

# STATE RECORDS COMMITTEE MEETING

Thursday, March 14, 2019 at 9:00 a.m. to 4:00 p.m.

Utah State Archives Building  
346 S. Rio Grande St.  
Salt Lake City, UT 84101

**NOTE:** The Chair may recess at 12:00 p.m. and may reconvene at 12:30 p.m. for lunch when there are three or more hearings scheduled.

## AGENDA

### **HEARINGS:**

Edward Berkovich v. Attorney General's Office (AGO), appeal for access to the audio recording of the Utah Prosecution Council (UPC) closed meeting held on October 21, 2015.

Brady Eames v. Utah Local Government Trust Corporation, appeal for fee waiver to inspect all emails to/from ULGTC to/from any city or county corporation related to Mr. Eames and his rights and record requests to access public officials surety penal bonds of elected or appointed public officers.

Salt Lake Tribune v. Grantsville, appeal for access to records related to an outside investigation of Mayor Brent Marshall.

### **WITHDRAWN/POSTPONED/DENIED/HEARINGS:**

Eddy Berrest v. Davis County Sheriff, appeal for access to video in the Davis County Jail In-take area on the date of his arrest. Withdrawn.

Clifford Murray v. Duchesne County School District, appeal for access to a record that indicates Mr. Murray is an authorized contact person for his grandson. Withdrawn.

Salt Lake Tribune v. University of Utah, appeal for audio recordings of Lauren McCluskey speaking to University dispatch services. Withdrawn.

Ronald Mortensen v. Bountiful City, appeal for access to redacted information on the Declaration of Candidacy form all candidates submitted for a vacant City Council position. Withdrawn.

Utah Cold Case Coalition v. Moab City, appeal for access to records related to the 1984 disappearance of Robert G. Marvin. Withdrawn.

## March 2019 State Records Committee Case Updates

### District Court Cases

**Highland City v. Wahnschaffe**, 4<sup>th</sup> Judicial District, Utah County, Judge Christine Johnson, Case No. 190400262, filed Feb. 14, 2019.

**Current Disposition:** Answer filed on behalf of the Committee on March 4, 2019. Ms. Wahnschaffe filed her answer also on March 4, 2019. Highland City argues in its complaint that a settlement agreement was entered into by Ms. Wahnschaffe during mediation negotiations with the Government Records Ombudsman Ms. Cundiff, and that it should be enforced by the Court. Committee Answer includes a defense that the Committee cannot provide evidence regarding mediation proceedings because of the Utah Uniform Mediations Act.

**Clara v. Utah Transit Auth.**, 3<sup>rd</sup> Judicial District, Salt Lake County, Judge Patrick Corum, Case No. 190900339, filed January 13, 2019.

**Current Disposition:** UTA filed a Rule 12(e) Motion for More Definite Statement arguing that Mr. Clara should be required to file an Amended Petition free of errors. The Court granted the motion on Feb. 20, 2019 and Mr. Clara filed his Amended Petition on March 6, 2019. The Committee will file an Answer to the Amended Petition.

**David v. Wasatch County**, 4<sup>th</sup> Judicial District, Wasatch County, Judge Jennifer A. Brown, Case No. 180500177, filed December 19, 2018.

**Current Disposition:** Complaint filed by Mr. Lynn on Dec. 19, 2018. Answer filed by the Committee on February 8, 2019. Answer filed by Wasatch County on March 12, 2019.

**Univ. of Utah v. Jeremy Beckham**, 3<sup>rd</sup> Judicial District, Salt Lake County, Judge Gardner, Case No. 180909564, filed December 19, 2018.

**Current Disposition:** Complaint filed by University of Utah on Dec. 19, 2018. Answer filed on behalf of the Committee on January 7, 2019. Answer for other parties filed on January 31, 2019. Initial disclosures filed by Univ. of Utah on Feb. 28, 2019.

**Platt v. Utah Attorney General's Office**, 3<sup>rd</sup> District, Salt Lake County, Judge Keith Kelly, Case No. 180906128, filed August 22, 2018.

**Current Disposition:** Proposed Order signed by the Court on December 31, 2018, denying AG's Office's motion to dismiss, finding that Mr. Platt's petition does specify the type and extent of relief requested and therefore is not a basis for dismissal.

**BYU v. KUTV News**, 4<sup>th</sup> District, Utah County, Judge Kraig Powell, Case No. 180401367, filed August 21, 2018.

**Current Disposition:** On September 28, 2018, the court granted a stipulated motion to consolidate the *Volluz* and *Truth and Transparency Foundation* cases into this case and stay the proceedings until a decision is rendered by the Utah Supreme Court in the *Salt Lake Tribune v. State Records Committee* case.

**ACLU v. Davis County**, 3<sup>rd</sup> District, Salt Lake County, Judge Connors, Case No. 180700511, filed May 21, 2018.

**Current Disposition:** Deposition held on January 17, 2019 by ACLU deposing witness from Davis County.

**John Tilleman v. Ogden City**, 3<sup>rd</sup> District, Salt Lake County, Judge Kelly, Case No. 180901915, filed March 19, 2018.

**Current Disposition:** Answers filed by Ogden City and the Committee on April 9, 2018.

## Appellate Court Cases

**Matthew Piper v. State Records Committee (BYUPD Case)**, Utah Supreme Court Case No. 20180601.

**Current Disposition:** Appellant's brief is due on April 22, 2019. SB 197 "Law Enforcement Agency Amendments" passed the House on March 12, 2019, adding to the definition of "Governmental Entity" under GRAMA to include a law enforcement agency as defined in Utah Code § 52-1-102, which was also amended to include "a private institution of higher education, if the entity or division has been certified by the commissioner."

**Utah Legal Clinic v. Salt Lake City Corp.**, Utah Court of Appeals, Case No 20170362.

**Current Disposition:** Oral argument held on October 25, 2018. Case now submitted to the court awaiting a decision from the court.

## Bryner Court Cases

**Roger Bryner v. City of Clearfield**, 3rd District, Salt Lake County, Judge Gardner, Case No. 160907299, filed Nov. 25, 2016; Utah Supreme Court Case No. 20170729.

**Current Disposition:** Certiorari denied by Utah Supreme Court on February 5, 2018. Stay in case in effect until decision on vexatious order.

**Roger Bryner v. Utah Attorney General's Office, et. al.**, 3<sup>rd</sup> District, Salt Lake County, Judge Laura Scott, Case No. 160906562, filed October 20, 2016. Utah Court of Appeals Case No. 20170235.

**Current Disposition:** An Order of Affirmance issued by the Court of Appeals on August 13, 2018. The Court held that the district court's finding that e-mails between counsel for the State Records Committee and the City of Clearfield were properly classified as protected records pursuant to Utah Code § 63G-2-305(17). The Committee and Clearfield were co-defendants in a lawsuit and therefore shared a common interest and protected under the attorney-client privilege. Mr. Bryner filed a petition for a rehearing of the case and it was denied by the Court of Appeals on September 4, 2018.

**Roger Bryner v. Utah State Records Committee**, 3<sup>rd</sup> District, Salt Lake County, Judge Faust, Case No. 160903793, filed June 15, 2016. Utah Court of Appeals Case No. 20160870, Utah Supreme Court Case No. 20170112.

**Current Disposition:** May 24, 2017, Utah Supreme Court denied request for *writ of certiorari*. Case dismissed by the trial court on May 30, 2017.

**Roger Bryner v. Utah Dept. of Health et. al.**, 3<sup>rd</sup> District, Salt Lake County, Judge Gardner, Case No. 160903244, filed May 23, 2016.

**Current Disposition:** After motion filed by the Committee to extend the time for the stay of the case, the court extended the stay of the case until December 31, 2020 or when the vexatious litigant appeal has been completed, whichever comes first.

**Roger Bryner v. City of Clearfield**, 2<sup>nd</sup> District, Davis County, Judge Morris, Case No. 150701062, filed October 20, 2015; Utah Court of Appeals Case Nos. 20160863, 20161089, **20170477**, & 20171016; United States Supreme Court Case No. 17-7806.

**Current Disposition:** Only case that is still active is Appellate Case No. 20170477. Appellee's brief was filed on November 8, 2018. Mr. Bryner's reply brief is due on March 16, 2019.

Appeal #	2019 State Records Committee Hearings	Appeal	Date Received	Approve/Deny	Date Sent Notices	Relief sought	Hearing Date	SRC Order Number	Date Received Notice of Compliance or Appeal to District Court
2019-25	Gordon Thomas v. Board of Pardons and Parole		3/13/2019	under review		Requesting access to constructively denied record, Sentencing Guidelines Matrix form.			
2019-24	Morrison & Morrison (for Allied) v. Department of Human Services		3/12/2019	under review		Requesting access to partially denied and redacted DCSF records related to Ms. Allied.			
2019-23	Michael Clara v. Utah Dept. of Corrections		3/11/2019	under review		Requesting data from Sex Offender Registry's Offender Watch database. UDC stated the database is not set up to run reports by city limits and they cannot create/run a report from the database that matches his five requests. It does not appear that the appeal time frame to Deputy Director/CAO has expired.			
2019-19	Ozward Balfour v. Board of Pardons and Parole		2/27/2019	Approved	3/12/2019	Requesting access to records related to himself including, PSI's, violation reports, diagnostic reports, Board Reports, disciplinarys, progress reports, psychological reports, other criminal justice records.	6/13/2019		
2018-104	Richard Crandall v. Sandy City		12/14/2018	Approved	12/19/2018	Requesting records even though he was provided a fee waiver and access to the records. He needed to go pick them up. They also provided records to him via email and explained that other records were available to him without a fee and he could go pick them up. Additional records provided on (3/6/19) for his review.	3/14/2019 Postponed to 6/13/2019		
2018-77	Gregory Simonsen (for Lynn David) v. Heber Valley Historic Railroad (HVHRR)		10/19/2018	Approved	10/26/2018	Requesting access to public records for years 2012-2018 that should found on the Public Notice Website but are not and a fee waiver for each of those records.	12/13/2018 Postponed to 1/10/2019 Postponed to 3/14/2019 Postponed to 6/13/2019		
2019-10	Utah Cold Case Coalition v. Sandy City		2/12/2019	Approved	2/20/2019	Requesting fee waiver and records related to the 1999 disappearance of Ruth Jimenez.	5/9/2019 Postponed to 6/13/2019		
2018-102	Richard Crandall v. Department of Human Services		12/7/2018	Approved	12/19/2018	Requesting access to transcripts or recordings of interviews with all U of U employees listed under Appendix A in 12/17/18 Independent Review and Report... relating to Lauren McCluskey Case.	3/14/2019 Postponed to 5/9/2019		
2019-22	Salt Lake Tribune (Nate Carlisle) v. U of U		3/8/2019	Approved	3/8/2019	Requesting access to denied 2016 Budget for Utah Motor Sportspark Campus and other public records	5/9/2019		
2019-21	Doug Sagers v. Tooele County Commission		3/6/2019	Approved	3/7/2019	Requesting access to the current contract attorney contract. Denied due to lack of jurisdiction, beyond 30 days to appeal.	5/9/2019		
2019-20	Tony Alexander Hamilton v. Utah Dept. of Corrections		3/6/2019	Denied	3/8/2019		n/a		
2019-18	Greg Graves v. Board of Utah County Commissioners		2/27/2019	Approved	2/27/2019	Requesting access to complaints, investigative reports and all disciplinary actions taken against Richard Nance for 12/31/2017 to present time.	5/9/2019		
2019-17	Brent Mayon Cobb v. Utah Dept. of Corrections		2/27/2019	under review		Requesting access to video from Lone Peak unit for 8/26/2018, 8/1-31/2018, and 10/13/2018. CAO states none exists.	n/a		
2019-16	Janelle Roberts v. Dept. of Human Services		2/25/2019	Approved	3/7/2019	Requesting access to DCSF unredacted file. No supporting documents were provided.	5/9/2019		
2018-15	Salt Lake Tribune v. University of Utah		2/25/2019	Approved	2/26/2019	Requesting access to all emails to ans.r.me/UDeptrSRReview while a team investigated the UofU's handling of Lauren McCluskey's case. 11/1/2018-12/19/2018.	5/9/2019		
2019-14	KSL v. Salt Lake City Police Department		2/20/2019	Approved	2/21/2019	Requesting access to call for assist made by David Stokoe to the police dept. on 2/15/2019, two days before his death, and calls for assist on 2/17/2019.	5/9/2019		
2019-13	KSL v. University of Utah		2/19/2019	Approved	2/21/2019	Requesting access to denied portion of police records related to Lauren McCluskey, case #18-1861	5/9/2019		

2019-12	Michael Clara v. State Archives	2/15/2019	Denied	2/20/2019	Requesting access to Privilege Log reviewed in camera during September 2016 SRC meeting.	n/a			
2019-11	Brady Eames v. Utah State Archives	2/12/2019	Denied	2/15/2019	Requesting access to Oaths of Office for the Ombudsman and the Executive Secretary of the SRC. Neither exists.	n/a			
2019-09	Brady Eames v. Utah Local Government Trust Corporation (ULGTC) [fee waiver]	1/15/2019	Approved	2/4/2019	Requesting fee waiver for ULGTC records related to (ULGTC) interpretations with respect to Logan City regarding bonding laws; correspondence between ULGTC legal counsel, A. Craig Hale and certain officers of Logan City Municipal Corporation regarding Logan City's bonding laws; and correspondence between certain officers of ULGTC and A. Craig Hale, regarding Logan City's bonding laws.	5/9/2019			
2019-07	Aaron Needham v. Utah Dept. of Corrections	1/22/2019	Incomplete	1/23/2019	Requesting access to denied records due to exceeding the impecunious page limit extended to current inmates. He only submitted his initial request and the gov't entry initial denial.	n/a			
2018-34	Bennion v. Governor's Office	5/10/2018	Approved	9/24/2018	Continuance Ordered	April Meeting			
2018-32	Bennion v. Attorney General's Office	4/13/2018	Approved	9/24/2018	Continuance Ordered	Continued no longer than 6 months 4/11/2019			
2018-22	Bennion v. Lt. Governor's Office	4/13/2018	Approved	9/24/2018	Continuance Ordered	Continued no longer than 6 months 4/11/2019			
2018-70	Snow Jensen & Reece (for Derrick Erickson) v. Beaver County Sheriff's Office	10/5/2018	Approved	10/5/2018	Requesting access to denied investigation file LEA Case #180300012 OR Beaver case #181500021	11/8/2018 Postponed to 4/11/2019			
2019-06	Anthony Fierro v. Salt Lake City School District	1/15/2019	Approved	1/17/2019	Requesting access to the denied records that reference him and/or to the student walkout and classified as drafts, attorney-client privilege, student infraction, and other records withheld and located in his employee email account.	4/11/2019			
2019-05	Utah Cold Case Coalition v. Ogden City	1/15/2019	Approved	1/17/2019	Requesting access to partially denied records relating to the 1985 murder and dismemberment of Ogden resident Marnie Savannah Hoskins.	4/11/2019			
2019-04	Salt Lake Tribune v. University of Utah	1/10/2019	Approved	1/22/2019	Requesting access to denied audio recordings of Lauren McCluskey speaking to university dispatch services	4/11/2019 Withdrawn 1/24/2019			
2019-03	Richard Gallacher v. Department of Human Services	1/4/2019	Approved	1/8/2019	Access to an unredacted copy of Adult Protective Services, Case #2423485.	4/11/2019			
2019-02	Salt Lake Tribune v. Department of Public Safety	1/3/2019	Approved	1/8/2019	Access to denied investigative records created or reviewed in connection to an inquiry into how BYU PD access and share their own reports and records of UT Co Police agencies	4/11/2019			
2019-01	Clifford Murray v. Duchesne County School District	1/2/2019	Approved	1/8/2019	Access to denied record indicating Mr. Murray is an authorized contact person for his grandson.	4/11/2019 Withdrawn 2/1/2019			
2019-08	Edward Berkovich v. Attorney General's Office	1/28/2019	(Denied) Reversed and Approved	1/30/2019 (denied) 2/15/2019 (approved)	Requesting access to audio recording of Utah Prosecutor Council (UPC) closed meeting in October 2015.	3/15/2019			
2018-83	Eddy Berrest v. Davis County Sheriff	10/29/2018	Approved	11/5/2018	Requesting access to video in the Davis County Jail, denied and classified as records of security measures pursuant to §63G-2-106 and exempt from GRAMA statute. Also, there is no audio recordings in the intake area of the Davis County Jail; no responsive records. There is no body cam or dash cam issued to deputies; no responsive records.	1/10/2019 Postponed to 3/14/2019 Withdrawn 2/12/2019			
2018-109	Utah Cold Case Coalition v. Moab City	12/27/2018	Approved	1/7/2019	Requesting fee waiver and access to denied records relating to the 1984 disappearance of Robert G. Marvlin (case no. 84-1068)	3/14/2019 Withdrawn 3/12/2019			
2018-108	Eric Peterson (The Utah Investigative Journalism Project) v. Attorney General's Office	12/21/2018	Denied	1/3/2019	Requesting access to the final Utah AGO 2012 UTA investigation report. This matter was heard previously in January 2018. Decision and Order 18-03. Chair declined appeal hearing. Ken seconded.	n/a			
2018-107	Robert Pace v. North Summit School District	12/19/2018	Approved	1/2/2019	Requesting access to video footage of the North Summit High School vs. South Sewer High School September 2018 football game specifically as streamed by the North Summit broadcasting class to Desert Digital Media. CAO denied the appeal stating they do not maintain the record requested.	3/14/2019 Withdrawn 1/14/2019			

2018-106	Ronald Mortensen v. Bountiful City	12/19/2018	Approved	1/2/2019	Requesting access to unredacted Declaration of Candidacy for all candidates for the vacant City Council position, including phone number and email.	3/14/2019	Withdrawn		
2018-105	Salt Lake Tribune v. Grantsville City	12/17/2018	Approved	1/2/2019	Requesting access to denied documents and final reports pertaining to the outside investigation into Mayor Brent Marshall.	3/14/2019			
2018-103	Eames v. ULGTC	12/12/2018	Approved	1/2/2019	Requesting access to Utah Local Government Trust (ULGT) interpretations with respect to Logan City regarding bonding laws; correspondence between ULGT legal counsel, A. Craig Hale and certain officers of Logan City Municipal Corporation regarding Logan City's bonding laws; and correspondence between certain officers of ULGT and A. Craig Hale, ULGT legal counsel, regarding Logan City's bonding laws.	3/14/2019	Withdrawn		
2018-101	Michael Clara v. UTA	12/6/2018	Denied	12/14/2018	Requesting the Committee to classify the remaining emails in the whistleblower matter as public. Petitioner states the public interest outweighs any privacy interests now that the court case is closed. SRC Order 16-33 determined the records are appropriately classified. Chair denied and Holly confirmed denial.	n/a			
2018-100	Eames v. ULGTC	12/5/2018	Approved	1/2/2019	Requesting access and inspection of all emails transmitted by any agent of the ULGT to any municipal and county corporation regarding Brady Eames and his rights and requests to access and inspect the public official penal bonds of those persons elected or appointed as certain public officers of such corporations.	3/14/2019			
						February Meeting			
2018-94	Gollaher v. Morgan County	11/5/2018	Approved	11/15/2018	Requesting access to: 1) Certificates of insurance provided to Morgan County per Section Six of the Contracts of Ron Fujino and Richard Uday. 2) Post-payment detailed accounting that corresponds with GI Accounty 10-4129-940 Advance; invoice dated 3/22/18, re Mr. Uday, and all other invoices and details corresponding with any additional invoice submitted by Mr. Uday. 3) Invoice records or accounting from 3/1/17 to present time submitted by Ron Fujino, any payments made, future promises by Morgan County.	1/10/2019	Continued	2019-01	
2018-99	Eames v. Logan City	11/21/2018	Denied	11/28/2018	Requesting expedited SRC appeal for denied expedited access and inspection of Housley's & Carlson's legal interpretations and correspondence re surety penal bonds.	2/14/2019	n/a		
2018-98	Eames v. Davis County	11/19/2018	Approved	11/28/2018	Requesting access and inspect constitutional oaths and penal bonds. Records Officer, Rebecca Abbott provided 11 oaths (1 had no name). 0 bonds provided but indicated Davis County "utilizes crime insurance." Appealed to 3 commissioners for penal bonds or crime insurance records. No response received.	2/14/2019	Withdrawn		
2018-97	Eames v. Orem City	11/19/2018	Approved	11/28/2018	Requesting access and inspect constitutional oaths and penal bonds. Received non-responsive insurance documents. Appealed to the Mayor, Richard Brunst. Manager, James Davidson provided him 10 oaths (5 without names), 1 records officer certification, and non-responsive billing notice, continuation certificate, and power of attorney.	2/14/2019	Withdrawn		
2018-96	Eames v. Salt Lake County	11/19/2018	Approved	11/28/2018	Requesting access and inspect constitutional oaths and penal bonds. Constructively denied request due to no response. Appealed to Mayor, Ben McAdams. Initial request subsequently responded to by Gaylene Gudmundson with non-responsive "schedule bond" and 24 responsive oaths.	2/14/2019	Withdrawn		
2018-95	Eames v. Weber County	11/19/2018	Approved	11/28/2018	9/26 Requesting access and inspect constitutional oaths and penal bonds. 9/27 Responded to by Ricky Hatch Clerk/Auditor and referred to CAO Roger Brunker. (No appeal submitted to Mr. Brunker but he responded on Nov. 21" and referred to Appeal Board). 10/21 Appealed to 3 Commissioners. Commissioners did not respond.	2/14/2019	Withdrawn		
2018-94	Eames v. Ogden City	11/19/2018	Approved	11/28/2018	Requesting access and inspect constitutional oaths and penal bonds. Constructively denied request due to no response. Appealed to CAO. Initial request subsequently responded to by records officer. CAO Mayor, Mike Caldwell and Manager Mark Johnson did not respond.	2/14/2019		2019-05	
2018-93	Eames v. West Valley City	11/19/2018	Approved	11/28/2018	Requesting access to constitutional oaths and penal bonds. Constructively denied request due to no response. Appealed to CAO. Initial request subsequently responded to by records officer. CAO, Wayne Pyle did not respond.	2/14/2019		2019-04	
2018-92	Eames v. Provo City	11/14/2018	Approved	11/27/2018	Requesting access to surety penal bonds and constitutional oaths. Denied fee waiver to inspect records not already provided to him. Fee charged for costs associated with converting the records to electronic format in order to email them to him if he does not want to walk-in and view them at the Provo office.	2/14/2018	Withdrawn		
2018-91	Wayne Parke v. Department of Public Safety	11/14/2018	Approved	11/27/2018	Requesting access to records believed to be maintained by UHP when assisting Arizona DOT. UHP maintains no responsive records.	1/10/2019	Withdrawn		







