

SRC Minutes November 8, 2018

State Records Committee Meeting

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

Date: November 8, 2018

Time: 9:00 a.m. – 4:00 p.m.

Committee Members Present:

David Fleming, Chair, Private Sector Records Manager
Holly Richardson, Chair Pro Tem, Citizen Representative
Patricia Smith-Mansfield, Citizen Representative
Brad Westwood, History Designee
Tom Haraldsen, Media Representative
Cindi Mansell, Political Subdivision Representative

Kenneth Williams, Governor's Designee-Absent

Legal Counsel:

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

Executive Secretary:

Gina Proctor, Utah State Archives

Telephonic participation:

None

Others Present:

Lynn Allen David
Jeremy Beckham, People for the Ethical Treatment of Animals (PETA)
Stephanie Fricke, Hyrum City
Scott Wells, Wellsville
Greg Simonsen
Jon Woodard, Wasatch County
Barry Hallows, Wasatch County
Phyllis Vetter, University of Utah
Andy Weyrich, University of Utah
William Evans, University of Utah/Attorney General's Office
Amy Meyer, Students for Animal Welfare (SAW)
Cheryl Bodily, Nibley City
David Zook, Nibley City
Chad Woolley, Providence City
Maria Hiatt, Students for Animal Welfare (SAW)
Boyd Ferguson
Brady Eames
Rebekkah Shaw, Utah State Archives

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Renee Wilson, Utah State Archives

Dylan Mace, Utah State Archives

Agenda:

- Three Hearings Scheduled
 - Gregory Simonsen (for Lynn David) v. Wasatch County
 - People for the Ethical Treatment of Animals (PETA) and Students for Animal Welfare (SAW) v. University of Utah
 - Brady Eames v. 12 Entities (1 County and 11 Cities)

- Approval of October 11, 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 December meeting.
 - Next Meeting scheduled for December 13, 2018, 9 a.m. to 4 p.m.

Call to Order (0:00:04)

The Chair called the meeting to order at 9:08 a.m. The Chair asked the Committee members to introduce themselves. The Chair explained the procedures and stated the restrictions on mediation and reminded the parties that mediation discussions are prohibited and excluded from testimony.

1. Gregory Simonsen (for Lynn David) v. Wasatch County (0:00:45)

The Chair announced the parties for the hearing. The Chair asked the Petitioner and Respondent to introduce themselves for the record.

Petitioner Statements (0:02:25)

Mr. Gregory Simonsen, legal counsel, introduced Mr. Lynn David, Petitioner. Mr. David reviewed his professional background and interest in Wasatch County's Transient Room Tax (TRT) fund account. He reviewed the history of his record request and indicated that he was satisfied with the responses he received for items #1 and #2. Mr. David was not satisfied with the responses from Wasatch County on Items #3, #4 and #5 of his request. He described the significant funds that were provided to Wasatch County during 2017 and further back to 2007. He explained his interest in Fund 39, which held \$187, 500.00 and was transferred from Economic Development. From Fund 39, \$136,000 was transferred to Fund 21, Parks and Recreation. Mr. David reviewed the data he located on the transparent.utah.gov website. He stated that there was very little information regarding the nature of expenses and there was no level of detail for how the monies were spent. He explained that further information related to Fund 39 was unavailable and that he was unable to identify the name of Fund 39. He stated that his interest in reviewing the records related to the TRT will enhance his understanding of why, how and where these funds were being spent by Wasatch County.

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Respondent Statements (0:18:25)

Jon Woodard, Deputy County Attorney, and Barry Hallows for Wasatch County introduced themselves. Mr. Woodard explained that Wasatch County made a great effort to be transparent and provided great detail through the Transparency Utah website. They provided Audit Reports, Annual Budgets, County Code, Minutes of Ordinance and Resolution recordings. It requires great effort to produce this. All of it is available through Transparency Utah. All of the information is not easily understood. Wasatch County expended a lot of effort and produced a number of records without a fee in response to Mr. David's request. However, the additional detail in providing explanations and information Mr. David would like will take additional time and he should be required to pay the costs associated with providing greater detail about very specific records tailored in a very specific manner through custom reports. In Mr. David's request, item #3, he wanted details from 2007 2017 specific to his named fields which would require a custom report. It is not the role of the County to provide an interpretation of the data. In Utah Code §63G-2-201(8)(a)(i) (ii)(iii), a governmental entity is not required to create a record; compile, format, manipulate, package, summarize or tailor information; provide a record in a particular format not currently maintained by the governmental entity. Utah Code §63G-2-(8)(a)(iv) states that a governmental entity is not required to fill a person's records request if the request unreasonably duplicates prior records requests from that person. Wasatch County felt that item #3 duplicated similar requests submitted by Mr. David to the Tourism office.

In item #4, Mr. David wanted the method used to track funds. The State Codes and County regulations followed are maintained by the State Auditor and found online in the Budget Approval Minutes.

In item #5, Mr. David wanted the dollar amount paid to each fund. This was found in the approved Budget and was online in the final Budget. What was not found online must be compiled but Mr. David needed to pay the fees associated with creating a record and compiling the information. Wasatch County is willing to create such a record but the focus was the fee waiver denial. The County charges 50 cents/page for copies and \$20/hour for a professional's time, which fell far below the actual cost that is incurred by the County. The County had an interest in protecting its public resources and the fee costs are required.

Committee members asked questions regarding the records related to funds that are allocated to businesses for economic development grants. Source documents for allocating funds to various businesses and hotels were determined to be the records that would be responsive.

Committee members asked questions about a data warehouse and learned this is where back-up documentation for the transparency website is stored.

Committee members asked where the TRT income would be found. Wasatch County responded that the funds are transferred to other accounts within the county and outside the county and documented on the transparency website.

Committee members asked about a list of grants and whether a federal website would have such a list. Wasatch County responded that Heber Valley Tourism provided a report specific of grants to Mr. David.

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Committee members asked about the accounts for Fund 21 and Fund 39. Wasatch County responded that Mr. David was not using the correct accounts to understand the county's budget. The millions of dollars in the budget is complex. The TRT fund is not broken down the way Mr. David understands it. He was not looking in the right place. The accounting was provided to the State for auditing and approval of the budget.

Petitioner Closing Statement (0:52:30)

Mr. David explained that is not asking for additional information or a duplication of information. He reviewed the funds for which he was seeking records. Mr. Simonsen stated that Mr. David would like to know where the dollars are being spent. He ought to be able to get that answer. Mr. David is a reasonable person with questions about Wasatch County expenditure of its funds.

Respondent Closing Statement (0:57:15)

Mr. Woodard explained that what Mr. David wants is not a county record. It is a burden on the county and the county cannot justify waiving the fees. It would take one week's time of one person to locate and compile the records.

Deliberation (1:00:09)

Committee members discussed source documents and whether they would provide Mr. David with the information he wants. Ms. Smith-Mansfield explained there is a name for Fund #39 but for ease in reporting a number is used instead of the name.

Motion by Ms. Smith-Mansfield: There is no issue for requested items #1 and #2. For requested items #3, #4 and #5, §63G-2-204(1)(b) provides that a requester is required to provide a description of the record requested with reasonable specificity. A governmental entity is not required to summarize or tailor information pursuant to §63G-2-201(8)(a)(ii). Source documents can be provided to the petitioner as records but not in a comparative or methodological format. Some records are available in a public format available on a public website and pursuant to §63G-2-201(8)(a)(v), the governmental entity is not required to fill a person's records request for those records.

Discussion

Methods and comparatives are not records, they are processes. That is not a record, it is information. Some records have been provided. Wasatch County will provide source documentation but no comparatives. It is for Mr. David to do the comparison.

Seconded by Mr. Westwood.

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

Motion regarding the fee waiver by Ms. Smith-Mansfield: In §63G-2-203(6)(a)(b), a person that believes that there has been an unreasonable denial of a fee waiver may appeal the denial in the same manner as a person appeals when inspection of a public record is denied. The Committee finds that the denial of the fee waiver was not unreasonable in that the governmental entity may fulfill a record request without charge if it determines that releasing

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the record primarily benefits the public rather than a person, pursuant to §63G-2-203(4)(a), which the committee finds otherwise. The evidence shows that the fee waiver does not primarily benefit the public. In §63G-2-203(1) a governmental entity may charge a reasonable fee to cover the governmental entity's actual cost of providing a record. Seconded by Ms. Richardson.

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

5-minute break (1:28:00)

Call back to Order (1:29:40)

2. People for the Ethical Treatment of Animals (PETA) and Students for Animal Welfare (SAW) v. University of Utah (1:30:00)

The Chair announced the parties for the hearing and explained the procedures. The Chair asked the Petitioner and Respondent to introduce themselves for the record. The Chair reminded the participants that communications regarding mediation cannot be presented in their statements. Ms. Richardson stated she is a PhD political science student at the University of Utah, in case anyone had an objection to her voting in this matter. No one objected.

Petitioner Statements (1:31:00)

Mr. Jeremy Beckham introduced himself and his affiliation with PETA. Ms. Maria Hiatt introduced herself and her role with Students for Animal Welfare. Mr. Beckham stated that the University of Utah is charging exorbitant fees and the denial of a fee waiver is unreasonable. He believed the University of Utah is using the fee waiver provision to withhold records. He is requesting a *de novo* review of the fee waiver request and stated that these records are in the public's interest. Mr. Beckham explained how GRAMA requests had protected animals in the past. The lab studies are secret and the only way to uncover how animals are treated is through GRAMA requests. He asked for at least a fee waiver reduction. He explained that taxpayers have an interest in how their funds are spent. The fees are punitive attempts on the part of the University of Utah to prevent PETA from gaining public information. PETA had an eye-witness investigator working in the lab. They discovered that nine violations in animal welfare laws had occurred and found that once a week animals were showing up for the studies. It was through GRAMA requests that a list of where the animals were being sent from was discovered. Mr. Beckham stated that Davis County, Tooele County, and one shelter in Utah County provided to the University of Utah animals from their shelters for use in teaching students. The counties thought the animals would be adopted out after the teaching and research was completed. Once they learned how the animals were being treated, they stopped sending the shelter animals. Mr. Beckham explained other record requests that brought to light other issues surrounding ethical treatment of animals. Mr. Beckham does not believe a \$5,000 fee for reviewing records is reasonable and indicated that the University of Utah has a good deal of administrative bloat.

Ms. Hiatt stated that the fee waiver benefits the public and not the individual in that the University of Utah is awarded millions of dollars in funds through federal grants. There is broad public interest in animal welfare and non-compliance with federal laws. Previous violations have been covered in the national press. Federal regulators have been interested in

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information PETA and SAW have obtained. Ms. Hiatt reviewed other State Records Committee decisions in previous fee waiver hearings. She discussed the statute governing costs and that a governmental entity is not allowed to charge for reviewing a record to determine whether it is subject to disclosure. In a previous request submitted by SAW, the University of Utah provided a breakdown of costs, some of which were not allowed for in GRAMA.

A United States Department of Agriculture (USDA) inspection report stated that a marmoset died in 2015. A review of this record produced the federal citations and it is this same animal's records that were requested. Requesters want to know what happened, what went wrong, and what corrective actions were put in place?

Committee members asked whether a classification was provided with the prepayment notice the University of Utah provided to the petitioner. Mr. Beckham stated there was none.

Respondent Statements (1:51:45)

Phyllis Vetter, University of Utah introduced herself and Andrew Weyrich, Biomedical Researcher and Vice President of Research since 2016. Dr. Weyrich provided his background and concern for humane and ethical treatment of animals. Dr. Weyrich reviewed the types of human diseases that have been treated through the use of valuable animal research where in rare instances there was an occasional adverse event with an animal. These events are self-reported to the Office of Laboratory Animal Welfare (OLAW) at the National Institute of Health (NIH). OLAW has been satisfied that the University had taken immediate and appropriate corrective action. They have a very low number of adverse events compared to peer institutions. If adverse events occur in species covered by the Animal Welfare Act they report the event to the Animal Care Division of United States Department of Agriculture (USDA).

The disagreement is on reimbursement of costs to review the records thoroughly, redaction of sensitive information such as intellectual property, unpublished research results, investigators names, and places where the studies are taking place. Threats are received against their specialized employees for their research and it is critical to protect their identities. The scope of the request is extremely large and it will take a number of hours for specialized trained staff to review the documents. Based on the estimated amount of time necessary to fill the request they find it is necessary and reasonable to request reimbursement for the actual time to prepare the documents.

Ms. Vetter spoke to the nature of the requests and about self-reported incidents to the federal regulatory bodies that provide the public oversight of the University's programs. She reviewed the legal arguments involved in the appeal. The 2016 GRAMA statute modifications and the legislative revisions, where a governmental entity may waive the fee if it determines releasing the records primarily benefits the public rather than an individual. The statute still makes it permissive to waive the fee. The State Records Committee previously decided that the University was not required to waive fees in a 2004 case involving Mr. Beckham and the University. The district court upheld this finding in 2012 when it determined the University's charges for record requests were reasonable and consistent with the statute. The University's review *de novo* does not change the fact that a fee waiver is permitted. They considered a well-funded organization like PETA in the decision to deny the fee waiver. She reviewed the number of prior requests that Mr. Beckham, PETA, Ms. Hiatt and SAW have submitted and the

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burdensome time and cost to the University to redact protected information. A lot of records were generated in the aftermath of the 2015 incident, comprising thousands of pages. The unique circumstance of research records requires that the specialized personnel which includes researchers, lawyers, scientists, technicians as the lowest paid staff able to do the work. The denial of the fee waiver is reasonable. The University considers whether the fee waiver benefits the public or an individual. The federal regulators oversees the University's research programs. They work with the University to correct the actions and the citations that are included from these agencies already have been reported in the media and been made publically available. This request duplicates that oversight and benefits solely PETA and SAW. The threatening emails and threatening behavior in the past require the University to take their duty to redact very seriously when providing documents to these groups.

Committee members asked whether the cost estimate response provided a breakdown for the actual costs with this request.

Ms. Vetter responded that both Mr. Beckham and Ms. Hiatt have a history of requesting documents from the University and have received several breakdowns. GRAMA doesn't require a breakdown in an estimate but in the actual production of the work done. In the actual production of the records they describe the work that was done and the amount charged.

Committee members asked why the classification of the records that would be produced was not provided to the petitioner. GRAMA requires a governmental entity take a look at the specific records that would be responsive and require redaction. There is a need to classify the records that are at hand and not the ones that were done previously and may have a similar cost breakdown.

Ms. Vetter explained that the same petitioners have requested very similar records in the past and are aware of the cost breakdowns.

Committee members questioned whether the University of Utah Institutional Animal Care and Use Committee is a public committee. Mr. Weyrich explained that that committee does have oversight and is comprised of individuals from the University and the public sector. Some individuals are involved in animal research and others are not. But the committee is not subject to the Open and Public Meetings Act.

Ms. Vetter explained that the Board of Trustees is the governing body for the University of Utah and is subject to the Open and Public Meetings Act. There is no requirement for the Animal Care and Use Committee to hold public meetings. Out of an abundant concern for the safety of the individuals involved in the research, committee meetings are not open to the public.

Petitioner Closing Statement (2:19:48)

Mr. Beckham asserted that this hearing is not a good forum to get into the scientific and ethical concerns of animal research. The issue is based on the records themselves. Just because there was an accountability process does not mean that the community knows what happened. It was not appropriate to look at the identity of the requester and determine the costs. Just because PETA had more resources than Maria and SAW does not mean the public interest is diminished. PETA was involved only because Ms. Hiatt requested their assistance in requesting the records because of PETA's record request experience. They cannot access the reports on

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the University's website or on the NIH website. They are not talking about what the University should disclose in response to the request but what the University is charging.

Respondent Closing Statement (2:24:20)

Ms. Vetter explained that the University was happy to provide all of the documents that were requested. It was just about the fee waiver. She explained that this request required high-level staff to review the records. The University would charge the actual costs associated with all the documents they requested. A lot of it was available publically through grants, with NIH, and USDA. Redaction of sensitive information was important to the University and the actual costs were likely to be more than the estimate. The reality was that the scope of the request was quite large, including thousands of pages of documents.

Ms. Vetter addressed the fee calculations and reasonableness of the fees. The University does not charge the gross compensation of employees, just the salary. They do not use a more expensive method of determining costs than necessary. Exhibit H, provided in the January 2018 response to the requesters, showed that the work for searching for and retrieving the records was pushed to the lowest level veterinarian staff as possible. The work for the redaction that can be done by an administrative assistant was listed. The whole point of the GRAMA provision in allowing an estimate of prepayment was to prevent a governmental entity from going to all the work. They could just fill the request and perform the work and provide the petitioner with the actual costs for the work.

Deliberation (2:30:45)

Motion by Ms. Smith-Mansfield: Based on review of the testimony and information and material provided to the State Records Committee beforehand for review, the denial of the fee waiver was unreasonable and a fee waiver is granted. In *Deseret News v. Salt Lake County*, the governmental entity is required to address the specific GRAMA request and not base the decision on prior decisions, cases, or records series. Seconded by Mr. Haraldsen.

Discussion: The University refers to the 2004 *Beckham v. University of Utah* case. In that case the University at least went through the records specific to that request, provided the classification and provided the fee on that request. That particular one was about the actual costs. The public benefit was not discussed specifically in that case. Today, the petitioner has brought forward the public benefit.

The *Deseret News v. Salt Lake County* case required the governmental entity to take the request at hand, records specific to the request, and to classify those records, not classify them generally as the same type of records. It is hard to judge what the actual costs are since the Committee does not know what scientific evidence, intellectual trademark and other information is present in the records. The University did not weigh the public benefit. The University of Utah stated that they are not required to grant a fee waiver therefore they will not. They need to come out and state that there is no public benefit and that they deny the fee waiver based on that. There are different types of public benefits and PETA has demonstrated there is a public benefit.

Segregation and redaction may or may not be determined as the same thing. The State Records Committee has ruled differently in separate cases. The State Records Committee

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reviews the specific appeal at hand. A governmental entity has to process the request to figure out what the costs for that specific request are.

Public interest has been demonstrated. In the past, mistakes were made. Obviously we know there is not a huge problem. This is a public institution with a very successful track record. But, when things happen the public has a right to know about it. Public interest may have been served by the fact that the University of Utah has already been fined for the incident. There is a public record of it.

Because the incident had been made public does not mean that there is no more information that could be made public and more information to be learned.

The petitioner did a good job in outlining the public benefit. The respondent did not really address a public benefit or a lack of public benefit in the written information or before the committee to a specific degree. The University is relying on their stances that this is PETA and this is how the University responds to PETA instead of taking the specific case at hand. The fee waiver and classification require the case at hand to be reviewed and the responses be given to those records. The University did not do that.

The Committee discussed whether a blanket fee waiver should be granted or require the University to do the work and provide the actual costs to produce those records. For decisions where the committee had decided in other cases that a fee waiver denial was not unreasonable were when the Committee was provided a calculation of the fees. The respondents are required to provide the requester a denial based on the current classifications of the records and not on prior classifications.

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

20-minute break for lunch **(2:49:05)**

Reconvene hearing **(2:49:33)**

3. Brady Eames v. 12 Entities (1 County and 11 Cities) (2:49:45)

The Chair explained the procedures and stated the restrictions on mediation and reminded the parties that mediation discussions are prohibited and excluded from testimony.

Nibley, Providence, and Wellsville are present. Tremonton will participate via telephone. Cache County and Hyrum City are withdrawn. Smithfield and Lewiston are not respondents in this hearing.

Petitioner Statements (2:54:36)

Mr. Brady Eames stated that he referenced the Utah State Archives website to determine which persons should receive his requests and make the initial decision. In good faith, he stated he submitted the requests to the mayors, the CAO; of a municipal corporation. When the municipal entity had an ordinance stating who it should be sent to Mr. Eames submitted his request to that person. He explained that he was present today because he had not received an appellate response from any of the representatives. Stephanie Miller, mayor of Hyrum, responded the day before yesterday and Shaun Dustin from Nibley City responded with a

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denial. He asked the Committee to compel the other Mayors to make an appellate decision regarding penal bonds. City ordinances require the persons elected or appointed to execute these bonds.

The Chair asked Mr. Eames to clarify the scope of the request.

Mr. Eames explained that theft or crime insurance in lieu of bonds records have been provided by records officers in place of surety penal bonds. The request was limited to surety penal bonds and oaths of office and certain records with respect to the Utah Local Government Trust (ULGT) as amended in his request dated August 9, 2018. The amended request added the category of records with respect to ULGT and he might have referenced insurance in his request but he had a separate category of requested records for the surety penal bonds and the oaths of office. He stated he did not have an answer from the governmental entities as to whether the entity had destroyed the penal bonds, lost them or transferred them. He stated that the governmental entities do not admit that they do not maintain them. The governmental entities are required to have them based upon municipal code. Utah municipal code required the bonds.

Respondent Statements (3:04:30)

Nibley City

Nibley City, David Zook, city manager and recorder and Marilyn Bodily, deputy recorder and records officer for Nibley City introduced themselves. Nibley City received the request about ULGT which was submitted to multiple cities. Many entities, including Nibley City, reached out to ULGT and were told that ULGT would respond to the request. Nibley City was not told that ULGT then declined to make a response. There was a lack of communication. Nibley City did provide oaths of office and explained that they do not use penal bonds; they do not exist. Nibley City stated that they verbally told Mr. Eames that they had only theft and crime insurance.

Comments and questions from Chair:

The Chair would like to avoid information about whether the governmental entity is in compliance with municipal code. The Committee will address two questions. 1) Did the governmental entity respond appropriately to the request? 2) Do the records Nibley City provided to Mr. Eames satisfy the request?

Mr. Eames replied that he received only oaths of office. He did not receive surety penal bonds or records related to ULGT.

Mr. Zook explained that they provided everything they had. They would need a more specific request in order to search and locate anything else.

The Chair stated that the manner in which Mr. Eames submitted his request to multiple governmental entities was overwhelming to the respondents.

The Chair clarified with Mr. Zook that the records related to oaths of office were all that Nibley City maintains and can provide. The Chair asked Mr. Zook to speak to surety penal bonds. Mr. Zook replied that Nibley City does not use that method. Nibley City uses the crime and theft insurance.

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The Chair stated that the Committee would hear from the respondents that are present today and that the Committee will make decisions on those cases and then move on to cases involving the remaining respondents.

Providence City (3:15:00)

Chad Wooley from Providence City introduced himself. Providence City's case is similar to that of Nibley City. Providence was under the same impression as Nibley that ULGT would respond to the request and did not receive notice that ULGT withdrew their offer to make the response on behalf of the governmental entities. Ms. Skarlet Bankhead, Providence City records officer, has since responded with all the information requested except for a couple of oaths of office that she could not locate but notified Mr. Eames that she will send those when they are located. Providence City does not object to any of the requests Mr. Eames submitted. It is only a matter of there being no communication from ULGT to Providence that they should make their own response. Providence did provide some bonding information to Mr. Eames.

The Committee asked whether ULGT offered to respond to all record types or just to the insurance portion of the request. Providence stated that it was their understanding that ULGT would respond to all the types of records requested.

The Committee asked if the Western surety bonds provided are the surety penal bond records. Providence stated that they sent the Western surety bond record and felt that it would be appropriate in response to Mr. Eames' request. Ms. Bankhead reached out to ULGT for any documents that would be responsive. She will send those to Mr. Eames if she hasn't done so already. Mr. Wooley stated he has with him three oaths of office and will provide those to Mr. Eames if he would like them. Ultimately, Providence City felt that they had responded to his request, although belatedly.

Mr. Eames stated that at no time did he submit a request to ULGT for any of these cities' records or appeal to them. He does not know why ULGT was involved. He stated his satisfaction with the oaths he received. He received the scheduled bonds for the treasurer and recorder but did not receive the scheduled bonds for the mayor and the councilmen and did not have any ULGT records.

Mr. Wooley stated he will provide the Interlocal Agreement Providence City has with ULGT today.

Wellsville City (3:23:05)

Scott Wells introduced himself as the city manager and recorder/records officer for Wellsville. He stated that he had a delay in responding to Mr. Eames for the same reason as the other cities. He has since provided all of the responsive records.

Mr. Wells reviewed the responses he has provided:

On August 17, 2018, he sent the oaths of office for the mayor, city council, city manager, recorder and justice of the peace.

On October 22, 2018, he sent the bonds for all Wellsville City officials with billing records. Mr. Wells explained that, when a bond is in place, a billing notice is sent to Wellsville City, annually,

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which signifies that the bond is continued. Mr. Wells stated that Mr. Eames was not happy with that and stated that Wellsville did not have an official records officer.

Mr. Wells explained that, at that time, the previous city manager had an appointed records officer. Mr. Wells did not realize the records officer's certification was out of date. He took the records officer and records management certification tests.

On October 26, 2018, Mr. Wells sent Mr. Eames all of the actual bond information for all city employees: the mayor, city council, treasurer and the city manager. He also sent the billing information to show that the bonds are current.

On November 1, 2018, Mr. Wells sent the resolution where Wellsville created the ULGT. The resolution is when Wellsville acknowledged ULGT and that Wellsville was going to partner with ULGT. March 21, 2007, is the date on that resolution.

The Chair asked whether the purpose of ULGT was providing insurance or were there other functions it performs?

Mr. Wells indicated that ULGT provides the crime and theft insurance and that it is their primary function. It is noted that ULGT also provides liability insurance, insurance for auto and workers compensation, health and dental programs, risk management services and training services. They provide legal counsel to help cities stay out of lawsuits. From time to time they do provide legal services to cities.

Mr. Wells explained that in a fifth class town the treasurer is the only one that had to be bonded. Wellsville's code requires bonding for other elected or appointed individuals and Wellsville does have bonds on everyone. He stated that Western Surety is a penal bond provider.

Mr. Eames stated he was satisfied with the records that Wellsville provided. Wellsville was the only municipal corporation that provided penal bonds to him. He explained that there was a difference between insurance and penal bonds. For example, if a person steals money the surety will pay back the money that was stolen and the surety will get the money back from the person that stole the money. That is not the case under insurance, in lieu of bonds.

The Committee questioned whether risk management purposes provide crime and theft insurance in lieu of penal bonds and noted that Utah Code §17-16-11 related to counties. Mr. Wells stated that ULGT received a fee to represent the cities.

Mr. Wells requested the Committee to drop Wellsville from the appeal if Mr. Eames is satisfied with the records he received from Wellsville.

Mr. Eames stated that he did not receive a response from the mayor.

The Committee asked Mr. Eames whether he had any issues with the records he received from Wellsville. Mr. Eames did not.

The Chair stated that the Committee will consider the appeal related to Wellsville withdrawn for today's purposes.

Deliberation (3:35:08)

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The Chair stated that he was persuaded that Nibley had provided what they could provide. Nibley had not provided ULGT records. These cities are not used to receiving and responding to record requests. The appeal was made to the city as GRAMA requires. It was understandable that ULGT would provide legal counsel but Mr. Eames had an appropriate expectation to receive the records from the entities to which he submitted the requests.

The Committee instruct Nibley to respond in writing to each of the requested items and seek records from ULGT regarding penal bonds or insurance in lieu of penal bonds in order to provide those records to Mr. Eames.

The Committee discussed that the Petitioner was specific about penal bonds. It was obvious that Nibley City did not have penal bonds but carried insurance. The Committee discussed that that fact should be explained in writing to the petitioner. ULGT seemed to absolve the cities from penal bonds but municipal code required cities to have penal bonds. It was a contradiction but the Committee will rely on the one that was most recent, which was insurance in lieu of bonds. The Committee agreed that it was not their burden to enforce the Constitution of this state. There was no expectation that the Committee could do that. Mr. Eames expected to receive a response to each item of his request.

Motion on Nibley made by Ms. Smith-Mansfield (3:41:00)

Nibley City will provide all records of penal bonds or insurance in lieu of penal bonds and records that show that Nibley resolved to participate in the interlocal agreement with Utah Local Government Trust (ULGT).

Seconded by Ms. Mansell.

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

Motion on Wellsville made by Ms. Smith-Mansfield (3:47:30)

Wellsville has provided the records per the petitioner's request and petitioner is satisfied with the records. There is no further action pending. The appeal was satisfied.

Seconded by Ms. Richardson:

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

Motion on Providence made by Ms. Smith-Mansfield (3:50:25)

Providence will provide all records of penal bonds or insurance in lieu of penal bonds, oaths of office and records that show that Providence resolved to participate in the interlocal agreement with Utah Local Government Trust (ULGT).

Seconded by Mr. Westwood.

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

Motion on Hyde Park made by Ms. Smith-Mansfield (3:53:05)

Hyde Park will provide oaths of office and records that show that Providence resolved to participate in the interlocal agreement with Utah Local Government Trust (ULGT).

Seconded by Ms. Mansell.

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

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Break for 5 minutes (3:56:30)

Discussion and deliberation regarding North Logan (3:56:50)

North Logan provided access to records that fulfills the request related oaths of office and penal bonds but not to an interlocal agreement with Utah Local Government Trust (ULGT).

Motion on North Logan made by Ms. Smith-Mansfield

North Logan will provide access and copies, if requested, of crime policy insurance in lieu of penal bonds and interlocal agreements and the oaths of office.

Seconded by Mr. Haraldsen.

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

Discussion regarding Millville City (4:05:30)

The request was confusing and difficult to understand. The Committee agreed that there was a benefit in the GRAMA requirement that stated that a request should be submitted to a governmental entity but the request should not be bound together. The method of submitting the record request to multiple governmental entities contributed to the problem with ULGT being involved. If an individual request had been made to each single governmental entity it would have been a lot easier for each entity to respond.

Motion on Millville City made by Ms. Smith-Mansfield

Millville City will provide access and copies, if requested, of penal bonds or crime policy insurance in lieu of penal bonds, interlocal agreement with ULGT and the oaths of office.

Seconded by Ms. Mansell.

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

Richmond Discussion (4:08:45)

Richmond did not respond. Richmond will need to provide the State Records Committee a notice of compliance within 30 days or a notice of appeal.

Motion on Richmond made by Ms. Smith-Mansfield

Richmond will provide access and copies, if requested, of penal bonds or crime policy insurance in lieu of penal bonds, interlocal agreement with ULGT and the oaths of office.

Seconded by Ms. Mansell.

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

River Heights Discussion (4:11:36)

Mr. Eames' record request was submitted to the wrong email address.

Motion on River Heights made by Mr. Haraldsen

Noting that the email address to which the petitioner submitted the request was incorrect, the appeal is denied and the petitioner is required to submit the request in the correct manner.

Seconded by Ms. Mansell.

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

Smithfield Discussion (4:17:11)

The Smithfield appeal was withdrawn by the petitioner.

Discussion and Questions (4:18:15)

The Committee discussed whether the petitioner had any input on the cases the Committee has discussed.

Mr. Eames stated that when records officers receive a request that they don't understand or are confused about the burden is on the governmental entity to contact the requester and seek clarification.

The Committee agreed and explained that they addressed that problem in their orders when they stated that the governmental entities had received information that ULGT would respond on their behalf and then ULGT did not effectively communicate that they would not be doing so. The cities were inexperienced in receiving and responding to record requests and were confused by the method and manner in which Mr. Eames had submitted his request.

Mr. Eames stated that regarding River Heights, he submitted his request to the named records officer listed on the Archives website. He printed the list because he was aware that the names can change. He stated that he will have to double check to make sure River Heights did not change its address from .com to .org. Because he appealed to Mayor Todd Rasmussen, the mayor should have responded to the request. Mr. Eames spoke to him a couple of days ago about his records officer not being certified. She is now certified.

The Chair explained that the records committee cannot change their order on River Heights now. Regardless of whether the chief administrative officer responded, the committee will review the original submission and make a decision.

Mr. Eames asked when he will have a right to access the information that the respondent provided to the committee.

A committee member explained that the respondent is required to provide a copy of the statement of facts that is submitted to the committee, to the petitioner via first class mail, according to statute. The order will reflect a footnote regarding North Logan.

Tremonton Discussion (4:22:58)

On October 1, 2018, Linsey Nessen, city recorder, denied his request for insurance bonds, and oaths of public officials and stated ULGT maintained the records.

On October 3, 2018 Shawn Warnke, CAO, wrote to the committee that Linsey Nessen had since provided oaths of office for the top officials in Tremonton and he invited Mr. Eames to inspect the hundreds of permanent oaths of office. He stated the city denied access to the insurance and bond records and that those records were maintained by ULGT.

On November 5, 2018, Ms. Neesen submitted her Statements of Facts and Exhibits 1-14 outlining her responses to Mr. Eames.

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The Committee Chair asked the petitioner for his response to Tremonton's provision of the oaths of office. Mr. Eames indicated that he was satisfied. Mr. Eames stated that Tremonton is required to forward his request to the entity that maintains the records, if the city does not maintain them. The Chair stated the city is required to respond and they did respond but said Mr. Eames needed to seek the records from ULGT. The committee is not persuaded that Tremonton City is not the custodian of the responsive records.

Motion on Tremonton made by Ms. Smith-Mansfield: Tremonton will provide access and copies, if requested, of penal bonds or crime policy insurance in lieu of penal bonds and the interlocal agreement with ULGT.

Seconded by Ms. Richardson.

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

Concludes this hearing **(4:34:44)**

5-minute break.

Business (4:37:30)

9. Discussion

Two proposed 2019 legislative bills were discussed.

Ms. Smith-Mansfield summarized the Interim Government Operations presentation.

Mr. Fleming emphasized that the plan was to take responsibility for approval of retention schedules way from the State Records Committee. He said that he did not understand the slide that showed the proposal of the separate committees. He also wanted clarification of the role of the private sector representative, in the proposal. He said that it would be very difficult to find two private sector members – one for each committee – so one person would end up on both.

Ms. Smith-Mansfield said that one thing that she sees is that technology is missing from retention. This needs to be taken into account for access and maintenance. She said that systems need to be discussed with retention.

Mr. Westwood said that the State Records Committee has morphed over time. Removing retention will not take much off of the State Records Committee's plate.

Mr. Fleming said that it would be better to have technology on the committee than law enforcement.

Mr. Westwood asked if there was a possibility of creating something like a technology ombudsman, and asked if there is any way to do more before hearings to come to resolutions before the hearings.

Ms. Smith-Mansfield discussed vexatious requesters. She said that, legally, they can already take requests one at a time. Maybe this issue of vexatious requesters could be addressed in administrative rules, allowing the chair to efficiently manage many similar requests.

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Discussion regarding something about non-existent records could be added to GRAMA.

Discussion regarding maybe they needed to add a definition of specificity to GRAMA.

Mr. Tonks pointed out that a vexatious litigator can continue legal action if they hire an attorney.

Mr. Fleming said that he is not sure whether there is a need for a change in the law and he is not sure if it is possible to come up with a way to change the law that would work. He thinks administrative rules could potentially address this. There should be less about the requester and more about the process. It starts with the request.

Discussion regarding an administrative rule to include business hours, working hours for received appeals is moot. Appeals are received based on a 30-calendar-day time frame and not a business day.

10. Approval of the October 11, 2018, Minutes

Motion by Ms. Smith-Mansfield to approve the minutes.

Seconded by Mr. Westwood.

Vote: 6-0. The motion carries Ms. Mansell, Mr. Westwood, Mr. Fleming, Ms. Richardson, Mr. Haraldsen, and Ms. Smith-Mansfield voted for the motion. Mr. Williams is absent.

11. Approval of Retention Schedules

Department of Commerce. Division of Occupational and Professional Licensing. Series No. 26589, Controlled substance tracking files.

Motion by Ms. Smith-Mansfield: Approved with update to the code reference in appraisal section. Seconded by Mr. Haraldsen.

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

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 December SRC Hearing at this meeting. Mr. Westwood will be absent.

Motion to adjourn by Ms. Richardson, seconded by Ms. Mansell. The Chair adjourned the meeting at 3:32 p.m.

Adjourned (5:40:43)

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This is a true and correct copy of the November 8, 2018, SRC meeting minutes, which were approved on December 13, 2018. An audio recording of this meeting is available on the Utah Public Notice Website at <https://archives.utah.gov>

X *Gene Proctor*

Executive Secretary

APPROVED