

SRC Minutes June 14, 2018

State Records Committee Meeting

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

Date: June 14, 2018

Time: 9:00 a.m. – 12:00 p.m.

Committee Members Present:

David Fleming, Chair, Private Sector Records Manager
Holly Richardson, Chair Pro Tem, Citizen Representative
Kenneth Williams, Governor's Designee
Tom Haraldsen, Media Representative
Cindi Mansell, Political Subdivision Representative
Doug Misner, History Representative
Vacant, Citizen Representative
Brad Westwood, History Designee: Absent

Legal Counsel:

Paul Tonks, Attorney General's Office
Nicole Alder, Paralegal

Executive Secretary:

Gina Proctor, Utah State Archives

Telephonic participation:

Scott Gollaher, Petitioner
Tax Analysts, Petitioner
Jann Farris, Morgan County Attorney, Respondent
Shawn Platt, Petitioner

Others Present:

David Thomas, USBE
Gale Francis, Utah AG Office
Laron Lind, Utah State Tax Commission
Ric Cantrell, Utah AG Office
Lonny Pehrson, Utah AG Office
Shiree Riley, Paralegal, Utah AG Office
Dolores Furniss, USTC
Amy Arnn, USTC
Michael Clára
Collen Mulvey, Cedar Hills
Frank Hales, Utah State Tax Commission
Craig Sandberg, Utah State Tax Commission
Ken Cromar, Cedar Hills Citizens for Responsible Government
Stephen R. Hadfield, Box Elder County

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Brian Olmstead, USBE

Ben Rasmussen, USBE

Dylan Mace, Utah State Archives

Heidi Steed, Utah State Archives

Rebekkah Shaw, Utah State Archives

Kendra Yates, Utah State Archives

Agenda:

- Six Hearings Scheduled
 - Scott Gollaher v. Morgan County Attorney's Office
 - Tax Analysts v. Utah State Tax Commission
 - Leonard Platt v. Attorney General's Office
 - Ken Cromar v. Cedar Hills
 - Randy Andrus, Andrus Law Firm v. Unified Police Department
 - Brady Eames, v. Millard County Sheriff
- Approval of April 12, 2018 Minutes, action item
- Approval of Retention Schedules, action item
- Discussion, action item
 - How to handle appeals where no records exist; notice of service is not completed; and no copies of original request documents are submitted with the petitioner's written appeal for a hearing.
- Report on Appeals Received
- Report on Cases in District Court
- Other Business
 - Confirm a quorum for July meeting.
 - Next Meeting scheduled for July 12, 2018, 9 a.m. to 4 p.m.

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Call to Order:

The Chair, Mr. David Fleming, called the meeting to order at 9:03 a.m.

Both of the parties were called via telephone and successfully connected to the meeting.

1. **Scott Gollaher v. Morgan County Attorney's Office**

The Chair announced the parties for the hearing: Mr. Gollaher, Petitioner, and Mr. Jann Farris, Respondent. Mr. David Fleming, SRC Chair, explained the procedures and asked the Committee members, Petitioner, and Respondent to introduce themselves for the record.

Testimony Petitioner:

Mr. Gollaher provided background of his GRAMA requests to obtain records. He states it has been difficult to receive all records he requested until he clarifies multiple times he did not previously receive them. Mr. Gollaher sought numerous times an attachment (excel spreadsheet) to one document that was initially provided.

There is a dispute regarding an email listed on the spreadsheet from Mr. Newton, appellate attorney to Mr. Farris, prosecutor in Mr. Gollaher's legal matter, on August 9, 2016 regarding a conflict of interest in representing Mr. Gollaher. Mr. Gollaher claims to have obtained that email through another source at considerable cost. This email has not been provided to the State Records Committee. In an email, Sam Newton to Jann Farris, Mr. Gollaher reads, Jann, I have a conflict on the interest on Scott's case. I am just about to submit a brief to the Utah Supreme Court on a case where the victim was allegedly molested by Scott Gollaher. Unfortunately, it was the wrong person, but that is beside the point. This is how it is typed in the transcript. So, I

never caught it. I have briefed some sections arguing that this Gollaher was the real cause of the victim's damage, not my client. I'm pretty sure this is the same person.

He goes on to say that he can't accept the contract with Morgan County. Mr. Gollaher claims it isn't until March of 2017 before Mr. Farris chose to step forward. Mr. Gollaher further claims that denied him of his constitutionally guaranteed right of appellate counsel for near one year.

Chair: So, Mr. Gollaher I have just one question for you. So, this one email you obtained through another source is what you are providing us as evidence that there are other records that should be provided.

Scott: This record wasn't provided.

Chair: I understand. Alright, thank you. Are there any questions from the Committee?

Chair: Alright, Mr. Farris, we'll move on to you. You have 20 minutes.

Testimony Respondent:

Mr. Farris admits there is a spreadsheet that Mr. Gollaher just spoke about. And it is a detailed billing from his appellate counsel and it goes through dates. Email to Jann Farris, date 8/9/2016, then he has billing \$15.00, for how much time he spends on that. Mr. Farris states he gave a copy of this to our IT person, Jeremy Archibald, who can testify and fill out an affidavit that he went through this billing and search the archives of the county's emails, Mr. Farris' emails, and there was no email of that date. Mr. Gollaher's attorney says that there was an email on that date. I have a note here on 4/19/18, from Mr. Archibald in IT that there is no existing email. We have provided Mr. Gollaher everything he's asked for. He asserts he has turned over everything they have. They show no email on 8/9/2016.

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The Committee reviews the facts and arguments of the matter and clarifies testimony from Mr. Farris.

Mr. Farris sums up with, initially, he had checked any dates. And then when he saw the spreadsheet, he specifically checked each of those dates just to cross and had their IT guy cross-check each of those dates. But, none were located.

Chair: Mr. Gollaher, you have 5 minutes to close.

Petitioner Closing Statement:

Mr. Gollaher countered all points Mr. Farris made in his testimony. Mr. Gollaher read another email he asserts is dated August 22, 2016 from Mr. Sam Newton to Mr. Farris about his conflict. Mr. Gollaher alleges that Mr. Farris knowingly withheld emails. Mr. Gollaher states he can prove Mr. Farris is lying.

Respondent Closing Statement:

Mr. Farris tells the Records Committee I probably have at least 5 unopened emails from Mr. Gollaher because it never seems to work to give him a response and so he's gone through Ms. Cundiff, the Ombudsman, to try to communicate with him and try and resolve these issues before they ever get to the hearing stage. He states it is a little odd getting emails from someone in prison and just for security sake he has chosen not to open those attachments or communicate with him that way and so it is true he has communicated through US mail. Mr. Farris states he asks the Ombudsman to be the intermediary and send the records to him for Mr. Farris.

Chair: Reminds Mr. Farris no information about communicating with the Ombudsman is permitted.

Farris: Continues to argue with the Chair.

Chair: Chair tells Mr. Farris to provide evidence.

Deliberation: Both sides are not providing testimony not backed up by documents

Legal Counsel suggests perhaps if they submit more information then the Committee could go straight into deliberation at the next hearing.

Chair: I will entertain a Motion for a continuance. Both parties agree to continuance.

Motion:

Holly: Have a continuance for the next hearing.

Chair: Must hear the continuance at the next hearing.

Legal Counsel: It is part of the statute that any decisions not made within 57 days of receiving could be considered a denial of an appeal.

Chair: We have a motion from Holly to have a continuance to the next scheduled SRC hearing. The Motion was seconded by Cindi.

All in favor say Aye. The Motion carries 6-0. All votes Aye.

2. Tax Analysts v. Utah State Tax Commission

The executive secretary called and telephonically connected Mr. O'Toole to the meeting. He introduced his fellow petitioners. Cornish Hitchcock, legal counsel for petitioner and Gulnar Zanam, associate of Mr. O'Toole. Mr. O'Toole was sworn in.

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The Chair announced the parties for the hearing: Mr. Chuck O'Toole, Petitioner and Mr. Gale Francis, Assistant Attorney General representing Utah Tax Commission. Dolores Furniss is present also.

The Chair explained the procedures and asked the Committee members, Petitioner, and Respondent to introduce themselves for the record.

Testimony Petitioner: Mr. O'Toole: Yield to Gulnar Zanam. She states, they are in process of trying to make requests of all 50 states for tax audit manuals and policy and procedures. This effort is part of an ongoing process to provide their subscribers and the public with information on tax laws. Field audit manuals can provide tax payers with important guidance that facilitate compliance in preparing and filing returns. Ms. Zanam states there are elements of Utah statute that a record must be properly classified but not prohibited from disclosure.

Mr. Hitchcock: There is no evidence of interference with the audit process if disclosed and no proffer of how the interference could occur. The commission must show it would interfere, not may interfere, or might interfere or reasonably expected to interfere. He explains that the Respondent identified two cases in their denial of records. The Smith case was a discovery dispute on a specific tax case.

Other case is Wilkerson case. There wasn't a blanket withholding. Neither case is precedential.

There are two other points the Commission cited. First point: the commission argues that disclosure statute in other states is not relevant. Tax Analyst position is that withholding these documents in their

entirety may be overstated when thirty other states are willing to provide the information.

Second point: The Commission states they make lots of materials and brochures and other records available on line as well in published form. The purpose, Mr. Hitchcock suggests of an open records statute is to let citizen and the news media to try to find out information that they want to learn. And not be limited to information that the government wants to tell them. If an agency's own disclosure policy were the be all and end all then you wouldn't need the open records act.

During the discussions with the Commission, the point of the argument has been made that some of the stuff is not really relevant or terribly interesting. Tax Analysts have close to 200 employees, many are experienced seasoned reporters and editors. They know how to pick out the interesting material from the less interesting material but that is an editorial judgment that we would like to make.

To the extent there may be an issue of workload. That is an issue for the legislature not of an individual agency. Redaction may need to be performed but in a limited amount, which has been their experience with other states.

Chair: Any questions? None.

Testimony Respondent:

Mr. Thomas: The Tax Commission requests the States Records Committee to sustain the Tax Commission's denial of the Tax Analysts request because of the following points.

First, prior precedent has so held and we think it is precedential. Since we have a

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district court case and a prior decision of this body to make those decisions.

Secondly, Legislative mandate exists which doesn't exist in other states laws. Referring to the section that has been high-lighted about interference with audits and collections.

Next, there is publically available record in a myriad of areas where the scope of the requests can be totally fulfilled. There are answers to those questions by delving into already existing publically available documentation.

Granting this request would be unduly burdensome to the Tax Commission and especially to the auditing division taking high level employee time away from the collection activities and auditing activities which result in funds to the state of Utah. Audit manuals are protected under 63G-2-305(15) when disclosure would interfere with audits and collections. Manuals of methods and procedures for auditing personnel, which is the definition of an auditing manual absolutely fit this statute.

As stated in Tax Commission's memorandum there are two previous decisions. One by this Committee and one by the 4th district court.

The Tax Commission's audit manuals are a mix of information that would interfere with audits and collections if released. Along with such information as time tracking for those auditors, accounting policies and procedures and training. Tax Analysts interpretation of the phrase would interfere would create an unreasonably high standard for non-disclosure. We do not believe that was what was intended by the Legislature and the fact that specific section exists in the GRAMA statute bears out the Legislature

wanted this to be proceeded to with caution. Some of the most sensitive information includes Audit selection techniques and scoring criteria. If these were known, it is possible that unscrupulous tax preparers and members of the public would know the exact extent to which they would not need to comply or could not comply with Utah tax law and escape being audited. Also the manuals contain screen shot information from actual tax payers whose personal information is private.

A previous test was done on a topic suggested by Tax Analysts and the expenses shown and the level of expertise needed to go through and redact just a small section was enormous.

No other state researched by us has an equivalent statute to subsection 15. To the extent, the reasoning is helpful, the federal tax courts has upheld that non-disclosure of Discriminate Function Scores (DIF scores), essentially these are audit selection scoring methods were not disclosable. And that case is Goldstein vs. IRS 2016 Westlaw 1180157.

What other states do in regard to Audit manuals may be interesting as background but each state's law is different. The concerns and decisions may be helpful but they are not binding. The Tax Commission has made a great effort to be as transparent as possible by putting significant amounts of information on its website. It includes guidebooks, instructions, and decisions from actual cases with confidential information redacted and private letter rulings. And this is in addition to the statutes and rules and regulations which are publically available.

Witness Testimony:

The Chair swears in Craig Sandberg. He testifies that audit manuals contain procedures that the auditors will follow in selecting the audits, preparing work papers,

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recording their time, form letters, things that are specific for auditors to use to help them perform their audits.

Mr. Sandberg describes the test that was done on a topic suggested by the Tax Analysts. He states, he had two audit managers in the corporate section review the manual at a high level and they determined that approximately 61% of it would be information that they would think would interfere with their audit efforts and would require redaction. They spent approximately 10 hours making that review. This is just one of six manuals that they have in the division and the other manuals would have a comparable amount of necessary redactions.

Mr. Hitchcock questioned Mr. Sandberg. Mr. Francis mentioned screen shots from individual tax payers. Is it your testimony that it would take \$1000.00 an hour to redact names, personal identifies and other such information from any such documents, screen shots?

Mr. Sandberg answered the questions, On average our auditors return \$1000.00 an hour that they would have to spend their time reviewing the manual to determine which pieces needed to be redacted and they would not be able to do their normal audit activities that would generate that kind of a return.

Petitioner Closing Statement:

The considerations that are being raised, we understand from a management standpoint but, if something is burdensome, that is something that's really an issue for the legislature.

They did not face comparable claims of difficulty or burden with respect to the other manuals that were made available to them. There were some instances in which there were redactions but nothing suggesting something as high as 61%. The manuals may

be different, but there is a certain generic characteristic to a number of them.

Respondent Closing Statement:

Mr. Francis responds to the concept he did not mean to infer or imply that it takes \$1000.00 an hour to do the review and/or the redaction. But, the time that would be spent by the level of employee that was required to go through the audit manuals would be the top level of administration and employee level within the auditing division which means that time spent in that chore would take away the time that could be productive in \$1000.00 an hour in collections. And that is just an aggregate estimate by Mr. Sandberg. Given the fact of his experience, his lengthy history of auditing knowledge and his opinion, because it matters, to the danger of what would happen if those manuals were to be made public, they believe the Committee should sustain the position of the Commission.

Deliberation:

Holly: I at least have a comment and that is aimed at the governmental entity. And GRAMA doesn't allow the governmental entity to decide what is interesting and what is not interesting to the requesting party.

Chair: I'm in agreement with Holly's comment that there was significant evidence presented that goes beyond the scope of what we can and can't do here as defined by GRAMA. And it's pretty clear that the legislative intent was to deny access to these manuals, in my opinion. So, I'm glad that the Tax Commission has made efforts to be transparent. I do understand the position of Tax Analysts in that they feel like this hasn't been a problem for 30 other states but that's really not relevant to our decision.

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Motion: Motion by Ken, Access to the records be denied and the records have been classified correctly as protected per 63G-2-305(15).

Seconded by Cindi.

Chair: All in favor say Aye. Motion carries 6-0. All vote Aye. This concludes the hearing. The Committee will issue an order within 7 business days.

3. Leonard Platt v. Attorney General's Office

The executive secretary connected Dr. Shawn Platt by telephone to the meeting. The Chair announced the parties for the hearing: Mr. Paul Amann, legal counsel for Leonard Platt family and Lonny Pehrson, Government Records Counsel for the Attorney General's Office. The Chair explained the procedures and asked the Committee members, Petitioner, and Respondent to introduce themselves for the record.

Objection by Mr. Amann to Mr. Tonks representing the Committee.

Mr. Pehrson updates the status of the request. We denied the request in January due to an ongoing open investigation. We just finished the investigation. The records are provided now.

Testimony Petitioner:

Amann: I think Mr. Pehrson had a statement. I will yield to him.

Pehrson: Just to clarify, the original request was filed in February. It asked for all records regarding an investigation of Chad Platt. At that time the investigation was still ongoing. We denied the request on that basis due to an ongoing investigation. IN the meantime, in fact just in the last couple of weeks, the office has completed its investigation and declined to take any further action in the matter therefore we reclassified the records

and I've just provided the records to Mr. Amann for the requester.

Chair: Ok, Mr. Amann, if you'd like to address that.

Amann: I don't know why this wasn't provided to Mr. Platt previously. I don't know any reason why it couldn't have been. There have been numerous times where Mr. Pehrson has said, in April he said it would be another three weeks. When this hearing was set for May 10th he said we'll have something by May 18th so after the hearing was supposed to take place. Then when this hearing was anticipated to take place on May 31st because it didn't take place on May 10th, Mr. Pehrson said he could have the response on June 1st. So his indication has always been that a response would be forthcoming from the AG Office after the matter is set for hearing. And here we are today, I think wasting your time because this should have been provided previously. Now, I haven't had an opportunity to review this. I haven't had an opportunity to go over this with my client. This has gone on for way too long. The Platt family is really frustrated at how long this has taken and it shouldn't take them pushing to this level to get a response from the Attorney General's Office. But, that is exactly what it has taken. Under the circumstances where I have just been given a disc, I don't know what is on here. I think it would be appropriate under the circumstances to continue this hearing to allow for me to review this with the Platt family so that we can make a determination whether or not the GRAMA request they have made has in fact been complied with.

Lonny: Can I address the reason for the delay?

Chair: Sure

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Lonny: Just quickly, as I mentioned the investigation was ongoing when the request was filed. One of the reasons for that is that we were waiting for forensic examination of additional electronic devices. We only received those back 2 months ago and that was a point at which our investigators began to wrap up their investigation. That was only closed in the last 2 weeks. And it took us about a week to review the information, redact it, and prepare it for disclosure. In fact, we only completed the response last night. So, it hasn't been a delay in terms of producing the records. It was strictly because of the ongoing investigation and there was no way to speed that up so I have no objection to a continuance if the family would like to review the records and notifying us of any objections they may have regarding the response.

Tonks: Mr. Chair, we have done previously before of basically we continue the hearing to give them an opportunity to be able to review the records if they are satisfied with the records that everything's been provided usually then they just dismiss their appeal. If they're not satisfied then we just go ahead and meet again and hear their arguments on the things they think should have been provided them.

Chair: Given the request for a continuance in agreement by both parties is there a Motion for a continuance?

Tom: Well, I have a question first. Go ahead Ken, I'll let you go first.

Ken: I just wanted to ask the Respondents, so it's your position that the records you provided have satisfied the initial request?

Lonny: Absolutely. Like I said there's 1137 pages in a pdf including photos and that sort of thing and then there are 4 video files we provided, as well as we also included on that disc a classification log identifying all of the

records that we identified as responsive to the request, how they've been classified, and the grounds for any redactions or withholding that we've done. So, that should give them ample means to review what we've done.

Tom: Which was my question so thank you.

Amann: And I wonder if the Committee would entertain a question to Mr. Pehrson about why the delay from the time that this was handed over, the forensics was done by Cell bright, because this computer was brought to the regional computer lab on September 9th...

Chair: If we are going to continue I'd rather address that question later. I mean I understand the frustration. I think he just explained why they weren't able to produce the records until last night.

Amann: There are a lot of things he is assuming. He's saying that it couldn't have been done any quicker. The computer, it's an iPad actually and it was at the IRCFL from September 2016 through December 2017.

Lonny: The records will address a lot of those issues.

Chair: If we are going to continue, I don't want to hear 20 minutes of testimony from either side so I think we are ready to have either a motion of continuance or proceed with the hearings. Is there a Motion from the Committee?

Motion: Doug: I'll make a motion for a continuance.

Holly: I'll second.

Chair: Motion was made by Doug to continue the hearing and seconded by

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Holly. All in favor of the Motion say aye.
Any Opposed? Vote: 6-0.

Amann: So then Mr. Chair, this will go on the calendar for the next setting which is July and then assuming I meet with my client and they are satisfied with these records then we will notify Ms. Proctor, your Executive Secretary, that we wish to waive the hearing?

Chair: Yes.

Lonny: I feel like any objections they have ought to be presented to our Chief Administrative Officer first just so we have the opportunity to address that. The appeal before the Committee at this point is simply from the denial due to open investigation. It says nothing about any of the records and so I think our office should have a final opportunity to address those concerns and hopefully alleviate them and resolve them before it comes back to the Committee.

Tonks: Can we simply give two weeks for Mr. Amann to review the records, make the determination, and then just file something at that point. So if he's satisfied, file something in a dismissal and if he has objections he would file it at that time giving the AG Office an opportunity to be able to respond and be ready for the hearing so we have arguments for the Committee. Do you think that is sufficient?

Lonny: That's fine.

Chair: So, to review, we have a Motion approved by the Committee to continue the hearing. We've asked and Mr. Amann has agreed on behalf of Platt, that they will be able to review the production within two weeks and let know, both the Executive Secretary and the AG Office whether or not

they are satisfied with the response and give them a chance to complete the response if they're not, by the next hearing date.

Tonks: And we'll just take two weeks from the date of the Order. We'll put this like one of the first ones and we'll get this out as quick as we can.

Chair: There will be an order issued within 7 business days which is just an order for a continuance. So, it won't have any of this testimony or address any decision other than we agreed to continue.

4. Ken Cromar v. Cedar Hills

The Chair asked for the next party and asked them to introduce themselves for the hearing: Mr. Ken Cromar, Petitioner, lead researcher for an ad hoc committee, Cedar Hills citizen's committee called Cedar Hills Citizens for Responsible Government. Mr. Adam Wahlquist and Jake Green, Attorneys for Cedar Hills. We are here with representatives from Cedar Hills, most notably Ms. Mulvey, who will be providing testimony later. The Chair said he had a statement from Holly.

Holly: I know both Mr. Cromar and the Mayor.

Chair: Is there an objection to proceeding with Holly as part of the Committee at this hearing? No objection.

The Chair explained the procedures and asked the Committee members to introduce themselves for the record.

Testimony Petitioner:

Mr. Cromar relates his interest in public records as it relates particularly to a golf course that came on line in about 2004 on

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the promise of making \$400,000.00 a year if you'll bond for it. It will keep taxes down, etc. What resulted is immediate losses to the tune of hundreds of thousands of dollars which now averages 582,000.00 a year in losses, that's almost a 1 million dollar swing the opposite direction. That's \$982,000.00 swing the opposite direction.

Mr. Cromar reads aloud letters from people who wanted to attend the hearing but could not. Mr. Cromar played a recording of Judge Daniels, former SRC member, direction to Cedar Hills in previous hearing. The reason I brought these in was to demonstrate the pattern of deception, delay, desire to, contrary to what the mayor says, discourage record requests. You've got 30 just since 2011 in front of you and we have never felt that we have been dealt with honestly and completely. My point is this, the city claims that the records are irretrievable, without explaining exactly what that means, meaning, they say, well we've asked but the software company is out of business and all of that, fine. You've now provided back records that we helped you figure out how to get. Why won't you simply sign a new disclosure or statement, declaration, a new one that says, now you have indeed provided all the records per the GRAMA request? We simply ask the Committee two things: 1) would you please order the city of Cedar Hills to sign a declaration that they indeed they have provided all responsive records on these two GRAMA requests. 2) that they indeed provide the records back that councilmember Crowley has returned to them that they can work from. And we would respectfully request the committee make a motion to order the city to sign a document that says they have now fulfilled all of those responsive records and while providing the records that councilman Crowley has provided back to the city. I rest my time.

Testimony Respondent: I was just saying this is a little bit of moving target for me. I was under the impression that we were seeking additional documents by way of this petition but I understand he is just looking for some reassurance that we have fully complied with his request for records and he also wants secondly, the city to authenticate some records that were provided by a third party. I think we can address both issues today. With respect to giving him some reassurance that he's got a complete response, I believe some of the exhibits I'll show you soon and the testimony of Ms. Mulvey will show that's been given and we'll give it again today. As to the second one, we certainly can't authenticate the records given from a third party that we didn't receive directly and Ms. Mulvey can explain that a little more fully.

Chair swears in Ms. Mulvey. Ms. Mulvey testimony is about the requests submitted by Mr. Cromar, Exhibits #1, 5, and 7 asking for individuals, or groups, or anyone who has golfed for free at Cedar Hills golf course. Exhibits 2, 6, and 8 are responses Ms. Mulvey provided to Mr. Cromar with responsive records. Exhibits 3, 6, and 8 are document responses from Ms. Mulvey too. Section 13 are not from city records at all. These are the ones that were sent by former councilmember Crowley that he said he got from Par 9 our old software company. The city produced everything within its custody and control with respect to Mr. Cromar's requests.

The Chair questions the witness and witness answers the questions.

The retention schedule is one year and was adopted in July 2016.

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Petitioner Closing Statement:

Cromar: She said the requests are always similar. And they are similar because we can't figure out how to ask the question in a way so that the words don't get parsed to where you didn't ask for such and such, or whatever. We keep asking about free golf. The citizens of Cedar Hills and the public in general has a right to know what its government is doing. We've been stonewalled for years. This is the latest situation. We respectfully ask the Committee to Order City of Cedar Hills provide a declaration on these records, whatever that may be and declare they have definitively given us all the records in writing with a current declaration, not an old one from back when they didn't provide it and then we got more records. A current one sworn under penalty of perjury.

Respondent Closing Statement:

Mr. Wahlquist: Ms. Mulvey did provide a response dated, November 20, 2017, that states, "The city does consider your GRAMA request completed and fulfilled" and it tells him how he might appeal, if he so desires. Mr. Cromar wants us to verify some records that we can't verify and authenticate just because they don't come from us and we haven't received them from the custodian of those records to have a chain. For those reasons we think his appeal should be denied. For him to speculate that there are other records that should have been produced in the past in response to prior requests I think should be ignored because they are not before the Committee today. Unless the Committee has further questions, we will rest.

Deliberation: Discussion by Holly that when a governmental entity states they provided everything, the Committee's stance is to take the governmental entity at their word and clearly expect that people are truthful. But the Committee does not verify that a

petitioner actually received everything that was responsive. The position has always been if they have provided all records that are responsive then basically the appeal is denied because there is nothing to provide.

Chair: So, I think the difficulty we have with multiple petitioners, these are citizen petitioners representing themselves, which is exactly what this Committee is for, right? I appreciate their representing themselves and not sending a lawyer to represent them. But what that means is that they are not always really clear on what we can and can't do in the scope of our authority under GRAMA. And under the rules of the Committee. All we are able to do at this point is listen to testimony that is relevant to the current request and make a judgement on that testimony. We cannot compel further action. There is a remedy, that once the committee renders a decision, you have the right to appeal that to district court. And in district court you are de novo. You can bring anything into evidence you want to and start from scratch, I guess. It's up to the Judge to determine what they can allow into evidence.

Tonks: And also you have the option of Discovery as well that you don't have here in an administrative hearing.

Tom: I think to Holly's point and your point, this is not our job to force records to be created that don't exist. If somebody says they don't have any records, we cannot force them to produce a record they do not have. That is not what we can do. As you talked about district court there are other options for them. Right now, the city is saying this is what we have, this is what we produced, we don't have these other records about free green fees or anything else. They claim they don't have them we can't order

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them to produce them, if they don't exist. We are going in circles here.

Motion:

Holly: Based upon testimony that has been presented at the hearing all records have been provided that have been responsive to the request made by Mr. Cromar. And the city is not required to create any records, as stated in §63G-2-201(8) (a)(i).

Seconded by Doug. All in favor of the motion, say aye. Any opposed? Motion carries 6-0. That concludes the hearing. You will receive an order from the Committee issued within 7 business days and you'll have 30 days to appeal to district court.

Adjourn for lunch at 12:00

Resume at 12:27

5. Ben Empey v. Box Elder County

The Chair announced the parties for the hearing: Mr. Ben Empey, Petitioner and Mr. Stephen Hadfield, Box Elder County Attorney. The Chair explained the procedures and asked the Committee members, Petitioner, and Respondent to introduce themselves for the record.

Testimony Petitioner: Mr. Empey began by stating he'd like to remind the committee of a previous case, Empey v. DEQ, and he'd like to cross apply the witness from that case's testimony of Frank Holliman III. Mr. Holliman addressed the committee about the importance of access to public records to maintain oversight of public projects specifically land fill projects and environmental projects which is the issue today as well.

Mr. Empey makes two points:

One- procedural history of the request was appropriate and timely.

Two- the expedited nature of this case. He introduces three exhibits, a newspaper article, voluminous record requests with

respondent, and requests with key words identified and with specificity.

Respondent is requiring petitioner to pay for redaction and segregation of information before the records are actually segregated. A governmental entity may not charge a fee for inspecting a record. May not charge a fee for the examination by a private person of public records and documents. This is very clear. I understand statute being in place to charge for reasonable and administrative costs like taking the records after they have been segregated and placed on a flash drive or compiling them in a form for copying. But I'm not requesting those records be copied. I'm not requesting those records be produced. I'm asking the government entity to provide records for inspection. The justifications that attorney Hadfield is providing for why a governmental entity is allowed to charge fees for this case.

Mr. Empey explains his concerns about the landfill project and his position about Box Elder County and transparency. The Chair and Committee members ask questions and they are answered. Mr. Empey asks the committee to issue a subpoena to compel production of records.

Testimony Respondent:

Stephen Hadfield representing Box Elder County. Mr. Hadfield reviewed previous requests to view records received from Mr. Empey. 1-Records were prepared, segregated, and set aside and Mr. Empey did not show up to view them. 2-In another previous request attempts to discuss narrowing the scope of his request were met with Mr. Empey withdrawing the request. 3-Another request to search for key words resulted in 102,810 separate emails and the request was denied. Nothing further with that request.

The current request was made on March 20, 2018. There were two separate requests

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with search parameters. That search resulted in a total of 457,448 separate emails within the search parameters. Initially, the county clerk denied that. When he found out that it happened, within a couple of days, I responded to Mr. Empey and asked him to disregard that denial, we'd like to work with him. I provided an initial response and supplemented with two more responses indicating how many records there were. One of those responses also included some of the records he requested that we could identify and indicated we need to figure out a way to get those records paid for and be involved in getting those put together. Unfortunately, rather than respond to my reaching out to him, Mr. Empey filed this appeal and here we are today.

Mr. Hadfield makes two points. One, he doesn't think the request Mr. Empey has made is not a valid GRAMA request. Under §63G-2-204 (1)(b), a GRAMA request must contain a description of the record requested that identifies the record with reasonable specificity. In my opinion over 457,000 records is not reasonably specific. The request had several very specific search terms to be applied to hundreds of thousands records maintained by Box Elder County but fails to identify any specific records.

Two, Box Elder County did respond to Mr. Empey's GRAMA requests. We did provide a timely response. These specific ones. In this response from the clerk was within 4 days. County Attorney provided 3 separate responses and did provide some of the records he requested. The main thrust of the response was to get some direction from Mr. Empey on how he wanted to handle the large volume of records and to let him know what that volume was and see if we could maybe figure out a way to get what he wanted without having to have that many records. Once again, there was no effort by Mr. Empey to follow up on the requests. As

a result, the County is requesting he should be required to withdraw the GRAMA requests or provide appropriate direction to better identify the records sought and provide proper payment for the county's actual costs.

Mr. Hadfield then provides testimony related to the costs to retrieve, review, segregate, redact, and prepare the records for Mr. Empey to view. His IT office wasn't able to download the zip file for such a large dataset. It would take over 626 separate CDs to burn those and a very large amount of time, incurring more costs, to do so. Box Elder County has made a very good faith effort to comply with Mr. Empey's GRAMA requests. We've reached out to him to try to figure out a way to get him the documents he needs without such a large burden on the county.

The Chair and the Committee members ask questions and Mr. Hadfield answered them.

Petitioner Closing Statement.

Mr. Empey reviewed what was previously said. Mr. Empey would have liked Mr. Hadfield to have brought records for the Committee to review in camera. He states, the 457,000 number of emails responsive is an arbitrary number. Exhibit G identifies the types of records in sub 1, minutes, rosters, audio/video recordings, attendance records, this is specific. . This request is reasonably specific and should be provided.

This Committee has issued 2 or 3 subpoenas in the last 10 years according to Mr. Tonks, off the top of my head. It's time for this Committee to side with the petitioner, let district court decide and stop allowing governmental entities to charge onerous fees and prevent the release of public records that the public has a right to inspect.

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Respondent Closing Statement:

One of the things that is concerning about Mr. Empey's request to come in and inspect. I think he's overlooking the fact that it would be irresponsible for the County to just let him inspect those documents until they have been properly classified. Somebody is going to have to go through and I acknowledge we can't charge for that but someone is going to have to go through all of those to be sure there is no protected information before he can come in and just inspect. It's not as simple as he's making it. We can't just say, here they are. It would be irresponsible. I don't know what's in those emails. I don't know what kind of information may be protected or privileged or whatever so those would need to be evaluated before he could do that. The time and effort that would be involved in doing that is, but I think you understand the County's position and I've made my points. So I'll just submit it based on that, thank you.

Deliberation:

1. Is it reasonably specific? He has identified specific key words, specific email addresses. The results of the key word searches were voluminous.

Mr. Empey hasn't responded to the County Attorney's outreach trying to work through the search terms and key phrases that returned hundreds of thousands of search results.

2. Fee waiver denial appropriate?

There is a lot of back and forth discussion of the same issues of inspecting a record for free and payment for prior requests and receiving payment before processing current request and anticipated costs exceed \$50.00.

Motion: #1 (emails): 457,000 emails in search results. The search terms are overly broad as defined by Mr. Empey.

Holly: Deny appeal on #1 for not being reasonably specific in search terms and the request terms could be narrowed. Suggest request could be granted if it is made more specific. And several requests could be made instead of one request. The request was not specific pursuant to §63G-2-204(1)(b), reasonable specificity.

Cindi: second.

All in favor say aye? Motion carries 6-0.

Motion: #2 (fee waiver):

Holly: Denial of fee waiver is not unreasonable pursuant to §63G-2-203(6) and 203(2)(a)(iii), compiling records in a form other than already maintained.

Seconded by Ken. All in favor of Motion say aye. Motion carries 5-0 with one abstention. Tom Haraldsen abstained.

10 min break reconvene at 2:20. Resume at 2:15

6. Michael Clára v. Utah State Board of Education

Disclosure: Paul Tonks wife is in education but I don't do much. Does anyone have any objection to me serving as counsel in this case?

Chair: Let the record show that there were no objections.

The Chair introduced the parties for the hearing: Mr. Michael Clára, Petitioner and Mr. Bryan Quesenberry, Assistant Attorney General. The Chair explained the procedures and asked the Committee members, Petitioner, and Respondent to introduce themselves for the record.

Discussion: Cindi: Included from Petitioner are 3 emails that reference mediation. Remove that June 5th email from Rosemary. It's page 6 from Petitioners packet.

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Tonks: Gina will scour through and pull it out.

Chair: For the record, as far as deliberation, we will not be referring to that.

Testimony Petitioner: Mr. Clára began with some background information for context. In 2015, I was serving on board of education in Salt Lake City and one of the concerns at the time was the way SLC School District was utilizing the police department. He had interest in the arrests of students in his neighborhood's school district. I went to the State Legislature and ending up drafting a bill, getting with other people in the community and getting with sponsors. And unanimously passed a bill called in 2015 HB 460 that regulated how police officers are used in a school district. It provided for training, and a provision included that curriculum would be developed. At a meeting this past April he asked questions and he followed up with GRAMA requests. The responses he received didn't see to add up to him. His position is that there are additional records he has not yet been provided. He determined this by reviewing the 20 plus pages he has been provided. He believes there are records of violating procurement laws.

Testimony Respondent:

Mr. David Thomas, Assistant Attorney General and with me is Ben Rasmussen who is the records officer Utah State Board of Education. Brian Holmstead who is the coordinator for SASE, which is the student advocacy services also with the State Board of Education.

Mr. Clara has provided some information with regarding the origins of this coming through HB460, which funded, the name of the act, which is School Resource Training Act. It contemplated that within that act there would be training associated with the

student Resource Officers that are placed in schools. And with that there were specific moneys that were allocated through the education department to create a manual for such training. Now, under the act, not just the State Board of Education but also the CCJJ, which is the Commission on Criminal and Juvenile Justice system also tasked with the production of this training information. Most of that however was delegated to the CCJJ. They were in charge of the handling the curriculum and the approval, they had final approval of the manual as it went forward. That's been specifically delegated to them and that was pursuant to a Memorandum of Understanding entered into, which we provided to them, which was apparently unsigned as we now find those documents. As it went forward the meetings that were held, there three vendors that were contacted and one was selected to actually create the curriculum particularly the manual and this is where our focal point is with the manual. And that vendor went forward and that vendor had subcontractors that went forward. But all of that was channeled through and handled by CCJJ. There was a meeting that Mr. Clara refers to in April that was held at the State Board of Education's board room, it was CCJJ meeting however, we merely facilitated the location of that. If there is any confusion with regard who was hosting or who was taking care of the documentation that was CCJJ and that was not the Board of Education, we merely provided the location for that meeting. When we received the GRAMA request, as indicated he's read to you what the actual wording of it was and what he wanted was a copy of the School Resource Officers and School Administrators Training and the manual that had been prepared by the vendor, the SBOE received not the final version of that, that was within the parameters and jurisdiction of CCJJ who

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would take the final approval of that. We received a preliminary copy of it which was meant for the purposes of providing additional comment and additional scrutiny. So, when we had a request for manual we did not have a complete manual. We did not have the final document and therefore we indicated that rather than try to hide the ball and say we don't have it, we had a draft, but we knew who did have so in the response we specifically told him the place where you need to ask is you need to make a request to CCJJ. They have the final. He didn't ask for copies or of a preliminary draft or anything else, he asked for the manual. We didn't have a manual we had an incomplete copy of what was provided by the vendor earlier on. He also asked for copies of meeting announcements. This was not our meeting so we had no meetings that we could provide any kind of information to him. As to contracts, proposals, we did provide documents with regard to the Contracts the SBOE had with CCJJ. Finally he asks for and I think this is fairly indicative of some of the problems we have here, he said he wanted record with regard to Dr. Prospero's conflict of interest. Well, I'm not sure what documents are responsive to or evidence of a conflict of interest. There was no document specifically addressing that issue that was generated by the SBOE. If CCJJ had something, that was within their parameters and something they would have. But, we did not have any documents which either analyzed or tried to verify there was in fact a conflict of interest. So, those are the documents that were provided. They only had a copy of a draft of a manual, not a final manual. The information being sought is not document information it is information about the standing of specific individuals in the community. He also sent a series of interrogatories we declined to answer. That is beyond the scope of GRAMA.

Petitioner Closing Statement: Mr. Clára expresses his thoughts on the MOU, expenditures, vendor procurement, emails related to a survey monkey and Mr. Prospero's additional payment for rewrite. Mr. Clára believes he was paid from a Federal Grant and not SB460.

Respondent Closing Statement:

Again, we are looking at records and a request for records. We provided all of the records that we have. One of the confusions is that CCJJ is the one that is responsible for administering the creation of the manual so all of the information he wants regarding this including as he indicated in this list of 16 people, most of them are with CCJJ or a fair number of them are. They may have documents of that are associated with that. When he asks us for information or wants to know what we know or understand, there is a different process for that and its not through a GRAMA request. He can ask for whatever documents we have about individuals but we have turned over all the documents we have with regard to that. And when he's talking about these meetings associated with these individuals, those are not our meetings. It's very simple and straight forward, we are not trying to hide the ball, we told him the CCJJ was responsible for those meetings. So, he has a clear way and a very clear remedy in which he can find the information he is seeking. We also turned him to our coordinator for the SAS who can provide him with the information he has. He doesn't have a library of information, he has what he has. He can provide information and we are willing to provide whatever information and there has not been any hesitation as providing information. But why we are here, is we are talking about documents. We are talking about records. We have turned over all the records we have.

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Deliberation:

Mr. Clara has given specific examples of records he believes are out there. There probably are records out there. It's a matter where do the records reside. He doesn't have everything he'd like.

USBOE has provided all of the responsive records they have that is relevant to his request that they have in their custody. Their assertion is that CCJJ has custody of the records he still seeks.

I'm persuaded with Mr. Clara's argument that there is other stuff. I'm also persuaded with their argument that they aren't the entity that has them.

Motion:

Ken's Motion: All records have been provided. There are no other records responsive with BOE custody. Doug second, then this second is withdrawn. Motion died.

Alternative Motion:

Holly: Based upon today's discussion, evidence is there may be other documents in possession of BOE. Order BOE to provide all documents in its possession and if all documents were provided and no others exists then there are no other records. Motion made by Holly, second by Doug. All in favor say Aye; 5 to 1. All opposed: Tom voted nay. Motion carries, No abstentions.

BOE send letter of compliance.

Concludes hearing at 3:17

7. Approve April 12th Minutes:

Tom: Motion Move to Approve:
Ken seconds the Motion. Vote: 4 Aye; with two abstentions of those that did not attend the previous hearing.

8. Approval of Retention Schedules:

Rebekkah Shaw: Federal Rehabilitation Act. New schedule due to not covered under another schedule.

3 years after graduate.

Motion to Approve

Seconded by Holly, Vote Aye: 6-0

Renee Wilson: Report on License Clinical Therapists Patient Case file and spreadsheet.

9. Discussion:

Mr. Fleming confirmed a quorum for July SRC Hearing at this meeting. Mr. Fleming will not be present at the July meeting.

Quorum for July: David not here. Other 5 will be here.

Review Petition of Appeal. Bennion v AGO. No service provided to governmental entity. No supporting documents. 63G-2-502 Administrative Rule, 63G-2-403(2) not a complete appeal request is a jurisdictional issue. IF not a timely complete appeal, the 30 days are exhausted. 403(3)

Next meeting: Consideration of dismissing appeals based on 403.

11. Report on July and August Appeals:

Motion: we won't schedule a hearing until we receive all documents Cindi Motion Ken 2nd. Pass.

Motion on AGO. Dismiss appeal: failure to comply with statute.

12. Report on Cases in District Court:

Paul Tonks provided updates on all current appeal cases under judicial review.

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13. Other Business:

Rule 35 R-35-2-2

The June 14, 2018, State Records Committee meeting adjourned at 4:35 Holly Motion to adjourn, seconded by Tom. Adjourned.

This is a true and correct copy of the June 14, 2018, SRC meeting minutes, which were approved on July 12, 2018. An audio recording of this meeting is available on the Utah Public Notice Website at <https://archives.utah.gov>

July 12, 2018
X Gene Proctor

Executive Secretary