

## May 2019 State Records Committee Case Updates

### District Court Cases

**Allred v. State Records Committee**, 3<sup>rd</sup> Judicial District, Salt Lake County, Judge Andrew Stone, Case No. 190903142, filed Apr. 17, 2019.

**Current Disposition:** Appeal dismissed from Committee because appeal was not filed timely. Petition for judicial review requests that the court remand the case back to the Committee to hear the appeal. Appeal also failed to name the governmental entity that holds the records (DCFS). Answer filed on behalf of the Committee on April 30, 2019.

**Clara v. Salt Lake City**, 3<sup>rd</sup> Judicial District, Salt Lake County, Judge Robert Faust, Case No. 190902861, filed Apr. 8, 2019.

**Current Disposition:** Committee served on Apr. 10, 2019. No hearing was scheduled because there were no documents responsive to the records request. Salt Lake City filed their answer on April 30, 2019. The Committee filed their answer on May 1, 2019.

**Clara v. State Records Committee**, 3<sup>rd</sup> Judicial District, Salt Lake County, Judge Amber M. Mettler, Case No. 190902358, filed March 21, 2019.

**Current Disposition:** Committee served on Mar. 22, 2019. Mr. Clara had requested copies of privilege logs from UTA that were provided at the appeal with UTA. The request was denied on the basis that the Committee does not keep those records. Answer filed on Apr. 12, 2019.

**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. UTA filed a Motion to Dismiss on March 20, 2019. No memorandum opposing motion was filed by Mr. Clara with 14 days, so Request to Submit filed by UTA on Apr. 8, 2019. Motion for More Definite Statement hearing scheduled for June 19, 2019.

**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.

**Gollaher v. Morgan County**, 3<sup>rd</sup> Judicial District, Salt Lake County, Judge Andrew H. Stone, Case No. 180909188, filed Dec. 6, 2018.

**Current Disposition:** Appeal filed for decision from Committee dated Oct. 26, 2018. Committee served with copy of the complaint on March 18, 2019. Since complaint was filed more than 30 days after date of decision, Committee filed a Motion to Dismiss on Apr. 9, 2019. Mr. Gollaher has requested extra time to respond to Motion to Dismiss.

**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.

**Lance Rolph v. Utah Dept. of Human Services**, 3<sup>rd</sup> District, Salt Lake County, Judge Hansen, Case No. 170905372, filed August 23, 2017.

**Current Disposition:** Initial disclosures filed by DHS on January 17, 2018.

**Paul Amann v. Utah Attorney General's Office**, 3<sup>rd</sup> District, Salt Lake City, Judge Skanchy, Case No. 170903997, filed June 21, 2017.

**Current Disposition:** Lots of motions. AG's Office filed motions for a protective order, classify the record as sealed, continue the attorneys planning conference, and request for in camera review. Mr. Amann has filed memoranda opposing motions and motion for Order to Show Cause against AG's Office claiming failed to follow previous court order. Matter set for a hearing on May 15, 2019.

**Utah County v. Salt Lake Tribune**, 4<sup>th</sup> District, Utah County, Judge Powell, Case No. 170300010, filed Jan. 18, 2017.

**Current Disposition:** A proposed order was filed with the Court on November 8, 2017, proposing that Utah County release some of the documents subject to redaction to the Tribune. The Tribune after reviewing the documents can then request that the Court review the redactions *in camera* to verify that the redactions were properly done. The Court signed the order on November 9, 2017.

**Heber City v. David Larsen**, 4<sup>th</sup> District, Wasatch County, Judge Brown, Case No. 170500006, filed Jan. 17, 2017.

**Current Disposition:** Judgment granted in favor of Mr. Larsen by the Court on October 1, 2018. Court found that the letter of reprimand was considered disciplinary action and should be disclosed to Mr. Larsen. On October 10, 2018, Mr. Larsen filed a Motion for an Amended Judgment requesting payment for time he spent on the case at \$150 per hour for 250 to 300 hours of work. Heber City has opposed the motion.

**Matthew Piper v. State Records Committee (BYUPD Case)**, 3<sup>rd</sup> District, Salt Lake County, Judge Scott, Case No. 160904365, filed July 12, 2016.

**Current Disposition:** Interlocutory appeal currently being considered by the Utah Supreme Court.

**Swen Heimberg v. Utah Dept. of Public Safety**, 3<sup>rd</sup> District, Salt Lake County, Case No. 150904273, Judge Bates, filed June 24, 2015.

**Current Disposition:** Proposed protective order for disclosure of documents filed with the Court. Nothing has been filed in the case since March 3, 2017.

**William Sherratt v. Utah Dept. of Corrections**, 6<sup>th</sup> District, Sanpete County, Case No. 140600023, filed April 23, 2014.

**Current Disposition:** January 3, 2016, Court granted Corrections' second Motion to Quash Service. Committee answer was filed on July 20, 2016. Waiting to see if anything will be filed by Sherratt.

### **Appellate Court Cases**

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

**Current Disposition:** Appellant's brief was filed on April 22, 2019. Appellee's brief is due on June 21, 2019. Question of what court will do with case since SB 197 "Law Enforcement Agency Amendments" was signed into law, 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."

## 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:** Mr. Bryner filed his reply brief on April 29, 2019, and the Court of Appeals issued its opinion on May 8, 2019. The court affirmed the trial court's decision, finding that the 2<sup>nd</sup> District had jurisdiction over the appeal even though Mr. Bryner filed an appeal from the remanded Committee decision in 3<sup>rd</sup> District. The court also found that the district court did not err when it dismissed the appeal after ruling against Mr. Bryner's motions for summary judgment. The appellate court also found that since Mr. Bryner did not request a review of the redactions of the document before the Committee which waived the issue. Because the fee had been waived, the issue regarding the fee waiver was moot and could not be the subject of an appeal. The court affirmed the finding of Mr. Bryner being a vexatious litigant and did not agree with Mr. Bryner's argument that Utah R. Civ. P. 83 regarding vexatious litigants was unconstitutional.