

**State Records Committee Meeting**

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

Date: May 9, 2019

Time: 9:00 a.m. – 4:00 p.m.

**Committee Members Present:**

Tom Haraldsen, Chair, Media Representative

Kenneth Williams, Governor's Designee

David Fleming, Private Sector Records Manager

Donald Hartley, History Director

Patricia Smith-Mansfield, Citizen Representative

Cindi Mansell, Political Subdivision Representative

Holly Richardson, Chair Pro Tem, Citizen Representative - Absent

**Legal Counsel:**

Paul Tonks, Assistant Attorney General, Attorney General's Office

**Executive Secretary:**

Gina Proctor, Utah State Archives

**Telephonic participation:**

None

**Others Present:**

Janalee Roberts

Carol Verdoia, Attorney General's Office

Deborah Atwood, Attorney General's Office

Alexandria Keith, Attorney General's Office

Douglas Sagers

Gary Searle, Tooele County Attorney

M. Scott Roberts

Rebekkah Shaw, Utah State Archives

**Agenda:**

- Two Hearings Scheduled
  - Janalee Roberts v. Department of Human Services
  - Doug Sagers v. Tooele County Commission
- Business:
  - Discussion regarding administrative rules at the Chair's discretion as time allows.
  - Approval of April 11, 2019, minutes, action item
  - SRC appeals received, report
  - Cases in District Court, report
  - Retention schedules approved, action item: None
  - Other Business

- Next meeting scheduled for June 13, 2019, 9 a.m. - 4 p.m.
- Committee members' attendance polled for next meeting, quorum verification.

### **Call to Order**

The Chair, Tom Haraldsen, called the meeting to order at 9:04 a.m.

### **1. Janalee Roberts v. Department of Human Services**

The Chair announced the parties for the hearing. The Chair explained the procedures and stated the restrictions on sharing any mediation information. He asked the parties to acknowledge the mediation restrictions. Both parties acknowledged the restrictions.

### **Petitioner Statements**

Janalee Roberts referenced her appeal documentation. She reviewed the Respondent's defenses and classification of the records related to her son. Ms. Roberts stated that the Division of Child and Family Services (DCFS) case was supported for four months and still supported when her record request was received by the governmental entity. She felt that the responsive records should have been provided to her based on the findings of the case at the time they received her record request.

Ms. Roberts reviewed her communication with the DCFS ombudsman and stated that the ombudsman supported her position in that the case findings should not have been changed to unsupported. Ms. Roberts felt that internal conflicts caused the agency to change its findings of the case from supported to unsupported. She read from an email that the DCFS ombudsman sent to her.

Ms. Roberts stated her views on the process the governmental entity used to process her request and the timeline and reasons for the agency's change in its case findings.

Ms. Roberts reviewed the statute that allows specific persons access to records when the findings are supported for a case. Ms. Roberts reviewed communications she received from the Children's Justice Center that support her position that the case findings should not have been changed.

### **Respondent Statements**

Carol Verdoia with the Attorney General's Office introduced herself. Ms. Verdoia reviewed the steps that the Division of Child and Family Services followed in processing Ms. Roberts's record request. During the ten-day time frame allowed for responding to a record request the agency received new information about the case. The new information was reviewed and the agency determined that the case could not be supported. Ms. Verdoia reviewed the statutes that Ms. Roberts referenced and explained the misunderstandings she felt were at play. Ms. Verdoia addressed the concerns that Ms. Roberts had about receiving a different case finding on a related matter but had a different outcome. Ms. Verdoia addressed other methods that Ms. Roberts may wish to use to obtain the record but which are not available under GRAMA.

### **Petitioner Closing**

The Chair swore in M. Scott Roberts, Janalee Roberts' father. Mr. Roberts provided his perspective of Janalee's experience with her record request. He expressed his concern about the unknown opinions that were used to change the DCFS opinion that the case should be changed from supported to unsupported. He reviewed the timeline of her record request.



Ms. Roberts reviewed the claim that the governmental entity had ten days to take in new information. She disagreed with the representation. She expressed her frustration with the record processes and legal channels. She is requesting access to the case findings and not for DCFS to change the findings back to their original supported status.

### Questions from Committee

The Committee determined that Ms. Roberts had not received any records from the case file. They learned that there is an active court case filed in Juvenile Court for a protective order.

### Respondent Closing

Ms. Verdoia made several points to clarify things. It is a mischaracterization to say it was open and supported for four months in September and suddenly overturned it when the GRAMA request was received. The notice to the alleged perpetrator was held while law enforcement officers were completing their investigation. It was then served in December and the alleged perpetrator then requested a hearing. The agency does an internal review on every case that is requested to have a hearing to determine whether there is sufficient evidence to proceed to a hearing. After receiving new information from law enforcement and the case worker, the supervisor determined that the evidence was not sufficient to go forward to a hearing. It coincided with the timing in receiving the GRAMA request.

Ms. Roberts can ask a judge to have the division provide the record to her. That is an avenue that she can pursue. There is no authority in GRAMA to treat the status of a record based on what it once was classified.

### Questions from Committee

The Committee determined that there is no public letter of the findings that declares a summary of the action. All of the information resides in the management information system. The Committee Chair reviewed the timeline for the law enforcement investigation and the notice given to the alleged perpetrator. Ms. Verdoia clarified the timeline and processes for reviewing the findings.

### Deliberation

The Committee determined that DCFS processes were typical for the type of investigation as in this case. They determined that law enforcement reports were created by separate agencies in Utah and Texas and may be provided to DCFS. The Committee determined that Ms. Roberts had obtained one law enforcement report previously. The Committee discussed that GRAMA defines what is and what is not considered a "record" in Utah Code § 63G-2-103(22). According to Utah Code § 63G-2-103(22) (b), a "record" does not mean "a video or audio recording of an interview, or a transcript of the video or audio recording, that is conducted at a Children's Justice Center (CJC) Accordingly, Ms. Roberts cannot obtain a copy of a video or audio recording of an interview, or a transcript of the video or audio record conducted by CJC through a records request pursuant to GRAMA because it is not considered a "record" under GRAMA.

GRAMA also provides that if a record to which access is restricted pursuant to another state statute, the record is not considered a public record. Utah Code § 63G-2-201(3) (b). The disclosure of a record to which access is governed or limited pursuant to another state statute "is governed by the specific provisions of that statute." Utah Code § 63G-2-201(6) (a). GRAMA

applies to these types of records only “insofar as [GRAMA] is not inconsistent with the statute.” Utah Code § 63G-2-201(6) (b). Title 62A, Chapter 4a, Part 4 provides that “except as provided in Subsection 63G-2-202(10),” reports made under Part 4 may only be available to “a subject of the report, the natural parents of the child, and the guardian ad litem.” Utah Code § 62A-4a-412(1) (e). However a record contained in the Management Information System, created in Utah Code § 62A-4a-1003, that is found to be unsubstantiated, unsupported, or without merit, may not be disclosed to any person except the person who is alleged in the report to be a perpetrator of abuse, neglect or dependency. Utah Code § 63G-2-202(10).

Motion by Ms. Smith-Mansfield: Deny the appeal of the petitioner.

Seconded by Mr. Fleming.

Vote: Aye: 6 Nay: 0. Motion carries 6-0. Mr. Haraldsen, Mr. Hartley, Mr. Williams, Mr. Fleming, Ms. Mansell and Ms. Smith-Mansfield voting in favor of the motion.

The hearing is concluded. An order will be issued within seven business days and both parties will receive a copy of the order. Each party has 30 days to appeal the Committee’s decision to district court.

Five-minute break. Resume.

## **2. Doug Sagers v. Tooele County Commission**

The Chair announced the hearing. The Chair reviewed the procedures. The Chair reminded the parties that mediation discussions are not allowed to be referenced in their testimony and asked the parties to acknowledge the restrictions on discussions of mediation. Both parties acknowledged the restrictions.

### **Petitioner’s Statements**

Mr. Sagers reviewed his record request and the type of financial records he requested. He stated he received some information but that it was not what he requested. He felt that the records are public and there is much public interest in the records. He reviewed the ownership and ground lease of the Motorsports Campus. He reviewed the bid from *My Time* for management of the track. They paid about \$8 million for the contract.

### **Questions from Committee**

The Committee determined that Mr. Sagers is seeking the financial records from 2016-2018. Mr. Sagers stated that the track has been sold and these records are records that the public is entitled to see. He received one Audit Statement and three contracts.

### **Respondent Statements**

Gary Searle, Chief Deputy of Tooele County, introduced himself. Tooele County has stated that the records are public. Tooele County has been involved in a legislative audit by the legislative auditor general concerning this matter and that has been ongoing for about six months. The County does not have custody of the records although they can get access to the records. Proprietary information is contained in the records. The records were withheld due to a bidding process. This track has world class motorcycle racing, Nascar West Series, and Ford Motor Racing. *My Time* bid and bought the contract. The contract states that the records will



be maintained by *My Time*. Their proprietary information about how to run a world class track is contained in the records. Mr. Sagers can go look at the records at *My Time* but according to the contract the records are maintained by *My Time*. The management contract with *My Time* dictates that *My Time* creates the records with the County's review and that they are maintaining the track according to the management agreement. *My Time* gets approval to purchase the items and supplies to maintain the track.

#### Questions from Committee:

The Committee determined that the Sportspark has been audited by the County auditor and an independent auditor. There are no documents in Tooele County Commission possession but they do have access to them. They have the audits in their possession. The Committee determined that Mr. Sagers is acting in his legislator role today.

The Committee determined that there are financial records of the purchases made by *My Time*. *My Time* would meet with the County to receive approval for all items and supplies for the maintenance of Utah Motorsports Park. When the park was sold, *My Time* was reimbursed for their expenses from the sale. Mr. Searle reviewed the sale and the reimbursements and stated that it has all been audited by auditors from the County, an independent auditor, and legislature's own auditors to ensure that tax-payer dollars and assets were not being thrown away. According to the contract the records were created and maintained by *My Time*.

#### Petitioner Closing

The Tooele County Auditor told Mr. Sagers that until 2018 she could not audit the racetrack. There are no audits of the racetrack until that time. She told Mr. Sagers that she could audit the County but not the racetrack. She has no record of purchase orders issued or invoices of the racetrack. The purchases are approved by the County Commissioner over the racetrack not the Tooele County Commissioners.

#### Respondent Closing

Mr. Searle stated that there are invoices and purchase orders in possession of *My Time*. They do exist and were approved by the County Commission and in the possession of *My Time*. Those records are not in the possession of the County Auditor. Mr. Searle reviewed his discussions with the Ford Motor Company and the negotiations for the sale of the track. The budgets were reviewed and approved by the County Commission. The Commissioner over the track would approve the purchase orders. If the Committee orders Tooele County to obtain the records they will. Tooele County will request them from *My Time*. Mr. Searle anticipates that *My Time* will claim that releasing the records violates the contract. Then Tooele County will enter into a lawsuit to obtain the records if the Committee orders them to do that.

#### Questions from Committee

The Committee determined that the management agreement contract does exist and the County has a copy of it but it was not brought to the hearing today. The Committee determined that the track's budgetary process was audited by the County. Under state law budgets and audits are to be made to the auditors. From 2015-2017 no audits were submitted to the County Auditor. The only audit that was done was in 2018. That was the only time that it was audited while *My Time* had that contract. The Committee learned that every year the

budgets were presented to the County Commissioners. They knew exactly how much money was lost. Tooele County had access to the records but copies provided to the County were returned to *My Time* to maintain. The Committee determined that the Legislative Auditors are concerned with processes of the sale, oversight, and management of the track.

### **Deliberation**

Committee members discussed the points of both parties. They determined that the records are public and accessible but not in the possession of Tooele County. A review of the records is not the same thing as inspecting the records at the complex. It is the County's obligation to maintain records that their contractors' create in order for the governmental entity to perform oversight. Tooele County entered into a contract with the operator. Anything pursuant to that contract is a public record regardless of whether there is any proprietary information contained in it. It is still subject to a record request. They can redact proprietary information that is classified as protected. The County stated that they don't have possession of the records but, legally, according to PERMA they should have them or a legal right of access of them. The Committee reviewed Utah Code § 63G-2-301(3), The following records are normally public (b) records documenting a contractor's or private provider's compliance with the terms of a contract with a governmental entity; (c) records documenting the services provided by a contractor or a private provider to the extent the records would be public if prepared by the governmental entity; (d) contracts entered into by a governmental entity; (e) any account, voucher, or contract that deals with the receipt or expenditure of funds by a governmental entity. The Committee reviewed Utah Code § 63G-2-201(1), Every person has the right to inspect a public record free of charge and the right to take a copy of public record during normal working hours.

**Motion** made by Ms. Smith-Mansfield: The governmental entity shall provide copies of the public records to the petitioner pursuant to Utah Code § 63G-2-301(3) (b-e) and pursuant to 63G-2-201. Seconded by Mr. Williams.

Vote: Aye: 6 Nay: 0. Motion carries 6-0. Mr. Haraldsen, Mr. Hartley, Mr. Williams, Mr. Fleming, Ms. Mansell and Ms. Smith-Mansfield voting in favor of the motion.

The hearing is concluded. An order will be issued within seven business days and both parties will receive a copy of the order. Each party has 30 days to appeal the decision of the State Records Committee to district court.

**Five-minute break. Reconvene.**

### **BUSINESS**

#### **Discussion of Administrative Rules**

R35-1, R35-2, and R35-4 were discussed and suggestions were reviewed to clarify the rules.

#### **Motion to Approve April 11, 2019, Minutes**

The motion was made by Ms. Mansell. Seconded by Mr. Hartley.

Vote: Aye - 6, Nay - 0. Motion carries 6-0. Mr. Haraldsen, Ms. Smith-Mansfield, Mr. Fleming, Mr. Hartley, Ms. Mansell and Mr. Williams voting for the motion.



**Report on Appeals Received**

The executive secretary reviewed the status of appeals received. She reviewed the appeals under review and denied appeals.

2019-45 Toby Garcia v. Utah Department of Corrections, the appeal was untimely and well exceeded the 30-day time limit for filing with the State Records Committee.

2019-44 Eric Peterson v. Attorney General's Office, the appeal was declined in part due to a previously heard appeal hearing. The Committee discussed the appeal.

Motion made by Ms. Smith-Mansfield: The Committee will hear the partially declined 2019-44 appeal. Seconded by Mr. Fleming.

Vote: Vote: Aye - 6, Nay - 0. Motion carries 6-0. Mr. Haraldsen, Ms. Smith-Mansfield, Mr. Fleming, Mr. Hartley, Ms. Mansell and Mr. Williams voting for the motion.

**Retention Schedules:** None

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


**Other Business:**

The next meeting is scheduled for June 13, 2019, from 9:00 a.m. to 4:00 p.m. The Chair queried whether a quorum will be present for the next meeting and determined that at least five Committee members will be present.

**Motion to Adjourn** by Mr. Fleming. Seconded by Mr. Williams.

The Chair adjourned the May 9, 2019, State Records Committee meeting at 12:59 p.m.

This is a true and correct copy of the May 9, 2019, SRC meeting minutes, which were approved on June 13, 2019. An audio recording of this meeting is available on the Utah Public Notice Website at <https://archives.utah.gov>

X   
Executive Secretary