

State Records Committee Meeting

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

Date: December 12, 2019

Time: 9:00 a.m. – 4:00 p.m.

Committee Members Present:

Tom Haraldsen, Chair, Media Representative
Kenneth Williams, State Archivist
David Fleming, Private Sector Records Manager
Cindi Mansell, Political Subdivision Representative
Holly Richardson, Citizen Representative
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:

Talon Hamman
Patrick Sullivan
Courtney Tanner
Brad Jeppsen, West Valley City

Others Present:

Lonny Pehrson, Assistant Attorney General
Justin Anderson, Assistant Attorney General
Robert Tripp, Davis County
Richard Jorgenson, Schatz Anderson
Kent Singleton
Jeff Glum
Miyako Uehara
Steve Onysko
Ryan Beam

Agenda:

- Four Hearings Scheduled
 - Patrick Sullivan (for Talon Hamann) v. Utah Department of Corrections
 - Steven Onysko v. Attorney General's Office

- Schatz Anderson (for Riley Booker) v. Davis County Sheriff's Office/Jail
- Courtney Tanner (Salt Lake Tribune) v. West Valley City
- Business:
- Approval of November 14, 2019, minutes, action item
- SRC appeals received and declined, notices of compliance, and related action items
- Discussion regarding rescheduling postponed appeal hearings
- Cases in District Court, report
- Other Business
 - Next meeting scheduled for January 9, 2020, 9 a.m. - 4 p.m.
 - Committee members' attendance polled for next meeting, quorum verification.

Call to Order

The State Records Committee Chair, Tom Haraldsen, called the meeting to order at 9:03 a.m.

1. Patrick Sullivan (for Talon Hamann) v. Utah Department of Corrections

Mr. Sullivan and Mr. Hamann were connected telephonically to the hearing. Mr. Haraldsen announced the hearing. The Committee members introduced themselves. Justin Anderson, legal counsel for the Utah Department of Corrections (UDC), introduced himself. 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. All parties acknowledged the restrictions.

Petitioner's Statements

Mr. Sullivan reviewed his record request and Mr. Hamann's signed power of attorney document that was submitted to the Utah Department of Corrections (UDC). He explained that the signed power of attorney named him as an attorney in fact. Mr. Sullivan explained that UDC denied his request based on the power of attorney does not expressly state he is to be given access to Mr. Hamann's records. Mr. Sullivan referred to portions of the relevant GRAMA statute, found in Utah Code §63G-2-202(a)(iv)(A), and in Power of Attorney Act. Mr. Sullivan stated that the State is trying to use court cases as grounds for the State Records Committee to deny his appeal. The cases cited revolve around trusts and were decided prior to amendments and not in the current statute. Formerly, the statute said that power of attorney had to give express authorization to modify the specific type of trust. Nothing in GRAMA or Power of Attorney Act says that there has to be specific consent to receive records of which someone is the subject. The power of attorney signed by Mr. Hamann is a general power of attorney. This version of the Act was amended in 2016. The cases UDC are referencing are based on an old version of the statute.

Mr. Sullivan reviewed the definition of agent and explained that he had general authority to do whatever Mr. Hamann can do. Mr. Sullivan stated that an agent, attorney in fact, authorized by the principal with respect to that subject is able to demand, receive, and obtain by litigation or otherwise, money or a thing of value, to which the principal is or may become, or claims to be entitled. The records of which Mr. Hamann is the subject is a thing to which Mr. Hamann is entitled. Mr. Sullivan stated that he should be able to obtain those records. Mr. Sullivan stated that he can communicate with any representative of the governmental entity on behalf of the

principal. He is delegated to do for Mr. Hamann anything he can do himself. He can make any claim or litigation asserted before an administrative agency, make a claim or cause of action to recover a thing of value. In this case the thing of value are the records.

Mr. Hamann was sworn in. Mr. Hamann answered questions regarding his signature on the power of attorney form, his intent to have Mr. Sullivan represent him in requesting access to records, and the validity of the form he signed. Mr. Hamann stated that he was visited by an investigator from UDC. The investigator requested that he withdraw the power of attorney and suggested that there were nefarious reasons. Mr. Hamann expressed his intent to not revoke the power of attorney, saying that he signed it willingly and knowingly. Mr. Hamann had no objection to Mr. Sullivan continuing to act with his power of attorney. Mr. Hamann stated that he had no mental defect or disability that would affect the validity of his signature on the power of attorney.

Mr. Sullivan stated that it is clear that UDC felt there were issues with the validity of the power of attorney. He expressed that Mr. Hamann knew what he was doing willingly, knowingly, and voluntarily. Mr. Sullivan reviewed restrictions on power of attorney including a seven business day window for UDC to accept or reject the power of attorney. If they failed to reject or dispute power of attorney as valid within seven business days, then they agree that it is valid. UDC waited two weeks to dispute the validity of the power of attorney. UDC denied and refused to accept the power of attorney. UDC informed Mr. Sullivan that he could add a provision that stated Mr. Sullivan can have the records or Mr. Hamann can submit a notarized release for Mr. Sullivan to receive the records. Mr. Sullivan stated that UDC cannot require him to submit another document.

Respondent Statements

Justin Anderson, Assistant Attorney General, representing Utah Department of Corrections (UDC), stated that power of attorney interpretation has changed since the case law was written but the statute should be strictly interpreted. Mr. Sullivan states that he can literally do anything that Mr. Hamann can do. He referenced Utah Code §75-9-203 Uniform Probate Code (UPC). A reasonable interpretation would not include what Mr. Sullivan believes. The records do not fit within any of the 10 subsets in the statute. Prison records are not a thing of value in the UPC. UPC did not contemplate private records held by governmental entities. The power of attorney should be disregarded in favor of specific provisions in the UPC. The UPC describes things of value, not subjective value. Mr. Sullivan is wrong in his interpretation. Mr. Hamann may sign a notarized release for access to private records instead of power of attorney. If the Committee disagrees with UDC's interpretation, Mr. Sullivan has requested more records than he is entitled to. Mr. Anderson reviewed Utah Code §63G-2-201(10)(a)(b). Mr. Hamann has received two records in 2019. Mr. Sullivan should specify which three records he wants from his record request.

Questions from Committee:

The Committee discussed §63G-2-201(10)(a)(b)(ii). UDC states power of attorney is not the same as an attorney licensed by the BAR, the authority is different between these two.

It is clear that Mr. Hamann wants Mr. Sullivan to act on his behalf. UDC is constrained by the power of attorney that he signed. He cannot verbally add amendments to the power of attorney. Mr. Hamann may need to amend the power of attorney or sign a release.

Petitioner Closing

Mr. Sullivan reviewed the Uniform Power of Attorney Act, §75-9-203 and §75-9-212. He clarified the authority of a power of attorney and explained he is entitled to act on Mr. Hamann's behalf. Mr. Sullivan reviewed his interpretation of Utah Code §63G-2-201(10)(a)(b).

Respondent Closing

Mr. Anderson reviewed Mr. Sullivan's five requests. He explained the common understanding of attorney and power of attorney. The differences are important. An attorney cannot sign documents on behalf of a client. An attorney represents the interests of a client. He reviewed what items were of value.

Deliberation

The Committee discussed Utah Code §63G-2-202(1)(a) and the release of private records to the person who has power of attorney. The Committee considered the power or attorney arguments put forth by the petitioner and respondent. The Committee considered attorney requests submitted under GRAMA and Discovery.

Motion by Ms. Mansell: Pursuant to §63G-2-202(1)(a)(iv)(A), the Committee is persuaded that the power of attorney submitted by Mr. Sullivan is recognized as valid and grants him the right to request records on Mr. Hamann's behalf.

Seconded by Mr. Williams.

Vote: Aye: 5 Nay: 0. Motion carries 5-0. Mr. Haraldsen, Mr. Williams, Mr. Fleming, Ms. Mansell, and Ms. Smith-Mansfield voting in favor of the motion.

Motion by Ms. Smith-Mansfield: Based upon the intent of Utah Code §63G-2-201(10)(a)(b), an inmate is limited to five records per calendar year, which contain a specific reference to the individual. Two requests have been made leaving three requests remaining.

Seconded by Ms. Mansell.

Vote: Aye: 5 Nay: 0. Motion carries 5-0. Mr. Haraldsen, Mr. Williams, Mr. Fleming, Ms. Mansell, and Ms. Smith-Mansfield voting in favor of the motion.

Motion by Mr. Fleming: The Committee orders the release of the first three records listed on the record request, classified appropriately as private.

Seconded by Ms. Mansell.

Vote: Aye: 5 Nay: 0. Motion carries 5-0. Mr. Haraldsen, Mr. Williams, Mr. Fleming, Ms. Mansell, and Ms. Smith-Mansfield voting in favor of the motion. Ms. Richardson absent.

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.
Reconvene.

2. Steven Onysko v. Utah Attorney General's Office

The Chair announced the hearing and provided instructions and reviewed the procedures. The Chair indicated the Committee members present. He 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. Lonny Pehrson, Assistant Attorney General, acknowledged the restrictions. Mr. Onysko did not.

Mr. Onysko questioned the Chair's authority to restrict mediation discussion under the Open and Public Meeting Act §78B-10-108. Mr. Onysko read Utah Code §78B-10-106 exceptions to privilege under the Uniform Mediation Act. Mr. Onysko stated that no mediation was used and he does not agree to the restriction on not presenting mediation discussions and he believes that requiring agreement to the restriction is an abuse of discretion.

Mr. Onysko reviewed the motions he brought to present to the Committee. One, objection to the Committee's legal counsel. Two, verify that Mr. Pehrson brought the records in question. Three, summary judgment due to a non-designated Chief Administrative Officer (CAO) who issued the decision on his appeal to the CAO. Mr. Onysko objected to the Committee holding a hearing today.

Petitioner Statements

Mr. Onysko stated that he had two issues, abuse of authority of legal counsel and the appearance of conflicted interests. He asserted that there was obstruction of citizens' rights to determine if corruption is taking place within the Attorney General's Office (AGO). He claimed that a previous staff member left employment with a cell phone and a laptop that belonged to the state. The laptop contained sensitive information about litigation that was ongoing with the AGO. When the AGO requested the cell phone and laptop be returned the former employee reported that the items were stolen from a parked and unlocked vehicle.

Mr. Onysko stated that he is entitled to the records he requested. He objects to Mr. Green's decision in the CAO response. He feels that new issues were raised in the denial.

Mr. Onysko addressed attorney-client privilege mentioned in the initial response by the AGO. He stated that in *Southern Utah Wilderness Alliance v. Automated Geographic Reference Center*, within the Division of Information Technology, decision in 2008, established the attorney-client relationship. He also referenced *Deseret News Publishing Company v. Salt Lake County*, as it relates to invasion of personal privacy. The invasion must be clearly unwarranted. Mr. Onysko reviewed several points in Mr. Green's response regarding his request for phone records from a specific phone number during the date range April 1, 2018, thru June 30, 2018. Mr. Onysko reviewed the Committee's order #17-19, *Steven J. Onysko v. Jordanelle Special Services District*, related to unredacted telephone numbers. He reviewed partial phone numbers that were provided to him. He explained that he wanted further phone records that indicate any calls that were made during the time frame he specified in his June 14, 2019, GRAMA request.

Respondent Statements

Mr. Pehrson, stated this a simple case of Mr. Onysko refusing to take yes for an answer. He wants the Committee to perform an investigation into other matters and take measures that are outside the scope of the Committee's jurisdiction. His request asked for call records of a specific phone number for a specific date range. Mr Pehrson stated that the AGO provided more records than needed with redactions. On appeal to the Solicitor General, Tyler Green gave him the unredacted copies of the call records he requested. There were other records that were initially provided with redactions but those were not considered on appeal and not provided to him unredacted as they were outside the scope of the request. Those records may be requested separately. It is inappropriate and unnecessary to ask the Committee to amend the request to include any records outside the scope of the request. Mr. Pehrson explained that Mr. Onysko's issue about Tyler Green responding as the CAO is resolved through Utah Code §63G-2- 401(9), the duties of the chief administrative officer may be delegated. He was designated by Sean Reyes to be the person to respond to the request. Mr. Pehrson explained that David Sonnenreich is the AGO records officer for records management, not the CAO. Mr. Pehrson stated that rather than accepting yes for an answer Mr. Onysko insisted on having this hearing to fill a personal agenda. Mr. Pehrson stated that all of the records in Mr. Onysko's appeal were provided. The call records provided did not include the calls made at the end of June. July's billing records were provided but did not list any calls for the specific phone number. The August billing records show no calls were made. The AGO provided those records.

Regarding attorney-client privilege, this issue is moot and does not apply to these records. There is no record provided within scope of his request that were classified as attorney-client privilege. The issue of CAO decision was de novo. The CAO does not have to make a de novo review. The CAO can reclassify a record at any time. Mr. Pehrson stated that he did bring the records for an in-camera review.

Questions from the Committee

The Committee discussed that the phone was reported stolen and not returned to the AGO. Incoming and outgoing call records from April 1, 2018, through June 30, 2018, have been provided to the petitioner without redaction.

Petitioner Closing

Mr. Onysko, stated that he is entitled to confirmation of assertions by the AGO. Mr. Onysko stated that he was provided with substitute records that are unrelated not additional records. Mr. Onysko stated that there is no evidence that Mr. Green was designated as the CAO from a legal perspective. Mr. Onysko stated that the appeal is the second opportunity of the CAO.

Question from Committee

The Committee determined that Mr. Onysko received the call records for April 1, 2018, through June 30, 2018, but subsequent billing records may exist in the September 5, 2018 billing.

Continue Petitioner Statements

Mr. Onysko stated he did not amend his request. The attorney-client rule was overruled by Mr. Green. Mr. Green did not unredact the calls that were outside the scope of the request. The

CAO made a de novo review. AGO cannot make a second decision on the appeal. Mr. Onysko stated that he is entitled to all the records, unredacted, and the August billing.

Respondent Closing

Mr. Pehrson stated that there is no support in statute that the CAO cannot assert different grounds for redaction of records on an appeal level. The CAO appeal is a final decision. The initial decision is just an initial review of the records. If Mr. Onysko wanted the September billing, he could have requested it. There was one call on April 13, 2018, for three minutes. There are no other calls on that statement. That is adequate proof that there are no additional calls for that period. The bill is dated June 5, 2018, because it reports the calls retroactively. On the next month there are no reported calls because there were no call records. Where there is no call, there is nothing below the statement. The AGO provided July and August statements and there are no calls for that phone. The AGO would be happy to provide the September statement if that is what he wants. There are no call records for September statement. He is amending his request. Regarding attorney-client classification, this is moot because nothing has been withheld from the records provided.

Questions from Committee

The Committee determined that the monthly assessment is \$49.99 plus fees for a total of \$53.42 and the phone number is active. The Committee reviewed the billing pages for the relevant phone number.

Deliberation

The Committee discussed that the records are public as decided in Onysko v. Jordanelle Special Services District, order #17-19. The request was for cell phone call records from April 1, 2018 through June 30, 2018. The only issue is whether the Committee thinks that there are calls within that time frame that were not provided. They discussed whether it is possible that any relevant calls have been post billed three months later. They discussed whether they would want the Respondent to go back and see if in September's bill if there are any responsive calls.

Motion by Mr. Fleming: The records are public and the Committee relies on decision and order #17-19, Onysko v. Jordanelle Special Services District. The Committee is persuaded that the Respondent should go back and determine whether there are any phone calls listed on the September billing records for April 1, 2018, through June 30, 2018, and provide the records. Seconded by Mr. Williams.

Discussion on the motion

Some Committee members were not persuaded that there are additional records.

Motion by Ms. Mansell: Deny the appeal. The Committee finds that the records are public and the responsive records have been provided. The Committee is not persuaded that additional records exist.

Seconded by Ms. Richardson.

Vote: Aye: 3 Nay: 2 Abstain: 1. Motion carries 3-2-1. Mr. Haraldsen, Ms. Richardson and Ms. Mansell voting in favor of the motion. Mr. Williams and Ms. Smith-Mansfield voting against the motion. Mr. Fleming abstained.

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.

3. Courtney Tanner (Salt Lake Tribune) v. West Valley City

The Chair announced the hearing. Ms. Tanner and Brad Jeppsen, West Valley City, were connected to the hearing telephonically. 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's Statements

Courtney Tanner requested the appeal hearing be continued to February 12, 2020, in order for her and Mr. Jeppsen to work through the mediation they have begun. The same records are requested from the University of Utah and they are working with that entity as well.

Questions from Committee

The Committee discussed the requirement, in compliance with administrative rule, for requests to postpone an appeal hearing is two days prior to the meeting.

Motion made by Mr. Fleming: Continue the appeal until the State Records Committee meeting on February 13, 2020.

Seconded by Ms. Mansell.

Vote: Aye: 5 Nay: 1. Motion carries 5-1. Mr. Haraldsen, Ms. Richardson, Mr. Williams, Mr. Fleming, Ms. Mansell, voting in favor of the motion. Ms. Smith-Mansfield voted against 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.

4. Schatz Anderson (for Riley Booker) v. Davis County Sheriff's Office/Jail

The Chair announced the hearing and provided instructions and reviewed the procedures. He indicated the Committee members present. 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

Richard Jorgensen, represented Mr. Booker. After a driving under the influence (DUI) arrest he requested video recording of the breath test that was conducted at Davis County Jail. They are a law enforcement agency and they create the video of the intoxilyzer area. In order for intoxilyzer result to be admissible after a DUI, the arrested driver must have his mouth checked and be visually observed for a 15-minute period prior to breathing into the instrument. The person administering the test must be certified in the instrument and certified (POST). We seek the intoxilyzer video that is and was at Davis County Jail that Mr. Booker submitted to. It was denied per Utah Code §63G-2-106, excluded as security plan, code, procedures, pass code, keys or design measures. Body Camera is prevalent in Utah and statutory Utah Code §77-7a-104, the officer shall use body camera, activate it and it shall be kept for the encounter. Mr. Jorgensen stated his position and that the dispute is factual. What is shown is not part of a security design. It is of the limited booking area. He has obtained videos in the past of the same booking area and he has six videos with him today that were previously provided under GRAMA by Davis County. The claim of a security issue is not appropriate. It can be obtained under discovery. The prevailing case law is State v. Spry, 2001, and State v. Pliego, 1999, prosecution does not have to get video that they don't think they need and is not exculpatory. Mr. Jorgensen stated that he cannot force the prosecutor to GRAMA request this video from the jail to provide under discovery. The driver's license division holds an administrative hearing within 30 days of driver's arrest. Their sole determination is whether to suspend driver's license privilege pursuant to arrest. Their consideration is if the arresting officer properly gave admonitions to the driver, whether they submitted to the chemical test and what the results were, if any. Part of that determination is whether the officer properly administered the breath test. Administrative hearings happen within 30 days of the arrest. If they tried to use the discovery process through the criminal case the time frame for challenging a driver's license administrative hearing would be long gone. The Committee has reviewed Utah Code §63G-2-106, in the past. The courts have reviewed video from inside a correctional facility, (see State v. Mohamed and State v. DeJesus). The Supreme Court has stated that that video is key player in exculpatory evidence. If it is exculpatory it should be maintained. Mr. Jorgensen has no way of determining exculpatory evidence unless he sees it first. Mr. Jorgensen stated that they have no way of determining that the video would show whether the breath test was conducted in compliance and whether that evidence is admissible or not. He reviewed previous Committee decisions in cases regarding Utah Code §63G-2-106 for security plans. Pritchard v. DCFS when scans of AGO scanned in and security video of clerk's office span of 5 days, and UDC review of security video of jails. He is not requesting security plans. He is requesting just the time that his client entered the facility until the end of the breath test. He does not want a comprehensive security plan. The video is from a fixed security camera view of the client as soon as he enters and completes the breath test. Mr. Jorgensen has still pictures of previous clients which Davis County complied with GRAMA to show that nothing can be gained under Utah Code §63G-2-106 that would jeopardize the security of the jail.

Questions from Committee

The Committee determined that the petitioner brought with him still images and video received from Davis County in previous GRAMA requests that contain video camera area as what he is requesting.

Respondent Statements

Robert Tripp, legal counsel for Davis County. The Petitioner has accurately stated the request. They want the video of the intoxilyzer from when their client arrived at the jail. The video camera is not solely the video captured of the intoxilyzer. How the jail operates, the entrance and exit is also revealed in this same footage. That is the concern. There is a big difference between surveillance video of a secure jail facility and body cam/dash cam video. Jail staffing protocols, how they operate, and when certain doors open is a concern and those are revealed in this video. Davis County is not prosecuting this case. Farmington City is the prosecutor and Utah Highway Patrol (UHP) is the arresting agency. Davis County merely houses the intoxilyzer. It is not that Davis County does not want to provide the video. They would like to provide it but when all the security issues were discovered, they realized that they cannot release it to the public. The video can be dissected and studied and puts security at risk. They have tried to redact portions but the video is tamperproof to restrict alteration of the video. This is why they have disqualified this video under GRAMA §63G-2-106. It contains security plans, building design, security procedures, that are included in §63G-2-106 and are exempt from GRAMA. Mr. Tripp explained that they are not saying that the Petitioner can get it under discovery. That is not Davis County's position. The video is not available under GRAMA, however it could be received under Discovery. Mr. Tripp explained that the Petitioner provided statements of fact about initial contact reports (ICR). The intoxilyzer room is a subsequent report to the ICR. There are two times that the Committee has addressed security information previously. Transportation departure and return times; dates and policy regarding restraints, dates/times employees came out of the building, their security access scans of their cards, dates/times, and first and last names of staff. This video camera footage is different from surveillance video of a secure area of a jail secure facility.

Questions from Committee

The Committee discussed that the cases previously heard were determined to be security measures. The intoxilyzer is not Davis County property. It is UHP's property. The costs and who houses the records with such a camera is being reviewed by the County. Some concerns about the video are: people using key pads/access cards into a secure area; how many staff are entering the area; how they open doors and conduct the protocols of a secure area within the jail. The video is approximately 10-15 minutes. The Respondent did not bring the video today. They have tried to edit the video. It is Davis County's camera and their determination is that the video is exempt from GRAMA because it contains all of the security information that is described as exempt. The intoxilyzer test is done in the pre-booking area and shows secure entrance of the jail; when doors open and close; how staff enter; and how many staff are present. It protects the public coming in and the officers entering and exiting. It reveals any weakness of the facility. The video software program is not alterable. The video clips brought that were previously provided are from the same camera and same area that is in the requested video.

Petitioner Closing

Mr. Jorgensen stated that the fixed camera footage contains video of a public area. It shows the pre-booking area where the arrestees enter through the sally port. It is not a control room, break room, changing room, or secure area where only staff are authorized to be. The public is brought there when arrested. The video does not show patterns of operation. It does not expose a week long time-line of activity at the jail. It shows the control room's pre-booking window and sally port door. It shows the breathalyzer area, a desk built out of cinder blocks. It does not show a layout of the building. It shows an overhead view. There are no wiring diagrams, keypads, nor indications of where the doors lead. There is nothing new, novel, or unique to this building.

Mr. Jorgensen explained that UHP does not have its own buildings to house the machine. They are a law enforcement agency and a state agency. All jails are run by the county. There are no UHP jails or UHP controlled facilities. Davis County Jail is part of the prosecution and detention of his client. UHP owns every intoxilyzer in the state. He requests records from UHP of their certification of the machine. He needs the motion video showing the officer conducting the Baker Check. It is a 15-minute check of when they check the mouth for foreign substance and watch for 15-minutes to make sure the person is not burping alcohol. He needs to watch the video to make sure the procedure was followed and the officer did not walk away or did not perform work on a computer instead of watching his client. He is charged in the legal profession with protecting his clients' rights. The video is not merely for security to know who goes there. It is not an ongoing security measure of the public entity. It is a 15-30 minute clip of the officer bringing an arrestee into the pre-booking area. The arrestee usually gives their name and they are told about the procedure.

This is distinguished from body cam video that stops at the facility. Body/cam video stops when they exit the car. This video captures the evidence of the breath test, a key piece of evidence obtained in an arrest. The evidence they obtained will show whether it was ascertained correctly and done according to the law. Mr. Jorgensen stated that he can provide the still images and video that he brought today, if needed. This is a static camera that shows a sally port and a desk and another camera that shows the intoxilyzer instrument with a stainless steel desk. The view of the building is seen. All persons who are arrested are brought to the same area. The video does not show how a person can break out of jail.

Respondent Closing

Mr. Tripp explained that the level of security is irrelevant. If it contains security protocols, procedures, or layout, then GRAMA is not the avenue to get the video. This is not a public area. The public is brought to this area only after they have been arrested. It is a secure area of the facility. Davis County is not the prosecuting agency. UHP made the arrest. Davis County operates the jail and releasing the video exposes security risks that they do not feel are appropriate to release under GRAMA. The length of the video is irrelevant. It only takes a minute to see how the jail operates, where staff are located, what the procedures are. It has security measures, procedures, number of staff, and layout of the building, the building plan, how they operate, where a person enters, and where to hide, exposing a secure area of the jail. Mr. Tripp stated that the only issue before the Committee is if security is involved then it is exempt from GRAMA and not the avenue to get the record.

Questions from the Committee

The Committee discussed that video from the camera has previously been released. Davis County denied it under the exempt provision under GRAMA. Classification of a record can be made at any time, per Utah Code §63G-2-307(2), a requirement to review a record and make a designation.

Deliberation

The Committee clarified Utah Code §63G-2-106, regarding records of a security measure designed for the protection of persons and property. In Department of Facilities Construction and Management (DFCM) v. Tribune regarding Heber Wells Building under §63G-2-106, the system was designed for key codes when people came in or out.

This area was not designed for security measure. It may include secure areas but not designed for it. If not designed for security measures, then Utah Code §63G-2-305(12) may apply, jeopardize the security of a government property. This camera covers this area and was put in place when they built the area. It was designed to cover the area. The intoxilyzer was put in place later when UHP asked Davis County Jail to house it.

The Committee discussed that police departments have security cameras that are not solely for security or documenting the actions that take place. As cited as in order #14-04, the Committee ruled as public the video of intoxilyzer video. In order #17-42, video of a lobby area was reviewed that the governmental entity said had security areas. Whether it is the sole purpose of the camera and whether it changes over time to rely on §63G-2-106 cannot be determined without reviewing the video.

The Committee is reluctant to continue hearing for the purpose of seeing the video when video camera footage of the same area is present today and offered by the Petitioner for review. The Petitioner has indicated a sensitive time issue. The implication is that he can potentially provide proof that the correct procedure was not followed, invalidating the test, prior to revocation of the driver's license.

Motion by Mr. Fleming: Grant the appeal. Based on previous Committee order #14-04, Jessica Phillip v. West Jordan Police Department, and absent being provided the video for *in-camera* review, and based on testimony provided today, the Committee is persuaded to release the video of the booking area of the intoxilyzer as a public record pursuant to Utah Code §63G-2-301(3)(g).

Seconded by: Ms. Richardson.

Vote: Aye: 4 Nay: 2. Motion carries 4-2. Ms. Richardson, Mr. Williams, Mr. Fleming, Ms. Mansell voting in favor of the motion. Mr. Haraldsen and Ms. Smith-Mansfield voting against 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.

Lunch 30-minute break.

Reconvene.

BUSINESS

Motion to Approve November 14, 2019, Minutes

The motion to approve the minutes was made by Mr. Williams.

Seconded by Ms. Mansell.

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

Report on Appeals received, report

Ms. Proctor, the executive secretary, reviewed the status of appeals received and the declined appeals:

2019-131 Brady Eames v ULGT: Requesting an expedited appeal for inspection of the pre-1980 and 1981-1988 open public meetings' minutes of the Board.

2019-133 Brady Eames v ULGT: Requesting expedited appeal and access to any and all notices sent to members of ULGT related to each "annual meeting" of the members of ULGT in which an elected or appointed official of a city, town, county, or special district was elected by the members of ULGT as a director of the Board or other business was transacted.

2019-124 Kent Singleton v. Riverdale City: Requesting access to policies and procedures for operating a business in the Senior Center, also requesting access to the contract between the Riverdale Senior Center and Newsletter advertisement agency. The Committee determined to reschedule this appeal hearing for February 13, 2020.

Motion to reschedule appeal by Mr. Williams per administrative rule, R35-2-2, for February 13, 2020.

Seconded by: Ms. Mansell

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

2019-117 Jana Tibbitts (for Ai Ning Hsu) v. Department of Human Services (DHS): The Committee discussed a motion to dismiss submitted by DHS. No decision was made.

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

Other Business:

Discussion regarding postponing appeals.

The next meeting is scheduled for January 9, 2020, 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

The Chair adjourned the December 12, 2019, State Records Committee meeting at 2:10 p.m.

This is a true and correct copy of the December 12, 2019, SRC meeting minutes, which was approved on January 9, 2020. An audio recording of this meeting is available on the Utah Public Notice Website at <https://archives.utah.gov>.

x *Gina Proctor*
Executive Secretary

APPROVED