State Records Committee Meeting

Location: Courtyard Meeting Room, 346 S. Rio Grande St., SLC, UT 84101
Date: September 12, 2019
Time: 9:00 a.m. – 4:00 p.m.

Committee Members Present:
Tom Haraldsen, Chair, Media Representative
Cindi Mansell, Political Subdivision Representative
Holly Richardson, Citizen Representative
Ken Williams, State Archivist
David Fleming, Private Sector Records Manager
Patricia Smith-Mansfield, Citizen Representative
Vacant, Electronic Records and Databases Representative

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

Executive Secretary:
Gina Proctor, Utah State Archives

Telephonic participation:
Daniel McMann
Gordon Thomas
Patrick Sullivan

Others Present:
Justin Anderson, Attorney General's Office
Peter Stirba, representing Beaver County Sheriff's Office
Ciera Archuleta, Stirba, P.C.
Cameron Noel, Beaver County Sheriff
Kendall Laws, San Juan County Attorney
David Everitt, San Juan County
Jessica Miller, Salt Lake Tribune
Tony Semerad, Salt Lake Tribune
Karra Porter, Utah Cold Case Coalition
Tom Harvey, Utah Cold Case Coalition
Samuel Straight, representing Brigham Young University Police
David Andersen, Brigham Young University General Counsel
Steven Messick Brigham Young University Police
Kyle Maynard, representing Andrew Gulliford
Andrew Gulliford

Kim Henderson
Curtis Henderson
Bill Keshlear
Kendra Yates, Utah State Archives
Rosemary Cundiff, Utah State Archives
Rebekkah Shaw, Utah State Archives

Agenda:

- Seven Hearings Scheduled
  - Daniel McMann v Utah Department of Corrections
  - Gordon Thomas v. Utah Department of Corrections
  - Patrick Sullivan v. Utah Department of Corrections
  - Andrew Gulliford v. San Juan County
  - Kim Henderson v. San Juan County
  - Jessica Miller (*Salt Lake Tribune*) v. Brigham Young University Police
  - Karra Porter (Utah Cold Case Coalition) v. Beaver County Sheriff's Office
- Business:
- Approval of August 8, 2019, minutes, action item
- SRC appeals received, report
- Review of FY 2019 Annual Report, action item
- Cases in District Court, report
- Other Business
  - Next meeting scheduled for October 10, 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 9:14 a.m.

1. **Gordon Thomas v. Utah Department of Corrections (UDC)**

Mr. Thomas was connected telephonically to the hearing. The Chair provided instructions and reviewed the procedures. Committee introductions were made. Justin Anderson, Attorney General's Office, representing Utah Department of Corrections (UDC), introduced himself. 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

Gordon Thomas, Petitioner, clarified that the responsive records were brought to the hearing with the Respondent. He clarified that Mr. Hudspeth reviewed Mr. Thomas' records.
Mr. Thomas requests his current Axis I and Axis II diagnosis and his past diagnosis from 1983. He asks whether the controlled classification is a restriction on the availability of his records to anyone other than himself.
Mr. Thomas stated that UDC is required to reasonably believe that the Axis I diagnosis is correct. It shows that he has a disorder that would cause him or another individual harm.

He explained that if anyone on the street went to a mental health professional they would know their own diagnosis and he should be able to know his own diagnosis. UDC did not state why or how releasing his diagnosis would pose a danger to himself or another individual.

Respondent Statements
Justin Anderson from the Attorney General's Office, representing the Department of Corrections. Mr. Anderson explained that the controlled classification is about not releasing the record to the subject of the record. Mr. Anderson reviewed the points in Utah Code §63G-2-304 for a controlled record. The responsive records contain not only the diagnosis but also notes, impressions, and observations of the mental health professionals. It is self-evident why UDC would not want to release the records to Mr. Thomas. UDC is a facility that deals with a specific type of population with antisocial personalities.

Questions from Committee
The Committee discussed Mr. Thomas' right to access his own 1983 and current diagnosis records. Mr. Thomas is aware of his diagnosis. There was discussion about whether he is requesting the entire document or just the diagnosis portion of the document. The rationale for the diagnosis is part of the diagnosis and the supporting or extended explanation of the diagnosis.

Petitioner Closing
Mr. Thomas reviewed the types of diagnosis associated with Axis I, Axis II, Axis III, Axis IV, and Axis V. Mr. Thomas reviewed his own diagnosis. Mr. Thomas would like the records so that he may compare his 1983 mental status with the current diagnosis, which is 30 years later.

Questions from the Committee:
The Committee clarified that Mr. Thomas would like to receive the 1983 diagnosis and not the supporting information.

Respondent Closing
The most recent diagnosis is from 2007. The Committee should defer to the UDC psychologist and uphold the controlled classification.

Questions from the Committee
The Committee discussed the three parts of the controlled classification and how the responsive records, including the diagnosis, may be considered a danger to the Petitioner.

Motion by Mr. Fleming to go *in camera*.
Seconded by Ms. Mansell.
Vote: Aye: 6 Nay: 0. Motion carries 6-0. Mr. Haraldsen, Ms. Richardson, Ms. Mansell, Mr. Williams, Mr. Fleming, and Ms. Smith-Mansfield voting in favor of the motion.

Mr. Thomas was connected to the SRC hearing telephonically.

Motion by Mr. Fleming to go back in session, on the record.
Seconded by Ms. Smith-Mansfield.

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

Deliberation
The records reviewed were not fully responsive to the request. The records reviewed were responsive but require redaction so that only diagnosis information is released. A more thorough search is required for additional responsive records.

Motion by Ms. Smith-Mansfield: The records are appropriately classified, in part, as controlled under Utah Code §63G-2-304. Parts should be classified as private under Utah Code §63G-2-302(1)(b), specific to the diagnosis contained in the records dated, a) November 19, 1982, b) January 12, 1983, and c) May 2, 1983. The remainder of the records will be classified as controlled and only the diagnosis portion is classified as private pursuant to the statutes cited above.
Seconded by Mr. Fleming.

Discussion
The Labrum doctrine and the 1992 Watkins case were discussed. UDC did not do a thorough search nor put in an argument to ensure that the records are classified appropriately as controlled. Heavy redaction will be required for the documents the Committee reviewed. One of the records offers a diagnosis; one record suggests that more information is needed in order for a diagnosis to be made; one record states more testing is required. A fourth document is non-responsive.

Vote: Aye: 6 Nay: 0. Motion carries 6-0. Mr. Haraldsen, , Ms. Mansell, Mr. Williams, Mr. Fleming, and Ms. Smith-Mansfield voting in favor of the motion. Ms. Richardson abstains because she was not present for the full hearing.

Motion by Mr. Fleming: According to the testimony today, review of the submitted statements, and the records from 1983, the Committee determines that Mr. Thomas received treatment for a diagnosis for several years. The Committee is persuaded that there is a lack of a thorough search for responsive records. UDC shall make another search for later records related to diagnosis.
Seconded by Ms. Mansell.

Vote: Aye: 5 Nay: 0. Abstain: 1. Motion carries 5-0-1. Mr. Haraldsen, Ms. Mansell, Mr. Williams, Mr. Fleming, and Ms. Smith-Mansfield voting in favor of the motion. Ms. Richardson abstains because she was not present for the full hearing.

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.

2. **<u>Daniel McMann v. Utah Department of Corrections (UDC)</u>**
Mr. McMann was connected to the meeting telephonically. The Chair announced the hearing. Introductions of Committee members and Respondent were made. The Chair provided

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

Petitioner Statements
Mr. McMann stated that he just learned of the proper procedure for notifying UDC that he is impecunious/indigent and does not have the financial means to pay the fee for obtaining records. Mr. McMann stated he has been declared impecunious in his federal court case and filed *in forma pauperis* documents in that case.

Respondent Statements
Justin Anderson, Attorney General's Office, representing UDC. Mr. Anderson stated that this appeal is specific to a denial of a fee waiver. Mr. McMann has not submitted any financial documentation indicating he is indigent. If he does submit the documentation then UDC would review it to see if it meets the standard for indigent status. Mr. Anderson explained that Mr. McMann does have a federal case that has been initiated. The federal case will allow discovery and allows for access to the records. He is not limited in time by that case for providing UDC with the necessary financial documents.

Questions from the Committee:
The Committee discussed that Mr. McMann is one of the subjects of the records and he states he is indigent. The Committee discussed the fee waiver issue under Utah Code §63G-2-203. The redaction of other individuals' information is required. Mr. McMann is not denied access to the record. Only the fee waiver request is denied.

Petitioner Closing
Mr. McMann clarified that he is required to provide payment at the time of the request instead of providing payment at a later date. Mr. McMann addressed the need to certify the financial documents and the lack of ability for certification at the Florida Federal Bureau of Prisons.

Respondent Closing
Mr. Anderson stated that UDC would review whether an inmate has a prison job or restitution and other obligations. He explained that it is not necessary to have a notary certify the documents although UDC would need to review a valid financial record.

Questions from the Committee
The Committee discussed UDC policy for determining indigent status and a similar federal policy for establishing indigent status.

Deliberation
The Committee may not have enough information at this time to determine whether to grant or deny a request for a fee waiver.

Motion by Ms. Richardson: The Committee moves to continue the appeal to the next available hearing date in order for UDC to review the Petitioner's financial documents and determine whether to approve the fee waiver.
Seconded by Mr. Williams.
Vote: Aye: 6 Nay: 0. Motion carries 6-0. Mr. Haraldsen, Ms. Richardson, Ms. Mansell, Mr. Williams, Mr. Fleming, and Ms. Smith-Mansfield voting in favor of the motion.

The hearing is concluded. An order of continuance 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.

Reconvene.

3. **Patrick Sullivan v. Utah Department of Corrections (UDC)**

Mr. Sullivan was connected telephonically to the hearing. The Chair announced the hearing. Introductions of Committee members and Respondent were made. The Chair provided instructions and 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 Statements

Mr. Sullivan stated that the records relate to him and a criminal case filed against him in Sanpete County. His legal rights are affected. Utah Department of Corrections (UDC) has not provided a provision in GRAMA that would prevent the release of the records. UDC cites Utah Code §63G-2-305 but no subsection within the section. Mr. Sullivan claims that UDC states this is a duplicate request because of a plea agreement he had with Sanpete County, which is not the same governmental entity as UDC. Mr. Sullivan states that withdrawing a request before it is answered is not a duplicate request when he submits a new record request. Sanpete County's record production related to discovery did not produce the same records that UDC has that were not provided to Sanpete County. There are other records that show exculpatory information and the source records are UDC records. Mr. Sullivan would like an adequate description from UDC indicating which records are withheld.

Questions from the Committee

The Committee discussed the plea agreement and how it is relevant to Mr. Sullivan's withdrawing his record request.

Respondent Statements

Justin Anderson, Assistant Attorney General, representing Utah Department of Corrections. As an initial matter, Mr. Sullivan's plea agreement and Judgement and Order states that he will withdraw his record requests which are specific to UDC records. The plea agreement states that he withdraws his request for records as it relates to this case, not Sanpete County. These are duplicate requests. Mr. Sullivan admits he previously withdrew these requests. This is the

third time that he has appealed this request. It is reasonable to deny a duplicate request after it has been withdrawn due to mediation.
Mr. Anderson reviewed the Utah Supreme Court determination in Southern Utah Wilderness Alliance (SUWA) v. Automated Geographic Reference Center Division of Information Technology, in December 23, 2008, paragraph 40, "the plain language of 63G-2-201(8)(a)(iv) provides that, '[i]n response to a request, a governmental entity is not required to fulfill a person's records request if the request unreasonably duplicates prior records requests from that person.'
Mr. Sullivan plead guilty to the charges against him. No appeal has been granted in that court matter so his legal rights are not implicated. He has had two opportunities to be heard before the State Records Committee and one opportunity to be heard by the court about these same record requests; in September 2018, January 2019, and May 2019. Twice he withdrew the appeal after mediation. In February 2019, his discovery request was cancelled. It is not unreasonable to deny this duplicate request.

Petitioner Closing
Mr. Sullivan explained that his record request was not adequately responded to. UDC did not describe what records they were denying. Mr. Sullivan referenced a previous State Records Committee (SRC) appeal Case No. 2007-08, Mark Haik v. Town of Alta, where the Committee was persuaded that an entity "ha[d] failed to properly identify and/or produce the records requested by [the requester] or in the alternative provide notice to [the requester] including a description of the records or portion of records exempt from disclosure and citations as to authority for denial pursuant to Utah Code Ann. §63G-2-204 and 205. The Town of Alta has not definitively identified what records exist and are maintained by the Town that may be responsive to [the requester's] request."
Regarding the plea agreement, UDC was never referenced in that Sanpete County case. These are two separate entities. Mr. Sullivan claims that UDC did not turn over their complete set of records to Sanpete County. Sanpete County referred Mr. Sullivan to UDC to obtain any additional records that he sought.

Respondent Closing
Mr. Anderson explained that the SUWA court found that a records request is unreasonably duplicated where a subsequent request is made to a governmental entity after the initial records request has been granted, denied, or adequately responded to. Haik v. Town of Alta was a broad request. Mr. Sullivan requested investigative, audio/video records and phone calls. This was very specific to his case. UDC does have a connection to the Sanpete case because the only records in that case were UDC records. He is not in prison. He is not a credible witness. He was incarcerated for several counts of fraud.
Mr. Anderson wondered what a governmental entity can do when they have mediated the same request twice and the Petitioner withdrew the appeals immediately following mediation. These are duplicate requests according to Utah Supreme Court standards. Mr. Anderson reviewed that it is undisputed that Mr. Sullivan submitted and withdrew these requests twice before.

Questions from the Committee
The Committee discussed that UDC did not respond to this current request or its appeal to the Chief Administrative Officer due to it previously having been submitted and withdrawn in the plea agreement.

Deliberation
The Committee discussed that Mr. Sullivan withdrew this previous appeal to the SRC is important. He made these requests before and withdrew them. He does take a risk in resubmitting them in that it would be denied as a duplicate request. This Petitioner has come before the Committee many times and does a more than adequate job in presenting his case. The Committee is persuaded that the Petitioner would have done an adequate job in representing himself before the Committee if he had not withdrawn it. He may have felt more empowered to present a case when he was no longer incarcerated. However, that fact still may not make this an unreasonably duplicate request. It is a duplicate request and may place a burden on the governmental entity to respond.

Motion by Mr. Fleming: Given the circumstances of this case, the Committee is persuaded by the Respondent's argument that this is not an unreasonable denial of a duplicate request pursuant to Utah Code §63G-2-201(8)(a)(iv).
Seconded by Mr. Williams.

Vote: Aye: 6 Nay: 0. Motion carries 6-0. Mr. Haraldsen, Ms. Richardson, Ms. Mansell, Mr. Williams, Mr. Fleming, 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 from the date the Decision and Order is issued to appeal the decision of the State Records Committee to district court.

Five-minute break.

Reconvene.

4. **Andrew Gulliford v. San Juan County**

The Chair announced the hearing. The Committee members and the Respondent introduced themselves. The Chair provided instructions and 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 Statements
Kyle Maynard, representing Andrew Gulliford, introduced himself. Mr. Maynard asked whether the public, San Juan County residents, have the right to know how the county representatives are spending the tax payers' dollars. In regard to the April 2, 2019, record request, the Petitioner requests an in *camera review* of the requested and responsive records. Mr. Maynard explained the issues for this appeal.

There is a policy issue. GRAMA allows documents be disclosed when there is a significant interest for the public v. a privacy interest. In Schroeder v AGO, the attorney-client privileged documents were disclosed because the public interest outweighed the privacy interests. San Juan County residents have a significant interest in knowing how and why a half million dollars were sent to an out-of-state law firm that could have been allocated to more needful areas. The claim of an attorney-client privilege is based on a contract. The political situation that existed starting in 2016 may still exist. There could be further litigation. Utah Court Rules outline that there are specific activities that require an attorney licensure. Excluded specifically in that rule, stated in 14-802, is lobbying as an activity. Lobbying is not considered for licensing and does not carry that privilege because you don't have to be an attorney to be a lobbyist. GRAMA promotes access to records and prevents abuse of confidentiality.
In SUWA, the court found that the fact that you have a license doesn't automatically create attorney-client privilege. It is applied when specific litigation is anticipated. In Colorado, Black v. Southern Water Conservation District, the court found, similar to SUWA, that attorney-client privilege does not apply to lobbyists and that attorney-client privilege has to apply to specific pending litigation.
Mr. Maynard reviewed the documents that were released by San Juan County to Mr. Gilliford, related to billing and time sheets for Davallier, where Mr. Gulliford identified specific activities that do not pertain to litigation. Those items were related to lobbying activities. The question the Petitioner has is what did San Juan County pay for? What was the result of the $550,000 spent on the out-of-state law firm? Was it spent on litigation? What amount was spent on lobbying?
Mr. Maynard reviewed the similarities between this appeal and the State Records Committee decision and order in Keshlear v. San Juan County, heard on June 13, 2019, where the Committee voted to waive the privilege in that specific case.
Mr. Gulliford reviewed the reasons for requesting the records. He related his interest in San Juan County and the historical significance of the Bear's Ears area. Mr. Gulliford reviewed the Keshlear v. San Juan County appeal. He reviewed his record request and noted he requested six types of records. He received two of the items. He reviewed specific billing items that were noted in the documents he received from San Juan County. Mr. Gulliford reviewed the numerous publications that have a state and national public interest in the Bears Ears National Monument. Mr. Gulliford related his concern with the classification of the documents and reviewed the need for transparency and accountability to the taxpayers and the public.

Respondent Statements
Kendall Laws, San Juan County Attorney, representing the Respondent. Mr. Laws reviewed the Keshlear v. San Juan County appeal issues and asserted that San Juan County was not the client in that case, two of the three San Juan County Commissioners were clients of an outside attorney.
Mr. Laws related that, in the SUWA case, the court held that the end result is not determinative, rather the purpose for the creation of the records, in anticipation of litigation, was determinative.
He stated that there are three requirements in work-product in anticipation of litigation by an attorney or his agent. He reviewed those three requirements as they relate to this current appeal: 1) material things; 2) prepared in anticipation of litigation or for trial; and 3) records were prepared by or for another party or by that party's representative.

Regarding the public interest issue, Mr. Laws reviewed the balancing requirement.
San Juan County has provided the records that explain how the money was spent. The work product and the communications between the client, San Juan County, and the attorney that created the documents that were part of litigation should remain classified as work-product.

Committee Questions
The Committee discussed that some of the records may not be attorney-client privileged records, specifically those that relate to lobbying. They discussed the similarities and differences of this current appeal to the case, Daniel V. Schroeder v. Utah Attorney General's Office, and the Utah State Records Committee. They discussed whether San Juan County is involved in present, imminent, or current litigation where these records are involved. The Committee reviewed the written request and the four items that were requested.

Petitioner Closing
Mr. Maynard stated the Petitioner's position is that there is a significant public interest about the money that was spent by public officials without an official motion to hire this law firm to do things that do not fall within the scope of litigation or traditional representation for litigation. Some of the work done by Davillier Law Group was not attorney-client privileged material when they shared their mental impressions with someone not their client and not a party to the lawsuit.
Mr. Gulliford reviewed a new map that indicates the Bears Ears National Monument, a living, sacred landscape to Native Americans. He reviewed the billing items and questioned the companies to which the Davillier Law Group submitted billing for legal work.
Mr. Maynard addressed whims and winds of litigation and said that attorneys are always looking to where the political environment may take legal cases.

Respondent Closing
Mr. Laws stated that possibility of future litigation is not the focus of case law. He said the records were created in anticipation of litigation. He cautions the Committee about drawing a line in determining when litigation ends. The point of attorney-client privilege is so that clients can speak candidly and work candidly with their attorney. He asked the Committee to consider what the long-term effect would be of waiving the attorney-client privileged communications.

Questions from the Committee
The Committee discussed the type of litigation the County was interested in pursuing. The County, after working with Davillier Law Group, and gathering the information, decided to enter into the litigation that is ongoing in federal court. A variety of plaintiffs are suing the Trump administration for shrinking Bears Ears and Grand Staircase Escalante. Initially, the county anticipated litigation when President Obama created the Bears Ears National Monument under the Antiquities Act. President Trump took executive action under the Antiquities Act to diminish it. And then the information acquired was used by San Juan County commissioners to determine that they wanted to get involved in the ongoing litigation supporting President Trump's decision. The County withdrew as an intervening party.

Deliberation
In applying the weighing provision in this matter, there are two issues. Whether the information has been properly classified as attorney-client privileged communications and review the public benefit in releasing attorney-client privileged communications.

Motion by Ms. Smith-Mansfield: Review the responsive records *in camera* during the next month and continue the case to the October meeting.
Seconded by Mr. Fleming.

Discussion
The motion is made in anticipation that the Committee will invoke the weighing provision.

Vote: Aye: 6 Nay: 0. Motion carries 6-0. Mr. Haraldsen, Ms. Richardson, Ms. Mansell, Mr. Williams, Mr. Fleming, 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.

Adjourned for lunch.

Reconvened.

5. **Kim Henderson v. San Juan County**

The Chair announced the hearing. The Petitioner and Respondent introduced themselves. The Chair provided instructions and reviewed the procedures. The Chair acknowledged that the parties did not engage in mediation for this appeal.

Petitioner Statements
Kim Henderson stated that she attended the April 2, 2019, San Juan County Commission meeting. Kendall Laws, San Juan County Attorney, addressed the Commission. This is when Ms. Henderson observed Commissioner Chair, Kenneth Maryboy, texting on his cell phone. She also observed Mr. Maryboy's attorney, Steven Boos, texting. In the video recording of the meeting, Mr. Maryboy can be seen texting.
Ms. Henderson reviewed the history of her record request, including the response she received from John David Nielson, former San Juan County Clerk/Auditor, where he stated that he was providing her with a letter from Mr. Boos. The letter informs the County that the Commissioners have asserted attorney-client privilege for their communications with Mr. Boos. The letter indicates that his text messages are not subject to GRAMA, as he is not an employee or contractor of a governmental entity.
Ms. Henderson also reviewed the response from the San Juan County Interim County Administrator, David Everitt, where he replied to her appeal that there are no responsive records that exist.
The two responses are conflicted. One asserts that records do exist but are classified as protected, or not subject to GRAMA and the other response asserts that no records exist.

Since the video clearly shows Commissioner Maryboy texting during an open and public meeting performing County business, the records created should be provided to her.

Respondent Statements
Kendall Laws, San Juan County Attorney, reviewed the County's position regarding a previous appeal hearing last June 2019, during the Keshlear v. San Juan County appeal. He reviewed San Juan County's procedure for searching and locating responsive records. Mr. Laws informed the Committee that the result of the search indicated that there were no responsive records. However, Mr. Everitt provided the letter from Mr. Boos indicating that there may be responsive records but the letter was provided for clarification purposes to the requester. The appeal was filed with the Interim County Auditor who replied that there were no records responsive to the request. It is important to note that Mr. Everitt had a one-on-one conversation with Commissioner Maryboy and specifically asked if those text messages or records exist and the answer was that he had no responsive records.
Mr. Laws explained that there are no records for San Juan County to review, classify, or provide to Ms. Henderson.

Questions from the Committee
The Committee discussed the video recording from the meeting and determined that texting very likely was taking place. They discussed the possibility that the specificity in the description of the request limited the scope of the search for responsive records. The texting may not have been taking place between the parties that were described in the record request.

David Everitt, Interim County Auditor sworn in.
The Committee discussed Mr. Everitt's process for conducting the search for responsive records. They discussed whether the County obtained the personal devices used to conduct their own search or accepted the word of the Commissioner that no records exist. Mr. Everitt explained that he asked Commissioner Maryboy whether any records existed that were responsive to Ms. Henderson's request and whether any records still exist or if there were responsive records which did exist at one time. He accepted Commissioner Maryboy's response that no responsive records ever existed.

Petitioner Closing
Ms. Henderson feels that the letter from Mr. Boos is an admission that records did exist since he asserted attorney-client privilege. She feels that Mr. Boos threatened her if she pursued legal action to obtain the records and stated she may be responsible for his legal fees. Ms. Henderson reviewed her own observations and that of a Sheriff's deputy observing both Commissioner Maryboy and Mr. Boos texting during the meeting. In order to preserve transparency the Committee should order the release of records.

Respondent Closing
Mr. Laws stated that there is nothing more to add.

Questions from the Committee
The Committee discussed whether any text messages created during public meetings by elected public officials were classified as public. The County is responsible for obtaining the

records and enforcing the policies. The Committee discussed a previous case regarding communications that were created during a public meeting and contrasted it to this current appeal where responsive records were not created during the public meeting.
The Committee discussed whether Commissioners are aware that the texts and emails they send during County business are subject to GRAMA.
Mr. Laws clarified that the Attorney General's Office has provided training this year to the San Juan County employees and Commission and they are aware of their own internal procedures related to retention of records. The County states that they have fulfilled the requirements to train and provide information to the Commissioners.

Deliberation
The Committee discussed that Mr. Boos has no claim in this case. The State Records Committee is not reviewing his records. The Committee is not convinced that the County has provided the proper training or implemented the appropriate policies and procedures for following the GRAMA statute. The Committee discussed whether the County and the Commissioners are out of compliance.

Motion by Ms. Smith-Mansfield: Absent a record keeping procedure and policies regarding retention of electronic communications sent and received by San Juan County Commissioners during public meetings, San Juan County shall again ask the Commissioners for the records. Based on the circumstances of this appeal and written and oral testimony, the County shall review the records and determine for themselves whether they are records pursuant to Utah Code §63G-2-103(22)(a)(i)(ii). If they are records under Utah Code §63G-2-103(22)(a)(i)(ii), and responsive then the County shall classify the records and provide them to the Petitioner, if they are public.

Discussion: The Committee discussed their ability to enforce an order requiring the County to obtain the personal devices and retrieve any responsive records.
The Committee discussed the attempts to go around GRAMA by government officials in using personal devices during public meetings to avoid following GRAMA.
The Committee discussed the letter provided suggests that there are responsive records that did exist at the time of the initial record request.

Seconded by Mr. Fleming.
Vote: Aye: 6 Nay: 0. Motion carries 6-0. Mr. Haraldsen, Ms. Richardson, Ms. Mansell, Mr. Williams, Mr. Fleming, 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.

6. Jessica Miller (*Salt Lake Tribune*) v. Brigham Young University Police Department (BYU PD)

The Chair announced the hearing. The Chair provided instructions and 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.

Samuel Straight, representing Brigham Young University Police Department (BYU PD), made an objection to Ms. Richardson being on the Committee and asked her to recuse herself because she writes for the *Salt Lake Tribune*.
The Chair stated that he would pose that question to Ms. Richardson but he would not ask her to recuse herself.
Ms. Richardson stated that she previously attended Brigham Young University and is able to understand both parties' records access issues.

Petitioner Statements

Jessica Miller, reporter for the *Salt Lake Tribune*, reviewed the history of the record request. In 2015, an employee of Brigham Young University's Honor Code Office sent an email to a University Police lieutenant. The school employee asked the officer to look at police reports to get information about a student who had reported that she was raped.
Logs show that Lt. Aaron Rhoades obtained Provo Police records through a database that he had access to only because he was a sworn law enforcement officer. He looked through the rape report, accessing all sorts of information, including the student's medical records and information from her sexual-assault examination. The documents show that Lt. Rhoades then called the school employee and relayed sensitive information about the alleged victim from these non-public portions of the report.
After *The Salt Lake Tribune* received documents detailing this behavior in 2016, they began to investigate the relationship between the BYU PD and the Honor Code Office.
Tribune reporters have made many efforts in the last three and one-half years to obtain records that would shed light on whether this information sharing was wider spread than this single case.
Ms. Miller explained her current record request for access to emails between various Honor Code Office employees and the BYU PD. She also seeks emails specifically sent to and from Aaron Rhoades.
Ms. Miller addressed BYU Police written argument that this request should be denied because it seeks the same records that are the subject of ongoing litigation between *The Salt Lake Tribune* and BYU PD. Ms. Miller explained that her request is different from a previous *Tribune* reporter's request. First, the original request sought emails between BYU PD and six email addresses from the Honor Code Office. Her request has added three more email custodians. It also seeks all email correspondence between police employee, Aaron Rhoades, and anyone employed at the Honor Code Office. She explained that the test under Utah Code 63G-2-201(8)(d) is whether the current records request "unreasonably duplicates" a prior request. The second part to this request, seeking emails involving specifically Aaron Rhoades, is not duplicative.

Ms. Miller explained that GRAMA defines a record as all documentary material that is "prepared, owned, received or retained" by a covered entity. Ms. Miller stated that she is not asking for the Committee to decide whether GRAMA is to be applied retroactively.
Ms. Miller reviewed a written argument posed by BYU PD related to a Wisconsin case where the court found that a retroactive application of an "amended interpretation" of an open meetings law would "produce substantial inequitable results." Ms. Miller stated that case does not involve a statutory change, it involves a change in a judicial interpretation of a statute.
Ms. Miller explained that a state investigation concluded that Lt. Aaron Rhoades accessed private police reports from other Utah County agencies and shared non-public information with offices at BYU, including the Honor Code Office and the Dean of Students. BYU PD takes the position that these emails cannot be released because it owes a duty of privacy to its students. She does not think that it is credible for the department to use privacy as a shield to protect documents that may detail its own invasion of students' privacy.
Ms. Miller disagreed with the BYU PD written argument that these documents are not "records" under GRAMA because these are emails between two departments of BYU, a private University. Under the 2019 amendment to the law, the department is now explicitly defined as a covered entity under GRAMA. BYU PD's emails are "records" under GRAMA even when the department communicates with other University departments.
Ms. Miller addressed BYU PD written argument that the emails are properly classified as private because the records contain information which would constitute a clearly unwarranted invasion of personal privacy. Ms. Miller asked the Committee to review the records *in-camera* to assess whether there is sensitive information and suggested that redaction of private information be made.
Ms. Miller stated that this request is centered in allegations that the police have misused power, a topic of public interest that has been covered extensively by our newspaper and other media outlets. Further, many of the students involved have already identified themselves in the reporting process.
Ms. Miller reviewed the Respondent's written argument of FERPA as the governing law for these records. FERPA does not apply to law enforcement records. FERPA defines this exemption as records maintained by a law enforcement unit of the educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement. BYU PD itself has said that its primary purpose is law enforcement. The state of Utah currently is trying to decertify the department entirely, a decision that BYU Police is appealing. In that appeal, the department asserts that "its employees enforce only public laws and does not enforce BYU's Honor Code." It further states, "University police do not enforce any university policy, unless it is within the scope of a public law." The appeal explains that it may share information with other BYU campus units in situations involving public safety, like a suicide threat or enforcing laws. Employees may be required to report incidents of unlawful sexual misconduct to the University's Title IX Office.
Ms. Miller stated her concern is about accountability and transparency when it comes to policing in Utah. When allegations of police misconduct arise, the public has a right to know and understand what happened and the scope of this misconduct. These emails will shed light on that misconduct and possible improper records access. She asked the Committee to find that these are public records, and order them released.

Respondent Statements
Samuel Straight, representing Brigham Young University Police Department, introduced David Anderson, from the office of the General Counsel at BYU, and Lt. Steven Messick from BYU PD.

Mr. Straight reviewed BYU and BYU PD histories as a private, non-profit University. Mr. Straight reviewed *The Salt Lake Tribune*'s previous 2016 record request. He explained that BYU PD followed their existing procedure and turned over police reports and other documents, including prior record requests, but refused to turn over private internal emails between departments at BYU because those are not law enforcement records and are not subject to GRAMA, they were private. At that time, BYU was not a governmental entity and not subject to GRAMA. *Salt Lake Tribune* appealed that refusal to turn over the private internal emails. The emails requested were not just with the Honor Code Office, they were emails with other departments at BYU including a Title IX officer. The *Salt Lake Tribune* appealed to the State Records Committee (SRC). The SRC declined the appeal and determined that BYU was not a governmental entity. *The Tribune* appealed to Third District Court.
Mr. Straight read from the document, Motion to Dismiss, filed by Paul Tonks. "As a matter of law, BYU and University Police, are not governmental entities and the Committee did not have jurisdiction over petitioner's appeal. This is defined by the Attorney General's Office."
Mr. Straight read from a Declaration of the Utah Division of Archives and Records Service (UDARS), dated July 31, 2017, where Rachel Gifford explained that UDARS considers BYU a private university and none of its departments including University Police is a governmental entity.
Mr. Straight stated this entire issue is pending before the Utah Supreme Court. BYU's final brief is due on September 20, 2019. Oral arguments are set for October 4, 2019. The Utah Supreme Court will address the issues that *The Salt Lake Tribune* appealed to Judge Gary D. Stott in Third District Court. Mr. Straight stated that the SRC should not be wading into this while we are waiting for the Supreme Court to determine this issue.
Mr. Straight stated that BYU understands the public's concerns. Senator Curtis Bramble sponsored legislation, SB 197, in order to prospectively make University Police subject to GRAMA. BYU supports transparency and supported the bill. It was passed by the Legislature and signed by the Governor. It became effective on May 14, 2019.
Mr. Straight reviewed the current appeal for correspondence between University Police and the Honor Code Office. He stated that few email addresses were added but this is substantially the same record request. Mr. Straight reviewed a *Salt Lake Tribune* news article, dated May 15, 2019, which stated that the *Tribune* reiterated the request. The current appeal should be denied, dismissed, based on Utah Code §63g-2-201(8)(d), it is duplicative, it is substantially the same request, and reiterated, as the 2016 record request.
Mr. Straight reviewed Utah Code 63G-2-201(22)(a) and said that because the emails were received or retained by the governmental entity they must be subject to GRAMA. The problem with the argument, and why the request was properly denied, is that they were not created by employees of a governmental entity. They are private internal emails between members of a department of a private and non-profit university. At the time they were prepared, owned, received, and retained, University Police was not a governmental entity.
Mr. Straight suggested that Ms. Miller wanted the Committee to go contrary to Utah Code §68-3-3, a provision of Utah Code is not retroactive unless the provision is expressly declared to be

retroactive. There is no dispute in this case that the Legislature did not make SB 197 retroactive.
Mr. Straight discussed a Wisconsin case, State v. Beaver Dam. He stated that changing the classification of a private entity and by judicial interpretation it became a governmental entity. On May 14, 2019, BYU Police become subject to GRAMA, very clearly only prospectively.
Mr. Straight read the decision of the Wisconsin Supreme Court, *See State v. Beaver Dam Area Dev. Corp.*, 2008 WI 90, ¶ 98, 752 N.W.2d 295, 315 (Wisc. 2008) concluding that retroactive application of an amended interpretation of public records laws and open meetings to an entity previously not subject to such laws would "produce substantial inequitable results." Applying the approach retroactively may produce substantial inequitable results. Mr. Straight stated that the same analysis applies here. To those individuals being discussed in those emails and members of the University Police who all had the expectation that these were not public records, releasing records retroactively would be unsettling.
Mr. Straight reviewed the invasion of privacy issue and Lt. Aaron Rhodes. The emails contain highly sensitive student, visitor, and employee information. Personally identifying information, about physical health, safety, medical incidents, and mental health, most of which has nothing to with the issues *The Tribune* says they are interested in. The request is overbroad and clearly an unwarranted invasion of privacy, which makes it prohibited and makes the records protected under Utah Code §63G-2-302(2)(d). In 2016, the Legislature said that redaction is not enough. If you take somebody's name out of a record other identifying information remains. People can figure out who the person is that is talked about in the record. Redaction is not enough to protect this kind of sensitive information.
Mr. Straight stated that *The Tribune* argues that these emails are all law-enforcement records. He contends that they are not. A lot of these records are educational records that are outside the law enforcement activities that the University Police engages in. They would not be subject to disclosure under FERPA and GRAMA.
Mr. Straight explained that Officer Rhodes ino longer works for University Police and he no longer is a police officer or peace officer with the state of Utah. A panel of prosecutors that screened charges related to allegations against Officer Rhodes declined prosecution. We request that the Committee deny the appeal and wait to see what the Supreme Court tells us.

Questions from the Committee
The Committee discussed that the records are still retained by the University. None of the records have been destroyed. There is a litigation hold that is in place and the University is holding those records. A sample of the records has been brought today for an *in-camera* review. The Committee was provided the FERPA citation for the definition of records, 34 CFR 99.3 is for student records; and 34 CFR 99.8 is the definition for law enforcement records.

Petitioner Closing
Ms. Miller explained that her position is not that GRAMA be applied retroactively to these records. She stated that since the University retains the records they should be subject to GRAMA and released.
Ms. Miller addressed the Respondent's argument that this is a duplicate request. She explained that the original request, in 2016, had five email addresses listed. Her understanding was that those five were all the people that were employed by Honor Code Office at that time. Now, there are more people identified, an additional three names, plus Aaron Rhoades. Whether

privacy was violated three years ago or not, these still are important records because of secrecy orders and pending litigation. The emails will shed light on the relationship between Aaron Rhoades, the University Police, and the Honor Code Office.

Questions from the Committee
The Committee reviewed the number of email addresses listed on the previous request. They discussed that three new email addresses and names, plus Aaron Rhodes name and email address, which have not been previously requested.

Respondent Closing
Mr. Straight explained that the emails between Aaron Rhoades and the Honor Code Office is duplicative to the first request for emails between University Police and the Honor Code Office. Two other names requested, worked at the Title IX office and the other is the Dean of Students. The 2016 request included the emails between the University Police. Aaron Rhoades was a University Police officer.

Questions from the Committee
The Committee discussed three objections BYU PD has to the new request that included additional email addresses after the legislative action; BYU Police email is not a law enforcement record. If an email was sent as of May 2019, it is subject to GRAMA. Back in 2017, it was not subject to GRAMA

Deliberation
The Committee discussed that BYU PD states that they were not a governmental entity prior to 2019. That question is before the Supreme Court. The Committee previously determined that BYU PD was not a governmental entity. The previous request was not answered as a request. It was denied because BYU PD was not a governmental entity. It is not a duplicative request. If you are a governmental entity then you retain records. They cannot be asked for records they no longer have. They had to retain the records for litigation.
When an entity becomes a governmental entity you separate the records that were created as a private entity from the records created as a governmental entity.
The Committee discussed the classification of records, whether they are FERPA student records or records held for litigation. The Committee was unable to determine that without an *in-camera* review.
The Committee is not persuaded all emails were for law enforcement purposes. Whether Officer Rhoades went outside procedures is unknown.
The Committee discussed the issue of student records, subject to FERPA. They may not be subject to GRAMA but the Committee has the right to make that determination. The Respondent would have to provide a description of what the records are and individually identify them as student records under §63G-2-107(2).
An education record is related directly to a student, maintained by an education institution, or an agent of an institution. They do not include law enforcement records kept for law enforcement purposes.

Motion by Ms. Mansell: Move to go *in-camera* to review the records that were brought today. Seconded by Ms. Smith-Mansfield.
Vote: Aye: 3 Nay: 3. Motion fails. 3-3.

Motion by Mr. Williams: Move to go *in-camera* to review the records in total, Bates stamped, with the governmental entity providing a log of the classification so that the Committee knows what is being reviewed. The hearing is to be continued and heard at the next available hearing. Seconded by Mr. Fleming.

Vote: Aye: 6 Nay: 0. Motion passes. 6-0. Mr. Haraldsen, Ms. Richardson, Ms. Mansell, Mr. Williams, Mr. Fleming, 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.

Reconvened.

7. <u>Karra Porter (Utah Cold Case Coalition) v. Beaver County Sheriff's Office</u>
The Chair announced the hearing. The Chair provided instructions and reviewed the procedures. The Chair acknowledged that neither party engaged in mediation.

Petitioner Statements
Karra Porter is representing herself as a volunteer of the Utah Cold Case Coalition, one of six volunteer members. The Coalition responds to family inquiries and initiates inquiries on their own. The Coalition has been vetted by Utah Valley University (UVU) and have a relationship with a class taught at UVU related to cold cases. Brigham Young University designed their logo. Ms. Porter outlined three issues with Beaver County's decisions.
First, the Beaver County Sheriff's office did not meet its burden under GRAMA until the Respondent submitted their statements to the Committee. Ms. Porter explained that she appealed several times and received no response from Beaver County. Beaver County never said that releasing the documents could reasonably be expected to interfere with their investigation. The Supreme Court has said that "reasonably expected" means it cannot be a hypothetical belief.
Second, it appears from a recent affidavit that there has been a flurry of activity because of her request. Ms. Porter asks whether Beaver County Sheriff's Office can, after the request is received, retroactively make the responsive records subject to non-disclosure.
Third, there is a different statute for initial contact reports (ICR). Regardless of status of law enforcement matters, the initial report, is normally public. Redaction may be required. Supplemental reports, follow the initial report. At the time of the request, there was no recent activity on the case. You cannot state it is ongoing investigation unless there are facts to support that. They have an obligation to produce records at the time of the request. A governmental entity cannot retroactively try to do something to make the record non-disclosable later.

Guidance from the Committee is needed for future requests. Ms. Porter feels that she has been overcharged.
Additionally, there is a statement, assumption or belief that the Coalition will release the police records. The Coalition has received dozens of police reports and does not re-release the records. The Coalition shared one record with the UVU students and they were required to sign a non-disclosure obligation and are under the supervision of their teacher.
Ms. Porter alleged that the County themselves provided the file to the Cold Case Foundation.
Ms. Porter offered in her appeal to the Chief Administrative Officer to sign a non-disclosure obligation.
Lastly, in a *Deseret News* article, dated October 31, 2000, this homicide was written about and the article asked for the public's help with providing relevant information.

Respondent Statements
Peter Stirba, representing Beaver County Sheriff's Office. Mr. Stirba explained the limits of DNA testing in 1998 and the recent advances in DNA testing that have assisted law enforcement in solving cold cases. Mr. Stirba explained the availability and reluctance of witnesses to come forward during the initial days of the investigation. He stated that changes in individuals' domestic or family situations may allow persons to provide insider information that wasn't previously available. Mr. Stirba stated that there is a law enforcement exception for investigation files kept by law enforcement, for law enforcement purposes. If it was given to a third party it is a reasonable belief that its release could interfere with a law enforcement investigation.
Mr. Stirba stated that the recent activity of the investigation should continue. The activity has been occurring and not just since this request. Any interference from an outside group, particularly one that is not law enforcement, potentially could interfere with sources, evidence, and compromise the investigation.
Mr. Stirba explained that the record request did not come from the family. The Coalition did not contact the family or the Sheriff or anyone in Beaver County. Mr. Stirba stated that they have complied with the rules of the Committee and provided the statements of fact five days prior to the hearing. He reviewed the law enforcement exception for the initial contact report. The content of the information could be prohibited from disclosure and it could be a public document if the content does not interfere with the investigation.
Mr. Stirba reviewed some of the content items in the investigation file. The ICR contains more than just the bare minimum of information. The file has autopsy photos, very sensitive information. There may have been a sexual assault involved. The Sheriff's Office references the privacy interests of the family. The family is satisfied with the efforts of the Sheriff's investigation. It is appropriate for the family to not want this to be disclosed. The mother of the victim is deceased. The brother and sister live in Beaver County. The Sheriff asked the Cold Case Foundation to help. The Foundation consists of law enforcement personnel and the Federal Bureau of Investigation (FBI) is involved. It makes sense for Beaver County to include those people who are within the law enforcement community.
The legislature said the protected restrictions are in the public's good. We want the law enforcement community involved in sensitive matters and not put in the hands of the Coalition, which the family does not want to be involved.

Mr. Stirba referenced Schroeder v AGO. This case went to the Supreme Court. They said, "In so holding, nothing in our decision requires state prosecutors to implement an open file policy with journalists and curious citizens." GRAMA provides 64 categories of protected information, the County relies on two that no one can access without compelling justification.
Mr. Stirba said that under precise provisions of GRAMA and common sense, there was no purpose to be served by releasing the records, and the law enforcement exception is clear.
Mr. Stirba referenced a case from Arkansas. It was a request for records and suggestion of something done after the request. The court said the records should be released but it had nothing to do with timing.

Beaver County Sheriff, Cameron Noel, sworn in.
Sheriff Noel stated that he was the first responding officer in 1998. DNA evidence was submitted in 1998 and in 2005. Recently, DNA evidence was submitted by the detective assigned when Sheriff Noel became the Sheriff.

Questions from the Committee
The Committee discussed that when the DNA was submitted a meeting was scheduled and the meeting took place in the past two weeks. There are more meetings ahead. The meetings are to review the crime-lab results. The Beaver County investigator has conducted follow-up interviews over the past four or five years and has many more interviews to come.

Petitioner Closing
Ms. Porter explained that a cold case is defined as three years by statute. If there had been activity on the case in the past three years she would withdraw the appeal. Ms. Porter stated that Beaver County cannot protect the records retroactively. She has asked for redaction of any privacy interests.
Ms. Porter reviewed the Coalition's opening of the country's first non-profit DNA lab. It is a totally different type of DNA testing, SNP or snip-testing has been available in the last few years. STR testing has been available since the 2000s. The Coalition works with the Cold Case Foundation's forensic experts.
Beaver County cannot retroactively call it an open case if it wasn't actively being investigated.

Respondent Closing
Mr. Stirba explained that no records have been released to the Cold Case Foundation. They are a free consulting group. Beaver County is only consulting with them. The law enforcement exception clearly fits this case. There has been ongoing activity with this case for years. The release of records could reasonably compromise sources, interfere with the investigation, and disclose investigation techniques otherwise not known to the public at large. In this case, the family does not want the records released.
Mr. Stirba agrees that there is a statute about cold cases. He believes that the information is restricted to law enforcement. The public policy, common sense, and statute require the records to stay with Beaver County, which is making progress in this case.

Question from the Committee
The Committee discussed that according to Bureau of Criminal Identification (BCI), the Cold Case Database is accessible to law enforcement and the public. There is restricted information for law enforcement only. There have been public tips that have solved past cases.
The Committee discussed release of the ICR. The ICR is not specifically described in the request but the ICR fits within §63G-2-305(10). There is a lot of information under the law enforcement exception.

Deliberation
The Committee discussed past legislation for the Utah BCI Cold Case Database where law enforcement is required to put data in the database about cases older than three years and is required to have publically available so the public can provide tips. The Committee discussed a recent news article about the database and the work of the Cold Case Coalition. The Committee may not be persuaded the Coalition cannot receive this information when the governmental entity works with two other non-profit organizations, Cold Case Foundation and a national non-profit law enforcement organization. The Committee does not find it compelling that this was an ongoing investigation with zero activity for 21 years.
The Committee discussed Utah Code §63G-2-305(10), that it is not specific to all investigation cases. The ICR is normally public. Previously, the Committee has ordered the ICR records released with redaction. It is concerning that nothing has been provided. The Committee has ruled before that there are privacy interests for some types of records such as autopsy reports. After 20 years, the argument for investigative techniques not known outside law enforcement and fair trial issues are far removed from 1998.
A challenge the Committee faced was that, if they wanted to see records the County did not bring them to the hearing.
There is a 2000 *Deseret News* article asking the public's help and the public's input. There is information in the article about the murder already revealed.
In most cases, the Cold Case Coalition is asked by the family to get involved. In this case, the family did not ask. There is an assertion by Beaver County that the family is pleased with the way the Sheriff's Office is handling the investigation.
The Cold Case database contains certain information that normally is included in the ICR.
The Committee discussed reviewing the records in order to consider their release since Beaver County denied the investigation file in its entirety.

Motion by Ms. Smith-Mansfield: Review the records *in-camera* and continue the appeal to the next available meeting. Classify the individual records specific to Utah Code §63G-2-305(10)(a-e) and §63G-2-302(2)(d).
Seconded by Mr. Fleming.
Vote: Aye: 6 Nay: 0. Motion carries 6-0. Mr. Haraldsen, Ms. Richardson, Ms. Mansell, Mr. Williams, Mr. Fleming, 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.

BUSINESS

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

Motion to Approve August 8, 2019, Minutes by Mr. Williams.
Seconded by Ms. Mansell.
Vote: Aye - 6, Nay – 0. Motion carries 6-0. Mr. Haraldsen, Ms. Richardson, Ms. Mansell, Mr. Williams, Mr. Fleming, and Ms. Smith-Mansell voting for the motion.

Report on Appeals Received
The executive secretary reviewed the status of the appeals received. Ms. Proctor reported the declined appeals:
Benjamin Pate v. Salt Lake County Sheriff's Office: Requesting a fee waiver for records regarding himself from 1980-2000. Untimely appeal.
Ozwald Balfour v. Utah Sentencing Commission: Requesting access to 2005-2019 Sentencing and Release Guidelines (excluding 2017). Utah Sentencing Commission provided all responsive records that they maintain.

Motion to approve the FY 2019 Annual Report by Ms. Smith-Mansfield.
Seconded by Mr. Williams.
Vote: Aye - 6, Nay – 0. Motion carries 6-0. Mr. Haraldsen, Ms. Richardson, Ms. Mansell, Mr. Williams, Mr. Fleming, and Ms. Smith-Mansell voting for the motion.

Other Business
The next meeting is scheduled for October 10, 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 Ms. Smith-Mansfield.
Seconded by Mr. Fleming.
Vote: Aye: 6. Nay: 0. Motion carries 6-0. Mr. Haraldsen, Ms. Smith-Mansfield, Ms. Mansell, Mr. Williams, Mr. Fleming, and Ms. Smith-Mansell voting for the motion.

The Chair adjourned the September 12, 2019, State Records Committee meeting at 4:27 p.m.

This is a true and correct copy of the September 12, 2019, SRC meeting minutes, which was approved on October 10, 2019. An audio recording of this meeting is available on the Utah Public Notice Website at https://archives.utah.gov

X *Gina Proctor*
Executive Secretary