 2012
SLM J

State Records Committee Meeting

Division of Archives, Courtyard Meeting Room

November 22, 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
Ed Lombard, Attorney General's Office
Amanda Jex, Attorney General's Office

Executive Secretary: Susan Mumford, Utah State Archives

Others Attending: Amy Arnn, Utah State Tax Commission
Susan Barnum, Attorney General's Office
Joshua Bullough, Archives staff
Glen Fairclough, Archives staff
Judy Fahys, Tribune, petitioner
Dolores Furniss, Utah State Tax Commission
Steven Onysko, Petitioner
Mindy Spring, Archives staff

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

Ms. Ross welcomed the parties for the hearing and explained the procedures.

Hearing – Steven Onysko vs. Utah State Tax Commission

Opening statement – petitioner

Mr. Onysko passed out copies of his GRAMA request history. He had asked for access to the records or to view existing records. In a prior appearance before the Committee there was an order issued for the Tax Commission to grant access to some of the requested records. Subsequent to that, Mr. Onysko received a letter from the Attorney General's Office that a payment was expected for copies of the records. A thirty dollar tax dispute in 2007 was the origin of the appeal and an eighty dollar tax dispute in 2008. He apologized for the time and effort the Committee and others expended, but he stated it

was a matter of principle. Mr. Onysko said he appealed to the Committee about the Tax Commission's non-compliance with the order. He was told the Committee did not have legislative authority to dispute a letter of compliance. The current appeal was for the denial of a fee waiver. Ms. Ross said she had consulted with the agency attorney to determine that the Committee did not have authority to dispute the Tax Commission's letter of compliance at this time.

Opening statement – respondent

Ms. Barnum, representing the Tax Commission, originally gave Mr. Onysko some of the requested records and denied others. She said proprietary software prevented extracting some of the information. After looking at the request closely, more effort was put into the request and more information was made available. Because significant time and effort had been expended, a fee accompanied release of the records. A few documents from workforce services were not released because of a sharing agreement with that agency. Mr. Onysko officially asked to have the fees waived. His request was denied by the Tax Commission. The Tax Commission was not charging the full amount for the records according to the fee schedule and the time and effort spent on producing the records.

Testimony – petitioner

Mr. Onysko said he should not have to pay to be able to rebut the position of the Tax Commission that he owed certain amounts of taxes. He was asked to pay \$131.00 to defend himself against a \$30.00 tax bill. His concern was that he had not seen a log of the records denied. The Tax Commission represented that much of the material had already been released. An index of the materials would have given him a way to determine which of the records he was missing. He already had all the correspondence that was addressed to him and suspected that the correspondence represented a large part of the records. He wanted the calculations the state used to determine he owed more taxes and to see if specific deductions were not allowed. The issue at hand was that the fees were punitive or diversionary. If the Committee did not have the authority to pursue the non-compliance of the Tax Commission with the order, he would pursue the matter with the Utah State Bar. The letter from Ms. Furniss did not include a list of the records denied. He suspected the list would include documents he already had. If a large part of the records brought to the hearing by the Tax Commission was correspondence addressed to him, Mr. Onysko already had those documents. He wanted access to the calculations made by the Tax Commission that justified extra tax charges and to inspect the records rather than have copies. Any records compiled for the Tax Commission hearing had already been compiled for the purposes of a hearing. The fees did not fairly represent what a lowest paid employee capable of handling the request would receive as a salary. He said he thought the state had padded the amount charged for records. He passed out documentation to the Committee members. He said emails between him and Dolores Furniss and Daniel Engh showed that only one individual had prepared the records. Daniel Engh, a manager at the Tax Commission, had printed out the material. The website: *Utah Right to Know* had posted the salary of Mr. Engh at \$106,000. The auditing manager was not the lowest paid employee capable of assembling the records. The price was inflated and punitive. Ms. Barnum said the work for Mr. Onysko had been billed for \$20.00 an hour but he had only been charged half of the amount or \$10.00 an

hour. Ms. Barnum had sent an email to Ms. Mumford to distribute to the Committee listing the breakdown of the charges. She had not sent a similar breakdown to Mr. Onysko. Mr. Onysko quoted from GRAMA: "...a governmental entity may fulfill a records request without charge and is encouraged to do so when it determines that the individual requesting the record is the subject of the record..." He said the law also stated that a governmental entity could not charge a fee for inspection of a record. He said he had not asked for copies, knowing he already had 99% of the records the Commission would generate. If there were a few pages not addressed to him, Mr. Onysko said he wanted those. Pursuant to UCA 63G-2-403(14)(c), "...if the records committee orders the governmental entity to produce a record, and no appeal is filed, or if, as a result of the appeal the governmental entity is required to produce a record, the governmental entity shall: (ii) file a notice of compliance with the records committee." He said the state was withholding evidence that would allow him to refute the accusations made against him in tax hearings. He was licensed by the State of Utah as an engineer. A false statement in certification letters for a design or engineering project could lead to loss of his license as well as civil and criminal penalties. If the notice of compliance produced by the state was untruthful, he would pursue his grievance through other avenues. He regretted that the Committee had no power to police compliance. He said his next tax hearing was scheduled for March 13, 2012. The process of hearings was starting over. He offered to have Ms. Barnum retract the letter of compliance and produce complete records. He said the Committee should consider the issue of non-compliance as well as punitive and obstructive conduct by the Tax Commission. A suitable resolution would be to rule the records released without a fee.

Testimony – respondent

Ms. Barnum said Mr. Onysko made his GRAMA request on December 11, 2010. The request was for records from 2007, 2008, and 2009. Anything from 2006 was not part of the request. Any records generated since the original request would not be part of the request. There had been hearings before the Tax Commission that Ms. Barnum was not part of. The calculations from hearings could be personal notes and calculations put together for hearings held after the original GRAMA request. Anything subject to the attorney-client privilege could not be released. Any documents prepared for Tax Commission hearings would not be part of the request. GRAMA was a tool for citizens who need records, but completely separate rights existed through the Tax Commission appeals process and were available to Mr. Onysko. He had the right to discovery which he had taken advantage of through the Tax Commission. In discovery, he could ask for everything the Commission was relying upon to make an assessment. The hearing officer at the Tax Commission could rule that missing documents be produced. Ms. Barnum said the documents she had produced were in response to the original GRAMA request. Agencies could charge for documents if time and effort had been expended to produce the documents. At the June State Records Committee hearing, Ms. Barnum had said that Mr. Onysko could view the documents without charge. That option was still open. It was standard practice for the Tax Commission to supply petitioners with all the auditing division's records before a hearing. Mr. Onysko received records immediately after his original GRAMA request. Most taxpayers were satisfied with the documentation given at that point. Mr. Onysko was not satisfied, so further research was done to see if other

records were available. The computer files were searched. The fees charged were reasonable because of the effort put into extracting computer files. Because Mr. Onysko was offered access to the records in June, the offer was still open. He could view the records without charge. Ms. Dolores Furniss was sworn as a witness by Ms. Ross. She testified that all the notes and comments on Mr. Onysko's account had been downloaded into a readable format. That included all the information submitted by him, information sent to him, and any notes on his account made by the auditor's office. Any spreadsheets would be part of his appeal file and would have been created subsequent to the original appeal. Spreadsheets would be requested under discovery as they were not in the possession of the Tax Commission records officer but were maintained in the auditor's office. As the subject of the records, she said, Mr. Onysko would be entitled to the spreadsheets in the process of his appeal hearings. Obtained under discovery, there would be no fee for the records.

Closing – petitioner

Mr. Onysko said he had, in the process of the records request, met people that were admirable as well as people that should be held accountable. He had been given no calculations for the Tax Commission hearings. Mr. Francis had been ordered by the judge to give Mr. Onysko calculations for the tax discrepancy. He had not received them despite his discovery requests. On September 22, 2011, Mr. Francis had provided some calculations. The state's assertion that everyone got the records needed for a hearing was not true. The Tax Commission had accused a citizen of tax errors with no evidence to support the accusation. The evidence necessary to make the allegations was created before he received the bill for adjustments. The assertion that the records were created outside the time frame of the original appeal was invalid. He had not received an amendment to the tax charges. Mr. Onysko said he trusted the Records Committee more than he trusted the Tax Commission and the discovery process. Unless the list of records provided by the Tax Commission was the same as records used against Mr. Onysko in Tax Commission hearings, records had been withheld. Mr. Onysko said he wanted to view the records and take a copy of anything he did not already have.

Closing – respondent

Ms. Barnum said she had nothing further to add.

Deliberation

Ms. Ross thanked the parties and asked if there was a motion from a Committee member. Mr. Rowley proposed that Mr. Onysko look at the records at the hearing to see if there were records he wanted copies of. Mr. Daniels said there may not be sufficient time to meaningfully examine the records. Ms. Ross suggested that the Committee make a decision on the fee waiver. Mr. Whittaker made a motion that the denial of the fee waiver was unreasonable with regard to the cost of retrieval but was reasonable with regard to copying costs. Ms. Smith-Mansfield seconded the motion and added a friendly amendment. Pursuant to UCA 63G-2-201 and UCA 63G-2-203(5)(b), a governmental entity may not charge a fee for: inspecting a record. A fee could be charged for any copies required after inspection of the records. Mr. Daniels said that the statute was written in the day of paper files when a person could review a paper file and request a

copy of certain records in the file. With electronic records, the process was different, but the intent of the statute could still be honored. 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. Ross said an order would be sent to the parties within five business days.

Break 10:50- 10:55 a.m.

Approval of the September 8, 2011 minutes

The Committee resumed for business items. Approval of the September 8, 2011 State Records Committee Minutes was introduced. Mr. Hemphill had a significant amendment to the timing of the second closed section. Approval of the minutes was postponed until the Executive Secretary could review the minutes and determine the correct sequence of events.

Approval of retention schedules

Mr. Bullough presented retention schedules for approval

October series:

1. Meeting recordings, a general retention schedule. The proposal is to retain for 3 years from the former retention of 1 year after the approval of the minutes. Closed meeting recordings are permanent.
2. #27751, city volunteer background checks, St. George. This series is similar to series # 27734 approved in August, 2011, to be kept for five years. Look at as a general schedule item
3. # 27749, Commerce, a new series, applications used for enforcement of the uniform debt management services act. Retention of ten years.
4. #27768, Field training officer program (Park Rangers) retain for 30 years.

November series:

5. General Retention Schedule: 11-6, Medical & dental claims, retain for 4 years. Was formerly 3 years.
6. #27766, local government trust, retain for 7 years.
7. #82299 & #82298, quality control sheets required to be retained until report is produced.

Ms Smith-Mansfield made a motion to approve the forgoing retention schedules with the exception of #27751. She proposed increasing the retention of the general retention schedule 11-6 from 3 to 4 years and changing the text of the mental hospital records to "report" which is required to be kept. 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. Joshua proposed the following general retention schedules: Lost checks warrants. Currently there were three different schedules: county and state retention schedule at seven years, municipal at four years, and school districts keep the records for one year. Mr. Daniels made a motion that all the retention time periods be set at four years. 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. Mr. Bullough said a general schedule for "Warrant checks

redeemed” had retention schedules under county and municipality records for 7 and 4 years respectively. Ms. Smith-Mansfield made a motion that all the variations of warrant checks be made part of the same schedule with the same retention of four years. 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. Betsy said she would have the State Auditor’s Office look at the retention schedule. Mr. Bullough said Receipt books were kept by school districts for four years and by municipalities and counties for three years. Ms. Smith-Mansfield made a motion that receipt books be kept for three years. 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. Mr. Bullough presented “Journal entries and ledgers,” which included debit and credit entries and financial statements. The state schedule specified ten years and the school districts four years. Ms. Smith-Mansfield said these schedules should also be reviewed by the Department of Finance before the Committee made a decision. Mr. Bullough presented “Project control files.” The records were kept for one year in the county and municipal schedules, and two years in the school district schedule. Ms. Smith-Mansfield made a motion that the schedule be one year retention after the project closed. 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. Mr. Bullough said “Working case files” currently had retention of until administrative need ends or five years after project completion. Ms. Smith-Mansfield made a motion that the title be changed to “Working files” and the retention one year since last access or activity. Mr. Daniels seconded the motion. Mr. Daniels said that the trigger to indicate the retention should be the same on both schedules. Ms. Smith-Mansfield made a motion that both general schedules be worded “after project closed.” Mr. Daniels 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. Feasibility studies, Mr. Bullough said, had retention of permanent in the state and county schedules, five years in the municipal schedule, and two years for school districts. These records were feasibility studies for technology, systems, or office equipment purchases. Ms. Smith-Mansfield said she wanted to establish why the county kept the records permanently before the Committee decided on a schedule. Mr. Bullough presented “System studies and reports” which had similar retentions as “Feasibility studies”. Ms. Smith-Mansfield asked that the county schedule be examined to determine why the records were kept permanently.

Appeals received during the month

Ms. Mumford reported on appeals received during the month. See attached report. The Fahys vs. Community and Culture hearing was continued as requested by the petitioner. Some progress had been made towards a resolution as the parties met together. If the hearing proceeded, new documentation would be provided to the Committee members indicating which records were still sought.

District Court cases

Ms. Amanda Jex substituted for Paul Tonks as counsel to the Committee. Ms. Ross introduced her to the Committee and congratulated her on passing the bar exam. She reported on cases in District Court. See attached report.

Adjournment 12:07 p.m. – next meeting scheduled for January 12, 2012.

November 2011
Appeals to the Committee since September hearing
October SRC meeting canceled

1. **Paul Kimbal vs. Corrections.** Mr. Kimbal sent an incomplete appeal for psychological records. He was sent a letter referring him to his social worker.
2. **Steve Elliott vs. Corrections.** Mr. Elliott sent an incomplete appeal for denied mental health records. He was sent a letter referring him to his social worker.
3. **Edward Owens vs. State Medical Examiner.** Mr. Owens requested DNA test information from the State Medical Examiner and received no answer. I contacted the SME and wrote Mr. Owens a letter explaining that the SME Office maintains records on deceased people. DNA evaluations are obtained from private providers. He should contact his case worker.
4. **Gordon W. Thomas vs. Corrections.** Mr. Thomas had requested information about the funding for the prison vocational education program. He was given a report entitled "Post-Secondary Vocational Education Opportunities." Previously he had requested mental health records and was denied. He asked for sections of GRAMA explaining the denial and the justification for not creating a record. He was sent a letter dealing with both requests. An appeal to the State Records Committee was incomplete, but he was sent parts of the UCA that applied to his requests.
5. **Lynn Jenkins vs. Clearfield City.** Mr. Jenkins visited the Archives. He also went to the History Research Room. Records. He was referred by Clearfield City Attorney as he had requested "all laws used in the taking of Steed Pond." Clearfield has a separate GRAMA ordinance and does not use the SRC. He was offered another copy of the pleading in a case of eminent domain and real property condemnation action in which he had been involved. At the Research Room he asked for the laws that authorized the action, but did not stay for the research. He was sent a letter explaining the help available at the RR to access laws.
6. **J.H. Thompson vs. DHRM.** Mr. Thompson appealed the denial of copies of nominations, finalists, and winners for the 2011 Governor's Award for Excellence in the categories Humanitarianism and Leadership. He was denied as records were classified private pursuant to 63G-2-202(1). A hearing was scheduled. The issue was resolved at the hearing and he received the requested records.
7. **Steve Onysko vs. Tax Commission.** First request for a fee waiver, following a letter from the Tax Commission. The Commission was ready to release the records for a fee.. The hearing was scheduled for October but at the request of the petitioner was postponed until November. Petitioner requested subpoenas. The hearing was limited to fee waiver denial rather than including non-compliance of Tax Commission.

8. **Edward L Owens vs. Woods Cross Police Department.** Mr. Owens had requested evidence from a homicide case as well as a fee waiver. Woods Cross has a separate GRAMA ordinance and the Committee has no jurisdiction over the records. He was sent a copy of the ordinance with a letter explaining the ordinance and the classification of records.
9. **GRAMA request:** Lawrence Jackson requested a copy of the complete file resulting in the SRC order 10-3. He was sent a copy
10. **Nate Carlisle, Tribune vs. UTA.** Mr. Carlisle appealed the denial of records. He was asked to provide copies of the original request and subsequent responses. He later sent an email saying he had received documents that appeared to resolve the matter and asked that the hearing not be scheduled.
11. **Steven Dale Davis vs. Third District Court.** Write letter to redirect request. No jurisdiction over court records.
12. **Renee Christensen vs. UTA.** A request to clarify appeal process.
13. **Lawrence Jackson vs. Archives.** A request for case file.

November 2011 Records Committee Case Updates

District Court Cases

Attorney General Office v. Schroeder, 3rd District, Salt Lake County, Case No. 110917733, Judge Hansen, filed Sept. 21, 2011; Case No. 110917703, Judge Medley, filed Sept. 20, 2011.

Current Disposition: Answers filed on behalf of Committee in both cases. Motion to consolidate two cases filed by Attorney General Office on Oct. 14, 2011.

Salt Lake City v. Wheeler, 3rd Judicial District, Salt Lake County, Case No. 110915969, Judge Toomey. Filed July 5, 2011.

Current Disposition: Case dismissed with prejudice on September 30, 2011.

Uno v. Salt Lake City School District, 3rd Judicial District, Salt Lake County, Case No. 100918094, Judge Himonas. Filed September 23, 2010.

Current Disposition: Two decisions were issued November 8, 2011. The first decision denied Uno's motion to reconsider the Court's decision granting the Committee's Motion to Dismiss. The second decision dismissed the case based upon Uno's appeal being moot because he dismissed the Salt Lake City School District from the case. The dismissal entry adopted by the Court was drafted by the Attorney General's office on behalf of the Committee.

Nakamura v. Salt Lake City, 3rd Judicial District, Salt Lake County, Case No. 100917589, Judge Medley. Filed September 17, 2010.

Current Disposition: Answer filed for Committee on September 28, 2010. SLC filed their answer on October 8, 2010.

Attorney General Office v. Peterson, 3rd Judicial District, Salt Lake County, Case No. 100911772, Judge Reese. Filed July 1, 2010.

Current Disposition: Both parties' motions for summary judgment hearing set for November 30, 2011 at 9:00 A.M., Matheson Courthouse.

Salt Lake City v. Jordan River Restoration Network, 3rd Judicial District, Salt Lake County, Case No. 100910873, Judge Iwasaki. Filed June 18, 2010.

Current Disposition: The Court had an in court status/scheduling conference on August 11, 2011. The Court requested that the parties conclude discovery and submit their motions for summary judgment for consideration by the Court.

Maxfield v. Lieutenant Governor, 3rd Judicial District, Salt Lake County, Case No. 100907599, Judge Iwasaki. Filed April 28, 2010.

Current Disposition: Hearing held on June 13, 2011 for Lieutenant Governor's partial motion for summary judgment. Court granted the motion finding that the "manner of setting and amount of the fee, being neither a records access determination nor a claim concerning an unreasonable denial of a fee waiver, is not within the power and authority of this Court under GRAMA."