SRC Minutes October 11, 2018

State Records Committee Meeting

Location: Courtyard Meeting Room, 346 S. Rio Grande St., SLC, UT 84101
Date: October 11, 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
Patricia Smith-Mansfield, Citizen Representative
Brad Westwood, History Designee
Tom Haraldsen, Media Representative
Cindi Mansell, Political Subdivision Representative

Legal Counsel:
Paul Tonks, Attorney General's Office
Nicole Alder, Paralegal

Executive Secretary:
Gina Proctor, Utah State Archives

Telephonic participation:
Scott Gollaher
Jann Farris, Morgan County Attorney

Others Present:
Blake Hamilton
Michael Clára
Elias Faraclas
Patrick Tanner, Tooele County School District
Raymond Clinton
Scott Rogers Tooele County Schools
Ryan Wood, Lehi City
Megan DePaulis, Salt Lake City
Rosemary Cundiff, Utah State Archives

Agenda:
- Four Hearings Scheduled
  - Gollaher v. Morgan County
  - R. Blake Hamilton for Raymond Clinton v. Tooele School District
  - Michael Clára v. Salt Lake City Mayor's Office
  - Elias Faraclas v. Lehi City

- Approval of September 13, 2018 Minutes, action item
- Approval of Retention Schedules, action item
- Discussion, action item
- Report on Appeals Received
- Report on Cases in District Court
- Other Business
    - Confirm a quorum for October meeting.
    - Next Meeting scheduled for November 8, 2018, 9 a.m. to 4 p.m.

Call to Order (00:00:38):
The Chair called the meeting to order at 9:11 a.m. The Chair asked Michael Clára to come to the Petitioner table to discuss his request for a postponement.

1. **Michael Clára v. Salt Lake City's Mayor's Office (0:01:40)**
The Chair addressed Mr. Clára's postponement request. The Chair explained to Mr. Clára that the reasons he gave for a postponement were somewhat understandable but clarified to Mr. Clára that the state records committee did not rely upon the State Archives website to review the documents he submitted. The Chair stated that the documents the committee reviewed for this hearing were received timely and were the correct appeal documents.

Mr. Clára addressed his issues and the reason he requested a postponement. Mr. Clára stated that Salt Lake City's first response contained misinformation about mediation efforts. He related that the executive secretary stopped a different appeal several weeks ago from coming before the committee and he felt that was inappropriate

Committee members informed Mr. Clára that the committee ignored any information submitted by either party that was related to mediation. The committee would not consider any mediation information in their decisions and orders. If Mr. Clára believed that the committee could not ignore information about mediation then he would be wrong.

Committee members suggested that the notice of hearing letters that the executive secretary sends to the parties should add a statement that mediation information is not permitted to be presented in the written response or presented at the hearing. The Chair agreed that a reminder that mediation is not allowed would be appropriate.

The Chair explained to Mr. Clára that the appeal denial decisions were made by himself and one other committee member and not the executive secretary.

The Chair stated that there were issues remaining related to hearing the matter that day and determined that Mr. Clára's request to postpone should be granted and the appeal hearing be re-scheduled for December 13, 2018.

2. **Gollaher v. Morgan County (0:15:00)**
The Chair announced the parties for the hearing. The committee Chair asked the Committee members, Petitioner, and Respondent to introduce themselves for the record. The Chair

instructed the parties that discussions related to mediation communications are not allowed. The Chair reviewed the procedures for the hearing and asked if the parties understood the process. They both affirmed they did.

Testimony Petitioner:
Mr. Gollaher referred the committee to view his appeal to the State Records Committee dated August 10, 2018, his appeal to Morgan County council chair Ned Mecham dated July 11, 2018 and his initial GRAMA request to Morgan County dated May 31, 2018. Mr. Gollaher explained that his July 11, 2018 appeal covered in detail each of the grounds the committee needed to address Mr. Farris' response. Mr. Gollaher's May 31, 2018 request was denied on two grounds; unreasonable duplication of previous requests and a fee of eight-hundred dollars ($800) to be paid in advance for the Morgan County Attorney to perform the search for responsive records.

Mr. Gollaher asked the Chair to abstain from making any decision on this hearing. Mr. Gollaher stated that the Chair ignored the evidence he brought to the last hearing about records that should exist related to the 2016 email. Mr. Gollaher explained that while the Chair acknowledged that he believed Mr. Farris received the email but could not produce it is troubling in that each time he had been a petitioner and presented sufficient evidence that records should exist, the committee would not order the records be produced.

Mr. Gollaher suggested that Morgan County did not have a policy to set fees. Mr. Gollaher stated the new law that limited the number of GRAMA requests current inmates were allowed to make each year created difficulty for him to obtain a records series.

Committee members asked Mr. Gollaher about his request for any and all records that refer to him, where he is the subject of the record. Mr. Gollaher stated it was a records series dealing with him. The series was a criminal file for the prosecutor's record that dealt with him as the subject of the record and they were classified as public, private, controlled, or protected. The records affected his substantial rights and they were created by the governmental entity.

Committee members clarified that the record series of criminal case files was not what he wanted but just the distinct set of records that were contained within that series that pertained to him.

Mr. Gollaher stated he did not want any records that were previously requested and have already been provided or any that were court records.

The Chair observed that the current record request was not a duplicate request but rather a record request that overlapped multiple other requests that have been more specific.
Mr. Gollaher explained he was not asking for any records produced in response to previously submitted requests unless Morgan County's further review showed that some records, not provided previously were overlooked.

Mr. Gollaher expressed his frustration that Mr. Farris would not respond through email which would allow for Mr. Gollaher's wife to quickly confirm what had previously been received. Mr.

Gollaher stated that the $800 fee Mr. Farris had assessed was another way to block Mr. Gollaher's access to records that were probably uncomfortable for Mr. Farris to release.

Testimony Respondent (0:37:45):
Jann Farris, Morgan County Attorney, reported that over the past two years Morgan County has responded to over fifty requests submitted by Mr. Gollaher. Morgan County did not deny him access to records where he was the subject to the records. Mr. Farris explained that most of the requests had been for specific records which were easily identifiable. Mr. Farris stated this specific request was very broad and would require him to go through three boxes of record requests that pertained to Mr. Gollaher. He would need to determine whether any responsive record could be matched to a previously provided record. Mr. Farris stated the lowest paid person capable of performing the work was himself. Mr. Farris believed that Mr. Gollaher was making his requests increasingly broad to circumvent the five requests per calendar year that current inmates were allowed to request under the new statute, §63G-2-109. Mr. Farris explained that Morgan County was a small county with one full time attorney and two part-time secretaries.

Committee members asked whether the mailing address Mr. Gollaher used was a prison address or his wife's address. Mr. Gollaher responded that he was a current inmate but used his wife's mailing address in order to keep an accurate accounting of the records he received.

Committee members asked Mr. Farris whether he had a record keeping system for recording when he received record requests. Mr. Farris described his process for documenting the requests that were processed in a hard-copy format. Mr. Farris stated that he identified emails received from prison inmates as spam.

Petitioner Closing Statement (0:51:18):
Mr. Gollaher refuted Mr. Farris' testimony on email communication. Mr. Gollaher stated that Mr. Farris did respond to him through email as was shown at the last hearing. The 50 requests he submitted to Morgan County for records were over a seven year period.

Respondent Closing Statement (0:57:16):
The Chair asked Mr. Farris to explain how the fee was calculated and the statutory basis for charging the fee.
Mr. Farris summarized Morgan County's price policy; chapter eight of the county ordinance. It allowed Morgan County to charge .25 per page for photocopy. He explained that the policy provided for requests requiring a significant amount of time. The policy allowed for a capable person with the lowest salary to respond to the request. Mr. Farris asserted that he was the only one capable to fulfill the request. The cost per hour would be approximately $60-$70 per hour. A refund would be provided to Mr. Gollaher for money not used. Mr. Farris stated he did ask IT to block any email from Mr. Gollaher that was received in his email account.

Deliberation (1:00:56)
Motion by Ms. Smith-Mansfield: In U.C.A. §63G-2-204(1)(b) a person shall furnish a description of a requested record with reasonable specificity. Additionally, 63G-2-201(8)(a)(iv) a

governmental entity is not required to fulfill a record request if it unreasonably duplicates prior requests from that person. The committee denies the appeal in that the request is not specific enough and in certain areas it does duplicate prior requests. Also, referenced is a prior committee order in 2005-04 Schwartz v University of Utah for "any records on me." The current request for any and all records "on me" is not specific enough especially when there have been other requests fulfilled.
Seconded by Ms. Richardson.

Discussion: Committee members discussed an inmate's use of a personal email address and a personal mailing address may cause confusion. GRAMA allows a person to be a group of people but identifying who is the subject of the record may be confusing.

Vote: The motion carried 6-0-1. The Chair explained that he did not agree with Mr. Gollaher's request that he abstain but he will not vote on this motion. Ms. Richardson, Ms. Mansell, Mr. Haroldsen, Mr. Williams, Mr. Westwood, and Ms. Smith-Mansfield voted for the motion.

Motion regarding fee waiver by Ms. Smith-Mansfield: Pursuant to §63G-2-203(1) a governmental entity may charge a reasonable fee to cover actual costs; 203(2)(b) charge the hourly fee of the lowest paid employee; 203(2)(c) no charge for the first quarter hour of staff time. The Morgan County attorney is not the lowest paid person who is qualified to respond to the request. Morgan County's records officer would be a lowest paid individual qualified to respond to the request. This is a partially unreasonable fee waiver denial as it was calculated incorrectly.
Seconded by Ken.
Vote: The motion carried 6-0-1. The Chair abstained. Ms. Richardson, Ms. Mansell, Mr. Haroldsen, Mr. Williams, Mr. Westwood, and Ms. Smith-Mansfield voted for the motion.

Concludes the hearing **(1:14:52)**

Five minute break

3. **R. Blake Hamilton for Raymond Clinton v. Tooele School District (0:15:33)**
The Chair asked both parties to acknowledge that communications or mediation with the government records ombudsman cannot be used in this appeal hearing or in any administrative hearing and or provided as testimony according to the Utah mediation act. The committee Chair, explained the procedures and asked the Committee members, Petitioner, and Respondent to introduce themselves for the record. He asked the parties whether they understood the process. They both affirmed they did.

Testimony Petitioner (1:16:41):
Mr. Blake Hamilton represented his client Raymond Clinton. He provided his client's employment history for the past 16 years and his client's coaching position at Stansbury High School. He stated Mr. Clinton was only seeking records that pertained to himself and not about any other individual. Mr. Hamilton related that Mr. Clinton became aware of an investigation but he was not made aware of its nature or what the allegations were. Mr. Hamilton explained

that some people had been made targets of serious investigations and there were serious allegations against those people. At the end of the year Mr. Clinton was told his contract would not be renewed. In order to understand what had transpired Mr. Clinton sought records through the GRAMA process. He was not told any reason for why he was let go and he wanted to make sure he could correct any criticism or problems. Mr. Clinton received a partial denial from the school district in response to his record request and some records were received. The denied records were classified as protected and private. Mr. Hamilton emphasized they were not seeking the investigation records specifically related to Coach Jim Bolser.

Mr. Hamilton addressed the claim by Tooele County School District that some records are educational records as defined by Family Educational Rifhts and Privacy Act (FERPA). Mr. Clinton is seeking the records that related to himself as the subject.

Mr. Hamilton outlined the three categories of relevant investigation records 1) Principal Warr notes; 2) Student statements; 3) Parent and community comments.

Mr. Hamilton outlined the record classifications determined by Tooele County School District: 1) Protected §63G-2-305(10) administrative enforcement purposes and discipline purposes. He said that Mr. Clinton had never been disciplined. The district did not need to have a reason to fire him, he was an at will employee. There was no investigation.

2) Protected §63G-2-305(10(d) compromise a source. Mr. Hamilton proposed they could redact names if a student was a source. Mr. Clinton is in law enforcement and understands the criminal statute of Utah to mean compromising a source indicates that there was an informant. Mr. Hamilton clarified that the principal asked the parents and students to provide comments and witness statements regarding what they experienced or observed. They are not complainants.

3) Protected §63G-2-305(25) statements of witnesses recommending future action related to future employment. Redacting names is a remedy to any privacy interest or confidentiality claims allowing an individual to remain anonymous. One individual wanted to remain anonymous and one parent did not provide a name.

4) §63G-2-401(6) weighing various interests the chief administrative officer may order the disclosure of private or protected records if interests favoring access are greater or equal to interests favoring restriction of access. Mr. Hamilton stated that Mr. Clinton was the subject of these documents and the records would allow him to understand the decision of the school district to end his employment. Mr. Hamilton stated that the records were mis-classified as protected and any names could be redacted if there were confidentiality claims.

Committee members asked whether Mr. Clinton was seeking records from an employment file and whether he was a teacher at the school. Mr. Hamilton responded that Mr. Clinton was not seeking records from an employment file and he was not a teacher at the school.

Testimony Respondent (1:29:00):

Patrick Tanner introduced himself as legal counsel for Tooele School District. Mr. Tanner stated that it was clear in district policy that at will employees are not entitled to due process procedures. At-will baseball coach positions are made at the building level. Principal Warr was the one that could make decisions related to at-will coaches. The student statements did not relate to Mr. Clinton but rather to Mr. Bolser and Mr. Clinton indicated he was not interested in those statements.

Mr. Tanner stated that the principal may, at times, talk to people and receive voluntary comments. In this case, she made notes when she spoke to parents and the community members. She made staff changes when she found that there was a lot of noise and complaints and moved in a different direction. Ms. Warr did speak with Mr. Clinton about the complaints coming from parents. Thirteen pages of documents were provided and four categories of records were withheld: 1) Student statements; 2) Mr. Bolser documents 3) Communications or correspondence from the public and; 4) Notes Ms. Warr recorded during her conversations with parents.

Mr. Tanner stated that Mr. Clinton wanted to know the identity of those persons making the allegations and he wanted to know about due process. Mr. Tanner stated that Mr. Clinton did not identify any problems with the classifications at the time of his appeal to the chief administrative officer. The school district's decision on appeal addressed the due process issue.

Mr. Tanner stated that the student witness statements were prepared for *in camera* review, if they were wanted. They were related to what specific students observed and experienced. These were hand-written statements. Redaction will not keep their identities confidential. The statements were governed by FERPA and two communications were kept in confidence.

Mr. Tanner related that, regarding Utah Code §63G-2-305(10), the principal collected information to look toward the possibility to discipline someone or conclude disciplinary action was not needed and possibly look at a different action. Mr. Tanner explained that section (10) (d) identify source, did not mean a confidential informant. The school district was concerned about retaliation and stated Mr. Clinton would use the documents to identify parents. Releasing the records would make individuals less likely to be open about their concerns and would be reluctant to provide frank criticism. Mr. Tanner stated that Mr. Clinton's wife is a teacher and a softball coach and she had an avenue for confrontation and retaliation. Stansbury High School is a small community and Mr. Clinton could easily identify specific individuals.

Mr. Tanner discussed Utah Code §63G-2-305(25) records, other than personnel evaluations, that contain a personal recommendation concerning an individual if disclosure would constitute a clearly unwarranted personal invasion of privacy. He said that there was an expectation of privacy present when the statements were given. Principal Warr's notes were withheld on the same basis. The notes identify individuals.

Mr. Tanner discussed the balance of interests. Mr. Clinton said he needed closure and wanted to understand the nature of the complaints about him. The district had not made this public so

his reputation was not at stake. It was simply that he was not the coach anymore. The remedy did not require the disclosure of complainants. Ms. Warr spoke to him and she could again discuss the nature of the complaints and the nature of the positive comments. Mr. Tanner stated that Mr. Clinton was interested in the identities of complainants to in some way retaliate against them.

Mr. Tanner asserted that it was Mr. Clinton's burden to show the balance favors disclosure. The closure Mr. Clinton stated he required could be served in other ways. If he was not interested in the identities of these people, he could be informed in other ways without chilling future comments from individuals.

Committee members asked whether some of the correspondence and comments were from students and some from parents.
Mr. Tanner answered that they were from witnesses. There were four of them; one page each of student statements and one page of comments from parents.

Committee members asked whether Mr. Clinton was or was not told the reasons why he was not retained as coach.
Mr. Tanner explained that the notice stated that the school would not be calling him back. Prior to sending the letter, Ms. Warr met with Mr. Clinton and explained the situation to him. She told him this is what I'm hearing and this is the issue and this is what we can do with this.

The Committee members asked whether something in the termination letter told him the reasons why he would not be retained as the coach. Mr. Tanner replied, none.

Committee members asked Mr. Tanner, as he understood GRAMA, if Mr. Clinton had been an employee, how would have this situation worked out?
Mr. Tanner explained if it was a personnel issue about Mr. Clinton that relevant records would be maintained in the private section of the personnel file. But, the principal's notes would not be maintained in a personnel file. Ms. Warr would keep her notes separately.

Committee members questioned whether Mr. Clinton would have had a right to a personnel file? Mr. Tanner stated that he would.

The Chair swore in Dr. Scott Rogers as a witness. Dr. Rogers is the superintendent of Tooele School District. He explained that coaches, who are not full time teachers, were just coaches. They were not on contract. They were hired as at-will coaches. They did have personnel files. The only documentation that a school would forward to the district office personnel file were letters, not supporting documents.

Committee members asked Mr. Clinton whether he requested the personnel file.
Mr. Hamilton responded that they received two documents from what was understood to be Mr. Clinton's personnel file.

Petitioner Closing Statement (1:49:19):

Mr. Hamilton expressed his dismay and stated he was offended by the district's accusation that a well-respected, high ranking law enforcement agent might engage in retaliation. Mr. Hamilton reviewed Mr. Clinton's wife's career that spanned 23 years as a teacher and 22 years as a coach. He said that it was the first time Mr. Clinton's wife had been accused of possible retaliation.

Mr. Hamilton reviewed the one meeting Mr. Clinton had with the principal regarding coach Bolser where Ms. Warr did not relate specific information about the complaints. Knowing the names of parents would help him understand the nature of the complaints. He wanted to find another coaching position and wanted to be able to provide a response to any future question about why he was not retained as the baseball coach.

Mr. Hamilton related that Mr. Clinton had no understanding of the reasons why the records would be kept for administrative enforcement purposes or discipline. The records would be in his personnel file if he was the subject of an investigation. The district had to show there was an administrative process and that the records would compromise a source. The district failed to show this. Mr. Hamilton asked the committee to review these records *in camera* and, if they did not fall in the protective classification, they should be provided.

Respondent Closing Statement (1:54:28):
Mr. Tanner said that there was no offense intended toward Mrs. Clinton but the district had the distinct impression she was very angry and very upset during the appeal process. Complaints from people that are disclosed open the possibility of future repercussions. It may discourage people from being open about any issue.

Mr. Tanner explained that if the district was required to go through a due process proceeding, Mr. Clinton would be entitled to whatever evidence was relied on in that process. Keeping the records for an administrative process served the principal's supervision responsibilities. She routinely collected information, bad and good, and was constantly reviewing comments and complaints. The result may be a discipline process. In this instance, it was not to conceal the identity of an informant. It was someone not generally known within a group.

Mr. Tanner stated that the school had one losing season. There had been no allegations of misconduct on Mr. Clinton's part. The district never alleged any wrong doing. They simply said they were going in a different direction and were going to get a different coach. Mr. Clinton was told about the nature of the complaints. Releasing the records would put at risk the open and frank comments from individuals.

Committee members asked Mr. Clinton about his overall coaching record for the nine years he coached the baseball team.
Mr. Clinton said that the first eight years the team had winning seasons and five consecutive region championships. The team won the American legion state title in 2012. Mr. Clinton stated that he had sent sixteen kids off to college and the players he sent on past high school should speak for itself.

Motion to go in camera by Ms. Mansell **(2:00:00)**. Seconded by Mr. Westwood. Vote: The motion carried 7-0. Mr. Fleming, Ms. Richardson, Ms. Mansell, Mr. Haroldsen, Mr. Williams, Mr. Westwood, and Ms. Smith-Mansfield voted for the motion.

Motion to return to open session by Ms. Mansell **(2:00:41).** Seconded by Mr. Haraldsen. Vote: motion carried 7-0. Mr. Fleming, Ms. Richardson, Ms. Mansell, Mr. Haroldsen, Mr. Williams, Mr. Westwood, and Ms. Smith-Mansfield voted for the motion.

Deliberation (2:00:56)
Having reviewed the documents in camera the committee identified the records as:
Document one – page 1, personnel record of another individual
Document two – page 2-5, student statements
Document three - page 6-21, parents' comments and public comments
Document four – page 22-28, principal notes

Motion by Ms. Smith-Mansfield: Document one is properly classified as private pursuant to §63G-2-302(2)(d). They are employment records and non-responsive.
Seconded by Ms. Richardson.
Vote: The motion carried 7-0. Mr. Fleming, Ms. Richardson, Ms. Mansell, Mr. Haroldsen, Mr. Williams, Mr. Westwood, and Ms. Smith-Mansfield voted for the motion.

Motion by Ms. Smith-Mansfield. Document two (pages 2-5) is properly identified as education records pursuant to §63G-2-107, governed by federal law (FERPA) and non-responsive.
Seconded by Ms. Richardson.
Vote: The motion carried 7-0 Mr. Fleming, Ms. Richardson, Ms. Mansell, Mr. Haroldsen, Mr. Williams, Mr. Westwood, and Ms. Smith-Mansfield voted for the motion.

The Chair noted that the respondent appropriately described the records as complaints against coach Bolser.

Motion by Ms. Smith-Mansfield.
Document three (pages 6-21) includes parents' correspondence and community correspondence.
Document four Pages 22-28) is principal notes referencing parents' communications. They are properly classified, in part, and improperly classified, in part, pursuant to 63G-2-305(10)(d) & (25) in that the investigation is over and the personally identifying information could be redacted so that it would not identify personal information such as, names, email addresses, mailing addresses and phone numbers and all relevant references to students. General information related to students, players, and issues relating to individuals or the team should be provided. Regarding the principal's notes, these would require much more redaction than the prior set of records. The notes are summarized but it would be useful to the respondent and could provide an understandable portion.
Seconded by Mr. Haraldsen.

Vote: The motion carried 7-0. Mr. Fleming, Ms. Richardson, Ms. Mansell, Mr. Haroldsen, Mr. Williams, Mr. Westwood, and Ms. Smith-Mansfield voted for the motion.

The committee members found the petitioner did have a personal interest and this classification held but did not take into account a weighing provision. This was a motion that was regarding a straight classification.

Concludes hearing for the day. 2:12:24

Break for lunch (2:12:45)
Mr. Brad Westwood was absent for the afternoon hearing.

1. **Elias Faraclas v. Lehi City (2:14:00)**
The Chair asked both parties to acknowledge that communications or mediation with the government records ombudsman cannot be used in this appeal hearing or in any administrative hearing or provided as testimony according to the Utah mediation act. The Chair explained the procedures and time limits for each party to present their case and asked if the parties had any questions on the procedures. The Chair asked the parties to introduce themselves.

Testimony Petitioner (2:14:26):
Elias Faraclas stated the scope of the request was very narrow. He sought electronic communications from a city councilman, Paul Hancock, during a city council meeting, doing city business, at a public meeting, on a public record. He stated that he received two records and clarification from the city recorder that there might be other messages but those pertained to councilmember Hancock as a private citizen. The city recorder further explained that other messages were items on the agenda but councilman Paul Hancock may have not seen them until after the public meeting and they were classified as private. In his appeal to the chief administrative officer, Mr. Faraclas outlined the five minutes of time stamps on the city's video recording and identified the specific communications he believed were received and created by Paul Hancock. The decision of the chief administrative officer affirmed the classification and the denial.

Mr. Faraclas stated that the records should not be considered private because it was on city business during a city council meeting while the councilman was engaged in the discussion. The interests favoring access were equal to or greater than restriction.

Testimony Respondent (2:24:56):
Ryan Wood stated he represented Lehi City. Mr. Wood suggested that the committee's jurisdiction was compromised due to the incomplete appeal the state records committee received. There were procedural issues as shown in his Exhibit F. The appeal to the State Records Committee was initially submitted on April 19 and was an incomplete appeal. It was not until June 18 that the appeal was determined to be complete. The Lehi City decision on appeal to the city administrator was denied on March 22. From March 22 to June 18 was 88 days. Mr. Wood pointed out that Mr. Faraclas missed the appeal deadline and a recent court decision showed that the committee did not have jurisdiction if the deadline was missed.

Mr. Wood stated Lehi City determined that Mr. Faraclas' request was for communications that were determined to be not a record. The narrow issue was that these were not records since

they were not received by the governmental entity. The more general issue was even if Mr. Faraclas obtained this one electronic communication, he would believe that a multitude of records were not disclosed that corresponded to the time stamps on the city's video. Many of the assumed existing text messages could be transitory and deleted immediately. Mr. Faraclas did not describe a way that the city had the authority to force the councilmember to provide the city with any existing records. Mr. Wood stated that he did not have subpoena power or legal authority to compel an individual to turn over their device. In Mr. Wood's search of case law, there was no support for the city to compel a person to give up their personal device or personal accounts so that the city might confirm that full disclosure was or was not made.

Mr. Wood stated it was the councilmember's assertion that there was a group chat. The councilmember maintained he did not know this chat was received by his device until he was asked to search for any records for the city council meeting. Mr. Wood described scenarios of retention for various types of electronic communications and said that privacy issues of other parties required consideration.

Committee members asked whether the city searched the councilmember's phone or if the councilmember searched his own phone. Mr. Wood replied that the councilmember searched his own phone.

Committee members asked whether the councilmember used the video log timestamps to locate any records.
Mr. Wood explained that initially he did not. They did not have the time stamps with the initial request. The mayor received the appeal that contained the outline of the timestamps. Councilman Hancock met with the mayor and reviewed the time stamps. At that time, he located the records from both a pre-council meeting and a council meeting.

Committee Chair clarified that the respondent's assertion was that the committee does not have jurisdiction to debate whether the electronic communications are records.

Petitioner Closing Statement (2:36:17):
Mr. Faraclas reviewed the history of his appeal and provided the notice of hearing dated April 24, 2018 from the interim executive secretary, Dylan Mace, to show his appeal was vetted and submitted properly.

Mr. Faraclas stated that his request was for all council meeting records, which included any pre-council or council meeting records. Mr. Faraclas wondered what kind of privacy interests there were when councilmembers are talking to each other during council meetings. He questioned the city's due diligence to obtain the councilmember's electronic communications. Mr. Faraclas argued that the city may not have the power to compel but the committee does. Mr. Faraclas stated that councilmembers could use a personal device to avoid providing records and that was not what the GRAMA law intended. The GRAMA law intended for official city business on city time be publically available.

Committee members asked about the notice of hearing sent by the interim executive secretary. Mr. Faraclas provided his personal device to the committee members that showed a copy of the notice of hearing issued on April 24, 2018 by interim executive secretary, Dylan Mace. Mr. Faraclas related that he submitted the documentation in a certain format to Mr. Mace but when the reshuffling of staff occurred Ms. Proctor cancelled the hearing citing that the supporting documentation was not received. He worked with the ombudsman and determined which documentation was required and submitted those in the format requested.

Respondent Closing Statement (2:42:49):
Mr. Wood reviewed the May 16 letter issued by Ms. Proctor, which notified Mr. Faraclas that his appeal was incomplete and could not be scheduled until all of the required documentation was provided pursuant to statute and rule. This gave him additional time that exceeded the 30 days allowed to appeal to the committee.

Mr. Wood that the city did perform due diligence and that the city provided everything responsive to Mr. Faraclas.

Committee members asked Mr. Faraclas about the documentation he did submit.
Mr. Faraclas stated he sent everything to Mr. Mace who reviewed it and determined that scheduling a hearing was appropriate.

Deliberation (2:46:20):
The committee discussed the administrative error and the timeliness of the appeal. The time from May 16th to June 18th is 33 days. It was late by three days. The state records committee should absorb this administrative error and if the respondent wants to appeal to district court on this issue he could do that.

Motion by Ms. Smith-Mansfield to deny the motion to dismiss based upon the fact that the state records committee was unable to determine if the appeal was received timely or untimely. Seconded by Mr. Williams.

The Chair asked for clarification on the law regarding the timeliness of the appeal. Ms. Smith-Mansfield clarified that §63G-2-403(2)(b) stated, that an appeal must be accompanied by a copy of the decision being appealed. She explained that the State Records Committee had a lot of instances where petitioners (lay people) forgot the requirement. In those instances, a notice was sent to the petitioner letting them know that they were required to provide the additional documents by a certain date in order to schedule a hearing. Ms. Smith-Mansfield suggested that the committee may want to amend a rule to make that more clear. The Chair claimed jurisdiction of the matter and asked for a vote.

Vote: The motion carried 6-0. (Mr. Westwood, absent) Mr. Fleming, Ms. Richardson, Ms. Mansell, Mr. Haroldsen, Mr. Williams and Ms. Smith-Mansfield voted for the motion.

Deliberation (2:54:00):

The committee discussed whether text messages and electronic communications are records. It was a record regardless of format pursuant to 63G-2-103(22)(a). Retention schedules should be followed. A record may follow a transitory retention schedule. A retention schedule protected the governmental entity. A text message was a record if the content contained government business created in the councilmember's role about the agenda items or issues about the council's discussion and was dependent on whether he retained the communications at the time of the request. A policy needed to be in place for councilmembers' communications about city business on personal devises. Personal devices may be used for government business but the records must be turned over to the city.

The committee discussed whether the city performed due diligence in fulfilling the request. Ms. Richardson stated she was persuaded that the city had asked the councilmember for records and had asked a second time. She was persuaded that the city had performed the required due diligence.

The committee discussed whether text messages are conversations and whether conversations are reproducible. Committee members determined that smart phone conversations were reproducible while flip phones were not. Smart phones had the metadata intact.

The committee discussed whether a governmental entity could compel a person to turn over their device and personal information. Committee members determined that when a public official acts in an official government capacity, the governmental entity owned the record. Regardless of whether the councilmember read or opened the group chat during the meeting, it is still a record.

Motion by Ms. Smith-Mansfield:
Based on testimony of the respondent and the petitioner related to the time and date stamp, the record pertinent to council business should be released as a public record to the petitioner. Seconded by Mr. Williams.

The Chair clarified that the record described as text messages about council business, were records and should be released regardless of whether the councilmember opened the messages during the council meeting. The city did perform due diligence and no further action was needed except to turn over the record described as council business.

Committee members discussed whether this was all inclusive of all the records that may be responsive but recognized that the committee cannot determine if it was all inclusive.

Vote: The motion carried 6-0. (Mr. Westwood, absent) Motion carries 6-0 Mr. Fleming, Ms. Richardson, Ms. Mansell, Mr. Haroldsen, Mr. Williams, Mr. Westwood, and Ms. Smith-Mansfield voted for the motion.

Concludes hearing at 2:00 p.m. **(3:20:32)**

Business (3:24:12)

9. **Discussion**:
The Committee received suggestions from legal counsel regarding amendments to Administrative Rule 35-1-2-(12) Procedures for Appeal Hearings, pertaining to postponement requests. Changes to the rule are as follows:

(12)(a) If the petitioner wishes to postpone the hearing or withdraw the appeal, the petitioner shall notify the Executive Secretary of the Committee and the government entity in writing no later than two business days prior to the scheduled hearing date.

(b) The Committee Chair has the discretion to grant or deny a petitioner's request to postpone a hearing based upon: (i) the reasons given by the petitioner in his or her request, (ii) the timeliness of the request, (iii) whether petitioner has previously requested and received a postponement, (iv) the status of any mediation taking place between the parties with the government records ombudsman, (v) any other factor determined to protect the equitable interests of the parties.

(c) Prior to granting or denying a petitioner's request to postpone a hearing, the Committee Chair shall consult with the Executive Secretary of the Committee in order to determine if mediation is taking place between the parties and the Government Records Ombudsman.

~~(c)~~ (d) The Committee Chair will ordinarily deny a governmental entity's request to postpone the hearing, unless the government entity has obtained the petitioner's prior consent to reschedule the hearing date.

Motion by Ms. Richardson to incorporate the changes as discussed. Seconded by Ms. Smith-Mansfield. Vote: The motion carried 6-0. (Mr. Westwood absent) Mr. Fleming, Ms. Richardson, Ms. Mansell, Mr. Haroldsen, Mr. Williams, Mr. Westwood, and Ms. Smith-Mansfield voted for the motion.

10. **Approve September 13, 2018 Minutes**
Motion to approve the minutes by Mr. Williams. Seconded by Ms. Smith-Mansfield.
Vote: The motion carried 5-0-1 (Ms. Mansell abstained, Mr. Westwood is absent) Mr. Fleming, Ms. Richardson, Mr. Haroldsen, Mr. Williams and Ms. Smith-Mansfield voted for the motion.

11. **Approval of Retention Schedules**: None

12. **Report on Appeals Received, Denied, and/or Scheduled**
Executive secretary reviewed the appeals.

13. **Report on Cases in District Court:**
Assistant Attorney General Paul Tonks provided updates on all current appeal cases under judicial review.

14. **Other Business:**

Mr. Fleming confirmed a quorum for the November SRC Hearing. Mr. Williams will not be present.

Motion to adjourn by Ms. Smith-Mansfield; The Chair adjourned the hearing at 2:00 p.m. **(3:50:31)**

This is a true and correct copy of the October 11, 2018, SRC meeting minutes, which were approved on November 8, 2018. An audio recording of this meeting is available on the Utah Public Notice Website at https://archives.utah.gov

X _____

Executive Secretary