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| **State Records Committee Meeting**Location: Courtyard Meeting Room, 346 S. Rio Grande St., SLC, UT 84101Date: January 9, 2020Time: 9:00 a.m. – 5:00 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**:

Gordon Thomas

Tiffany Gilman

Patrick Sullivan

Kendall Laws, San Juan County Attorney

Mike Favero

**Others Present**:

Justin Anderson, Assistant Attorney General

Laron Lind, Assistant Attorney General

Bryant Hinckley, Assistant Attorney General

Denny Lytle, Utah State Tax Commission

Byron Ellis, Garfield Taxpayers Association

Denise Olson, Garfield Taxpayers Association

Andrew Gulliford

Patrick Tanner, Logan City School District

Frank Schofield, Logan City School District

Jeff Barber, Logan City School District

Harry Souvall, Unified Police Department

Paul Amann

Eric Johnson, Seven County Infrastructure Coalition

Ryan Beam, Center for Biological Diversity

Raphael Cordray, Utah Tar Sands Resistance

Lionel Trepanier

Steven Onysko

Toni (illegible/unknown)

Jeff Glum

Kent Singleton

Miyako Uehara

Jana Tibbitts

Rebekkah Shaw, Utah State Archives

Rosemary Cundiff, Utah State Records Ombudsman

**Agenda**:

* Ten Hearings Scheduled
	+ Gordon Thomas v. Utah Department of Corrections
	+ Patrick Sullivan v. Utah Department of Corrections
	+ Tiffany Gilman v. Utah Department of Corrections
	+ Andrew Gulliford v. San Juan County Commissioners
	+ Byron Ellis (Garfield County Taxpayers Association) v. Utah State Tax Commission
	+ Cathryn Raphael Cordray v. Seven County Infrastructure Coalition
	+ Margaret Townsend/Ann brown (Center for Biological Diversity) v. Seven County Infrastructure Coalition
	+ Mike Favero v. Logan City School District
	+ Paul Amann v. Unified Police Department of Greater Salt Lake
	+ Paul Amann v. Unified Police Department of Greater Salt Lake
* Business:
* Approval of December 12, 2019, minutes, action item
* SRC appeals received and declined, notices of compliance, and related action items
* Cases in District Court, report
* Other Business
	+ Nomination of Committee Chair, action item
	+ Nomination of Committee Chair pro tem, action item
	+ Nomination of Executive Secretary, action item
	+ Approval of 2020 State Records Committee meeting dates, action item
	+ Open and Public Meeting Act training
	+ Next meeting scheduled for February 13, 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. **Gordon Thomas v. Utah Department of Corrections**

Mr. Thomas was connected telephonically to the hearing. Mr. Haraldsen announcedthe hearing. The Committee members introduced themselves. Justin Anderson, Assistant Attorney General and 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. Both parties acknowledged the restrictions.

**Petitioner’s Statements**

Mr. Thomas stated that he recently received the responsive records with a fee waiver. He asked to withdraw his appeal. He is satisfied with the records he received.

**Motion** by Mr. Fleming to accept the Petitioner’s withdrawal of his appeal.

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 is absent.

The hearing is concluded.

1. **Tiffany Gilman v. Utah Department of Corrections**

Tiffany Gilman was connected telephonically to the hearing. Mr. Haraldsen announcedthe 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. Both parties acknowledged the restrictions.

**Petitioner’s Statements**

Ms. Gilman explained her interest in the Ted Bundy case. She reviewed her research, qualifications, and background. Ms. Gilman reviewed her record request, which was denied by Utah Department of Corrections. UDC classified the record series as private. Ms. Gilman explained that she is opposed to the classification due to the notoriety and high-profile of the case. She stated that Ted Bundy should not have a right of privacy since he is deceased for many years. She reviewed Ted Bundy’s appearances in media and public court documents. Ms. Gilman reviewed SRC Case No. 12-09, Kurt Danysh v. Unified Police Department as it relates to a right to privacy. She addressed Mr. Bundy’s family members’ privacy. She explained that the daughter has dropped out of the public eye and changed her name so that she would not be identified as Ted Bundy’s daughter. She referenced Utah Code §63G-2-310, records do not retain a previous classification indefinitely. Any private information or sensitive, protected information could be redacted if it is relevant to today’s prison operations. She reviewed her record requests regarding Ted Bundy to other governmental entities in Utah, other states’ and federal records that had been released to her.

**Question from Committee**

The Committee discussed that records that UDC provided to Ms. Gilman.

**Respondent Statements**

Justin Anderson, Assistant Attorney General, representing Utah Department of Corrections (UDC), stated that the initial matter is that GRAMA does not differentiate between living and deceased persons. A tort claim or personal injury case is different from access to records. He explained that under federal law, a deceased person cannot be a plaintiff in an invasion of privacy case. Access to records is separate from these types of cases. The Committee has previously recognized that inmate “jackets” or record files are appropriately classified as private.

Mr. Anderson reviewed that in 2012, Kurt Danysh requested records from Unified Police Department (UPD) pertaining to the murder of Susan Gall by her son. UPD released some records but withheld crime scene photographs because the photos would violate the surviving family member’s right to privacy under Utah Code § 63G-2-302(22)(d), unwarranted invasion of privacy. In that case, Case No. 12-09, the Committee recognized that deceased individuals have some privacy interest.

Mr. Anderson reviewed federal court decisions that found that family members of deceased individuals have privacy rights under Freedom of Information Act (FOIA). In *Prison Legal News v. Executive Office for US Attorneys*, Prison Legal News requested records related to a deceased prisoner. In the 10th Circuit 2011, the court found that family members have an independent right to privacy to a deceased person’s records to secure their own refuge from a sensation-seeking culture for their own peace of mind and tranquility.

Federal courts have found that the government cannot waive privacy rights of family members under FOIA. They found that a family’s failure to object at the time of trial is not sufficient to waive their own privacy interests under FOIA. Mr. Anderson addressed Mr. Bundy’s daughter’s privacy interests. He stated that the daughter has not taken any affirmative actions to waive her privacy rights.

Mr. Anderson explained that the records contain some protected information that the Committee should allow UDC to redact, if they find that the records could be released.

**Questions from Committee**

The Committee clarified the 10th Circuit Court decision.

**Petitioner Closing**

Ms. Gilman addressed the privacy of Mr. Bundy’s daughter. She stated that the daughter has not identified herself. Ms. Gilman stated that she is agreeable to redaction for privacy interests of other inmates. Ms. Gilman stated that there is no harm to releasing private records after 45 years. She reviewed that the State Records Committee has the power to review the classification under Utah Code § 63G-2-401(6).

**Respondent Closing**

Mr. Anderson indicated that redaction would be appropriate in the case where the Committee orders the release of the records. Mr. Anderson stated that the standard is whether the daughter has taken acts to waive her privacy in this sensational and infamous case. Mr. Bundy’s daughter has taken affirmative acts to increase distance in being identified as his daughter. Mr. Anderson explained that the family has privacy rights and the Committee has previously ruled that a deceased person has privacy rights.

**Deliberation**

The Committee discussed the standard for clearly unwarranted invasion of privacy. The Committee is not persuaded that a protected classification was appropriate 44 years after the records were created. The Committee is persuaded that security issues are different today than they were 44 years ago.

**Motion** by Ms. Smith-Mansfield: The records are public and subject to redaction and should be released to the Petitioner. The records are not private, pursuant to Utah Code §63G-2-310, except to the extent that they may have information about specific private individuals, still living. The records are not appropriately classified as protected for security procedures except to the extent that they describe prison facilities that are still in existence, pursuant to Utah Code §63G-2-305(13).

Seconded by Mr. Fleming.

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 was 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.

1. **Patrick Sullivan v. Utah Department of Corrections**

Patrick Sullivan was connected telephonically to the hearing. Mr. Haraldsen announcedthe 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. Both parties acknowledged the restrictions.

**Petitioner’s Statements**

Mr. Sullivan stated that his appeal relates to changes in policy that deal with privileges and the time inmates are allowed out of their cell. He explained UDC’s modifications to the restriction levels, including “E” level, maximum security inmates, and the isolation that inmates experience. Mr. Sullivan explained that there are different inmate restrictions between Gunnison prison and Draper prison. He stated that the policy restricts inmates’ ability to make telephone calls and interferes with the inmates’ friends and family visits. He stated that in his request he referred to the policy as the new or updated policy.

Mr. Sullivan reviewed the meaning of “drafts” described in 63G-2-204(1)(a)(ii) and the legislative intent. He explained that the plain language is the common meaning of the word. Mr. Sullivan reviewed Utah Code §63G-2-103(22)(b), as it relates to a temporary draft for the originator’s personal use. He stated that if the record is a draft for the originator’s personal use, it would still be a public record because it has been relied upon in carrying out action or policy. Mr. Sullivan stated that an officer showed him a copy of the policy. He stated that he requested emails or communications about this policy.

**Respondent Statements**

Justin Anderson, Assistant Attorney General, representing Utah Department of Corrections (UDC), stated that the burden is on Mr. Sullivan to provide specificity in his request. Mr. Sullivan is required to provide proof whether the policy had been relied upon and is not a draft. He has not provided any evidence to support his allegations about the differences between Gunnison and Draper or how the draft policy has been disseminated to others for notes or comments. He stated that Mr. Sullivan’s statement today was that his request applied to a draft or a new policy that has been updated and included a draft. Mr. Sullivan’s written record request states, that he believes that the new policy is not a draft. Mr. Sullivan requested the “new policy FD20,” which does not exist. Mr. Sullivan did not request emails regarding the draft policy. He requested emails "specifically explaining or dealing with why the new policy has yet to take effect.” Since there is no new policy there are no responsive emails.

Mr. Anderson explained that a draft is either not a record or it is protected under Utah Code §63G-2-305(22). In Utah Code §63G-2-103(22)(b)(ii), the policy is not a temporary draft. Mr. Anderson explained that the GRAMA definition of a person included a group of people. He stated that there are three types of public records described in Utah Code 63G-2-301(i)(j)(k) and none apply to this draft.

**Questions from Committee**

The Committee clarified that there is not a different implementation of the policy based upon an inmate’s crime. They discussed that the draft was created several years ago. They discussed whether a person could be a governmental entity.

**Petitioner Closing**

Mr. Sullivan stated that the hearing is not a court and that he is not required to submit an affidavit or a claim as evidence. His testimony is allowed and is true that a staff member showed him a draft of the policy. He is not providing the staff member’s name due to retaliation that the staff member would be subjected to and it would jeopardize that person’s job. The draft policy is being relied upon.

**Respondent Closing**

Mr. Anderson stated that Mr. Sullivan did not request a draft. He cannot expand his request. He requested the policy. The draft is not a finalized policy nor has it been relied upon. Either the draft is not a record or it is classified as protected.

**Motion** by Ms. Smith-Mansfield: The Committee is persuaded that the policy is a record. It is not a temporary draft or created for the originator’s own personal use as described in Utah Code §63G-2-103(22)(b)(ii).

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. Ms. Richardson is absent.

**Motion** by Ms. Smith-Mansfield: The Committee is persuaded by the Petitioner’s testimony that the policy was circulated to others outside the governmental entity and relied upon but not finalized, pursuant to Utah Code §63G-2-301(3)(j)&(k).

Seconded by Ms. Mansell.

**Substitute Motion** by Mr. Williams: The Committee is persuaded to continue this appeal until February 12, 2020, to review all of the responsive records *in-camera*. The Respondent will bring the responsive records requested.

Seconded by Ms. Smith-Mansfield.

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 is 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.

1. **Andrew Gulliford v. San Juan County Commissioners**

Kendall Laws, San Juan County Attorney, was connected telephonically to the hearing. The Chair announcedthe hearing, provided instructions and reviewed the procedures. The Chair indicated the Committee members present. Kyle Maynard, legal counsel for Mr. Gulliford, 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.

The Chair explained that this appeal was originally heard in September 2019. At that time, the Committee heard testimony from both parties and determined an in-camera review was necessary for the Committee to review the disputed records. The voluminous number of records provided to the Committee required additional time for the Committee to review the disputed documents. Today, the hearing is for the Committee to meet in-camera to discuss the records they reviewed.

**Motion** by Mr. Fleming for the Committee to go in-camera.

Seconded by Ms. Smith-Mansfield.

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 is absent.

The room is cleared. Ms. Richardson arrives to participate in the in-camera review.

**Motion** by Ms. Richardson for the Committee to return to open session.

Seconded by Mr. Fleming.

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

**Motion** by Ms. Smith-Mansfield: The Committee orders a Continuance until the next scheduled hearing date. The Committee is persuaded that not all disputed records were provided for an in-camera review. The Committee orders all records, including attachments, be provided to the Committee.

Seconded by Ms. Mansell.

**Discussion on the motion**

The Committee discussed the correspondence and attachments to the emails were not included with the records that they reviewed. They need to be provided to the Committee.

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

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

30-minute lunch break.

Reconvene.

1. **Byron Ellis (Garfield County Taxpayers Association) v. Utah State Tax Commission**

The Chair announcedthe 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.

**Petitioner’s Statements**

Mr. Ellis stated that the Garfield County Taxpayers Association was formed about one year ago to investigate and educate the public about Garfield County’s taxpayers’ money. There seems to be a discrepancy between the assessed values for real property and listing values of properties for sale. The listing value has no relationship to actual property values. He is investigating actual sales in Garfield County. He found discrepancies between the sales prices and the assessed values at the Accessor’s Office. Utah law requires that properties be assessed at a fair market value. He learned that there is a sales ratio study that the Utah State Tax Commission completes every year. It is a comparison between assessed values and retail sales value of property throughout Utah. A 2019 study included that the 2018 sales had a ratio of .92 for Garfield County. The ratio is actually a .5 or .6. This is where the GRAMA request originated. He requested from Utah State Tax Commission (Tax Commission) which properties were used in this study. The request was initially denied and the denial was affirmed at the appeal level.

Mr. Ellis stated that in November 2019, the Tax Commission told him about a Multiple Listing Services (MLS) document. The seller and buyer are not compelled to disclose the sale price or the purchase price for a house. The Tax Commission receives the numbers by sending a survey out and asking owners to tell them what they sold the property for. When the surveys are returned, the numbers/prices sold are registered with the MLS. The agreement or contract between the MLS and the Tax Commission states that the numbers will not be shared or disclosed. The only thing the Tax Commission can do with the numbers is prepare this report. There is no way for the public to verify the numbers.

Mr. Ellis reviewed the Tax Commissions reasons for not releasing these documents. Mr. Ellis stated that he visited the Garfield County courthouse and had spoken with the Garfield County Recorder. There were 350 sales or property transfers in 2018. The Garfield County transmitted to the Tax Commission about 150 sales after the initial filtering process. Family or estate transfers were not included, only actual retail sales. Garfield County did an additional filtering process before transferring the information out of the tax rolls and records at the Garfield County Courthouse. He asked for any correspondence between the County and the Tax Commission related to the 2018 study, which should be a public record. The correspondence has no bearing on the MLS calculations.

Mr. Ellis reviewed the Tax Commission claims that the records include commercial information gathered from realtors and individuals who have bought or sold a home, which are protected pursuant to Utah Code §63G-2-305. The Tax Commission believes that it is reasonable to assume that some of the survey respondents, particularly from realtors, do not want the financial information, the sales prices, disclosed to the public. Mr. Ellis stated that the State Records Committee does not determine whether a record is public based on what someone wants. The Tax Commission believes that the release of the information, would prevent or impair a governmental entity from obtaining necessary information in the future. Mr. Ellis explained that the Tax Commission cannot know that unless there was a multiyear study. The Tax Commission believes that in order to protect this interest, GRAMA protects information submitted to or by a governmental entity in response to a request for information. Mr. Ellis argued that if someone submits information to the Tax Commission and wants it to be protected, a request for protection of the information must also be submitted. Mr. Ellis explained that under §63G-2-305, there are steps to take if information or records submitted are to be a protected record. Three conditions have to be met. The person submitting the information must give a concise statement why the record should be protected, per §63G-2-308. Mr. Ellis stated that he is asking for the sales prices. The MLS, in their contract, cannot release any information. Mr. Ellis stated that he does not want operational, procedural methods, or trade secrets. He wants the end results, the sales prices. Utah Code §63G-2-301, requires a business that provides records under 305(1)(2) to submit a business claim of confidentiality.

Mr. Ellis reviewed *Deseret News v. Utah State Tax Commission,* the Deseret News asked the Tax Commission to ask the courts for a record that the court was holding and create a report for them. That case is not similar to Mr. Ellis’ request. The records that he wants are held by the Tax Commission. He requests the pin numbers of properties transmitted from Garfield County to the Tax Commission. Mr. Ellis stated that these are not protected records.

The Garfield County Recorder’s Office has records of 79 sales. The list is from a Tax Commission process that is protected under §63G-2-305. Mr. Ellis stated that the Tax Commission believes that the public’s voluntary response to its sale price surveys, MLS’s willingness to contract with it, to prepare the Assessment/Sales Ratio Studies will be jeopardized if the records are released. They reasonably believe that the public will be less willing to participate in the survey if the information they provide to the Tax Commission will be directly or indirectly available to the public in a form other than the study. Mr. Ellis stated that there is no way to know this. A public document is not based upon whether someone wants it released or not. Mr. Ellis’s question for the Committee is whether it is or is not a public record.

**Respondent Statements**

Laron Lind, Assistant Attorney General, stated that Denny Lytle, Director of Property Tax Division of the Utah State Tax Commission has oversite over the sales ratio study at issue today.

Mr. Lytle is sworn in by the Committee Chair. He stated that there are two key pieces of information that are protected under Utah law. The information from the MLS, pursuant to a contract, is restricted. The MLS filed a business confidentiality agreement designating it commercial information. The questionnaire is a voluntary survey to persons that bought property at a fair market sales transaction. It includes financing terms that are received from the surveys. This is the information that he believes people do not want released.

Utah Code §63G-2-305(7), defines a record as protected, if people are required to submit information and do submit information to a governmental entity, aside from commercial information. The information is protected.

Mr. Lytle explained that the counties perform the property assessments on their own, including basic residential and commercial properties. The Tax Commission will do assessments on mines and utilities. The Tax Commission has oversight to make sure the county is doing their job correctly. This oversight is the sales ratio study. The study is to make sure the counties are assessing the property uniformly and close to fair market sale prices within 10% ; 9 - 1.1 plus or minus 10%. That information is published on the Tax Commission website. Utah is a non-disclosure state. The Tax Commission has repeatedly asked the legislature to make it public. The legislature has chosen not to do that. Mr. Lytle stated that his office tries to get the best information it can. The MLS must be used. A realtor can get this information. The Tax Commission cannot disclose that information. It is proprietary information. People have a privacy interest in not disclosing their private information. If assessors are not doing their job, it will get more out of balance than it is now. Some information is protected and he cannot disclose it. If there is a disclosure order for the surveys he is convinced that there will be less information and less accurate results for the sales ratio study. He believes that the records are not subject to disclosure.

**Questions from the Committee**

The Committee discussed that the Respondent may have misinterpreted Utah Code §63G-2-305(7). The signed and finalized contract is protected until two years has passed.

The Committee determined that the survey results include the sales price, the financing terms, and listing of personal property. The Committee reviewed the concerns with making information public based on public property land records. They reviewed Utah Code §59-1-404 in the Utah Tax Code.

The Committee discussed §63G-2-309, that requires a concise statement be provided by the entity claiming confidentiality in that it would reasonably expect to result in an unfair competition or impair the governmental entity’s ability to obtain information.

The Committee reviewed that the Tax Commission verifies the data to make sure it is good data. The Property Tax Division have county representatives stationed throughout the state and assigned to a county. The representatives do the work verbally with the county and report the findings to the Tax Commission, verbally. There is no correspondence that the Tax Commission is aware of that resembles what Mr. Ellis is requesting.

The Committee discussed that a lot of information is available to the public for broader statistical studies. Valuations from the county are public. Outcomes of the study, the statistics, and dispersions are public information published on the Tax Commission’s website. Private and protected information includes the sale prices associated with the individual property.

The Committee discussed that the Respondent classifies, as protected, the returned survey sheets and the 79 PIN numbers, which are the serial numbers for the sold properties. Knowing that a property sold can lead people to the sale price and can be associated to an individual. Property transfer serial numbers are available from the county recorder’s office. The county could give Mr. Ellis a listing of all 300+ property surveys.

**Petitioner Closing**

Mr. Ellis stated that he is asking for the 79 PIN numbers. The Tax Commission receives a transmission from the County, with unfiltered PIN numbers. That is correspondence. Those are from the County tax rolls. Mr. Ellis stated that the Tax Commission needs to figure out what is wrong with the process that is not giving them the true results. Mr. Ellis stated there is a huge discrepancy in the list price, the sale price, and the information at the Assessor’s Office.

Mr. Ellis stated that §63G-2-305(7) is not relevant.

**Questions from the Committee**

The Committee discussed §63G-2-305(15), and asked the Respondent to address whether this is an audit, collections, or work papers of an audit or collections.

**Respondent Closing**

Mr. Lind stated that the record is a compliance audit, like any other audit the Tax Commission performs. They do not release methods, only outcomes. They protect the privacy of individuals and uphold the public’s trust in protecting the information, which the majority of people and the Legislature considers to be private information. The Tax Commission has consistently asked the Legislature to make the sales prices public. It is difficult to get the data under the current law. The Legislature has chosen not to do that.

**Questions from the Committee**

The Committee asked whether the Tax Commission compiles a list of 330 properties sold during a year. They determined that the County Recorders’ send the Tax Commission an electronic transfer of any property that had a transfer during that year. The Tax Commission sends surveys to those that fit the description. Not included, are transfers between relatives or transfers of convenience. The answers to the surveys are verified and the Tax Commission asks at what price the property was purchased or sold. The Committee determined that the list of 79 surveys is arrived at from a combination of surveys and the MLS sales. The 79 properties are not disclosed because they are part of the audit work papers. The Committee discussed that the Tax Commission conducts the assessment studies as required by Utah Code §59-2-704. The Commission shall make these sales and appraisal studies available to the county assessors.

The Tax Commission may issue an order for the counties to comply with the audit. The Tax Commission considers it a compliance audit.

**Deliberation**

The Committee determined that Utah Code §63G-2-305(15) was added to protect audits. The Committee discussed unfair competitive advantage, trade secrets, confidentiality, and interference with future audits or collections. The questionnaires, surveys, or requests for information were voluntarily replied to by individuals. The Committee discussed Utah Code §63G-2-305(7)(9) and (15). They discussed that the MLS information is proprietary, which they sell. Access is given if it is paid for or obtained through a contract. The Realtors Association lobbying power is extensive and they believe it is proprietary commercial information. The Committee discussed that assessor’s value the property. The Tax Commission does a compliance audit. They test whether the assessors’ overall assessment is outside plus or minus 10%. The Tax Commission issues an order to bring them to 100%. The Committee discussed whether the person has a greater interest in protecting it than the public interest in receiving it.

**Motion** made by Ms. Mansell: Move to grant the Petitioner access to the 79 PINs, property serial number or parcel number, and find that the requirements in §63G-2-305(2) have not been met; it is in the public interest. §63G-2-403, allows the Committee to implement the weighing provision.

Seconded by Ms. Smith-Mansfield.

**Discussion** on the motion

The Committee discussed Utah Code §63G-2-305(7)&(15); §59-1-403(1)(a); §59-1-404(1)(c)(ii)a); §59-1-404(3)(a).

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

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

Five-minute break.

Reconvene.

Ms. Richardson is absent.

1. **Cathryn Raphael Cordray v. Seven County Infrastructure Coalition**

The Chair announcedthe hearing, 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**

Ms. Cordray stated that Seven County Infrastructure Coalition (SCIC) is attempting to build a railroad in the Uinta Basin. She explained the background of the railroad study. The Community Impact Board (CIB) provided $30 million for studies and environmental impact work to get the railroad permitted. The railroad will cost an estimated two to ten billion dollars. The railroad will serve oil and gas industries. This section of rail will connect Uinta Basin to the National Rail System and will be a public/private partnership with Newfield Energy. SCIC claims that the railroad study states the report must remain private according to the contract obligations. Ms. Cordray explained that the intent of Utah Code 63G-2-301(3)(d), is to allow the public to generally know the terms of contracts entered into by governmental entities. GRAMA provides a proper way for governmental entities to enter into confidentiality agreements, under Utah Code §63G-2-305(1)(2), claim of confidentiality and a concise statement.

Ms. Cordray stated that SCIC submitted a non-disclosure agreement between themselves and Newfield Energy. A non-disclosure agreement is not a written claim of business confidentiality. The agreement does not mention a railroad or rail study. Ms. Cordray stated that the agreement does not meet the requirements in Utah Code §63G-2-305(1)(2) and §63G-2-309(1).

Ms. Cordray stated that Newfield Energy produced the report. Ms. Cordray provided a letter to the Committee to show that Newfield Energy has significant financial Interest in the railroad being built. She stated that the terminus of the railroad will be at one of Newfield Energy’s stops where they want to onboard product. Ms. Cordray stated that there is significant public interest to see the financial feasibility of the railroad because the public will pay for the railroad.

**Respondent Statements**

Eric Johnson, representing SCIC, explained that SCIC is looking at various projects to contract Uinta Basin to the national rail work. SCIC looked at various government and private entities over the past 45 years. This is a study that was commissioned by Newfield Energy and conducted by a private entity. No public funds were used to prepare the study. It is a private company study. SCIC asked Newfield Energy if they could look at Newfield Energy’s study. Newfield Energy agreed but only if it was kept completely confidential. It is a Newfield Energy study. In the non-disclosure and confidentiality agreement it states, “The Coalition acknowledges that information Newfield Energy provides under this Agreement is confidential commercial information and or trade secrets protected from public disclosure under GRAMA, pursuant to Section 305 subsections (1) and (2) of Title 63G Chapter 2 of the Utah Code.” Absent the nondisclosure agreement SCIC would never have received it.

**Questions from Committee**

The Committee determined that no public money was used to fund this study. Newfield Energy performed this study on their own. The date on the confidentiality agreement is September 14, 2018. SCIC applied for funding from the CIB to perform a rail study. SCIC applied to the U.S. Surface Transportation Board that regulates rails, to seek a construction permit for a railroad, which was awarded on November 19, 2019. The confidentiality agreement was signed before SCIC was awarded the money to perform a current study. Newfield Energy has competitors and they would be badly damaged if the report was released to the public. The study that SCIC denied used no public dollars. Newfield Energy’s study and report were completed prior to SCIC seeing it.

**Petitioner Closing**

Ms. Cordray stated that the lack of public money spent should not be determinate of the study’s value to the public. The SCIC said that the study had several hundred thousand dollars value to them when they applied to the CIB to show that they were studying this project.

She stated that a private energy producer may claim business confidentiality as outlined in GRAMA §63G-2-305(1)(2). Ms. Cordray asked the Committee to see the value of weighing the public interest. She believes that there will be a significant effect on public citizens. She stated that the future of the state will be greatly impacted by this railroad and the public has a right to know how much it costs.

**Respondent Closing**

Mr. Johnson explained that Newfield Energy has a greater interest in prohibiting access to the confidential information than the public has in such information. The disclosure of such confidential information could reasonably be expected to result in harm or injury to the competitive interests of Newfield Energy and would prevent it from further disclosing information to the SCIC. Newfield Energy spent hundreds of thousands of dollars for this study. They gave SCIC access only if it could remain confidential. That benefit would be lost if public bodies could not enter into confidential agreements.

**Questions from the Committee**

The Committee reviewed the timelines of the study and the SCIC application for public money, approximately 8 million dollars from the CIB. There are several interested companies in putting a railroad and/or a pipeline in the Uintah Basin. If SCIC partners with a private entity, SCIC cannot share Newfield Energy’s private study. This matter has been studied more than a dozen times in the past 40 years. SCIC has provided the public studies, in the past. SCIC would not have received it if they did not promise to keep it confidential.

**Motion** by Ms. Smith-Mansfield: The Committee denies the appeal and is persuaded that the Newfield Energy report is appropriately classified as protected pursuant to Utah Code §63G-2-305(1) and (2).

**Discussion** on the motion: The confidentiality agreement is elaborate and specific. It states what is confidential and why it is confidential. The Committee finds that the report is not funded by public funds and was to be used by the governmental entity to determine whether to obtain public funds for their own study. The business confidentiality agreement is very detailed about what harm would be caused to Newfield Energy if the report was released to the public and not protected. The confidentiality agreement met the requirements set forth in the statute cited in the motion.

Seconded by: Ms. Mansell.

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

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

**Five-minute break.**

**Reconvene**.

1. **Margaret Townsend/Ann Brown (Center for Biological Diversity) v. Seven County Infrastructure Coalition**

The Chair announcedthe hearing, provided instructions, and reviewed the procedures. He indicated the Committee members present. Ryan Beam, for Center for Biological Diversity (CBD), and Eric Johnson, for Seven County Infrastructure Coalition (SCIC), introduced themselves. 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. Beam, representing CBD, stated that he is requesting a fee waiver as part of his May 29, 2019, record request that he submitted to Seven County Infrastructure Coalition (SCIC). He explained that he is a campaigner with the public lands program of the Center for Biological Diversity (Center). The Center is a 501(c)(3) nonprofit conservation organization headquartered in Tucson, Arizona, with two employees in Utah. The Center works to secure a future for all species great and small that are on the brink of extinction. The Center does that through science, law, and creative media with a focus on protecting the lands, waters, and climate that species need to survive. The center informs, educates, and counsels the public regarding environmental issues, policies, and laws.

Mr. Beam stated that the question is whether the Center qualifies for a fee waiver under Utah Code §63G-2-203(4)(a). The Uinta Basin rail issues and records are of significant public interest and the Center can properly distribute the information to the public. He emphasized that the records benefit the public. Broad and sustained media interest stems from the fact that the railway plans to alter 85 miles of landscape which will have a significant effect on the entire Uinta Basin region. The Community Impact Fund Board (CIB), which granted $27.9 million to the project, is a public entity. The CIB administers funds derived from mineral lease revenue generated on federal public lands and are dispersed by CIB. These funds are intended to be loaned and granted to public entities to offset adverse impacts due to mineral development on federal public lands and help pay for public buildings and services. If constructed, the railway would triple or quadruple the oil production in the region by allowing access to distant refineries and markets. It will have major consequences for public lands, wildlife, a shared climate, and public health. In 2018, Uinta Basin was declared out of attainment for ozone, a dangerous pollutant that leads to asthma attacks and other harmful conditions. Ozone in this area is due to emissions from existing oil and gas development. Increased drilling and production would put at risk the arid region’s water supplies through depletion and pollution and would have significant implications for the region’s future water security.

Mr. Beam reviewed his record request and stated that there is a public interest in communications between SCIC and Utah Department of Transportation (UDOT), between SCIC and Tyr Energy, and phrases containing “Transportation Infrastructure Finance and Innovation Act” and/or “TIFIA.” He explained that UDOT is a public entity, which conducted an early feasibility analysis for Uintah Basin Railway. Tyr Energy is or was a potential private partner in this project and would have a significant bearing on how the project moves forward. TIFIA fund was a potential source for railroad construction. It is a federal fund managed by U.S. Department of Transportation to provide credit assistance for qualified projects to regional and national significance.

Mr. Beam stated that the Center intends to provide the information to the public. They will use the records to increase public awareness about details of Uintah Base Railway potential impacts to air, water, wildlife and climate. Mr. Beam reviewed Utah Code §63G-2-204(5), related to media requests. The media are presumed to be acting to benefit the public. The Center is capable of broadcasting information to the public and regularly reports online, through emails, action alerts, press releases, social media, and news agencies. Mr. Beam stated that the Center does not affiliate with any political party and does not endorse electoral candidates. Nonprofit organizations, such as the Center, are barred from engaging in electoral politics.

Mr. Beam explained that SCIC has failed to properly consider the merits of his request for a fee waiver. In SCIC’s August 26, 2019, denial response and their September 25, 2019, denial on appeal, SCIC failed to provide a clear determination or adequate justification that a fee waiver is not warranted under Utah Code §63G-2-203(4)(a). Mr. Beam explained that SCIC provided no explanation why a second record request was granted a fee waiver. Mr. Beam stated that the Center submitted four requests to SCIC in the past seven months. The Center’s requests are clear, well-crafted, and they worked to clarify or change the scope of the request when appropriate. SCIC is a public entity promoting a multi-billion dollar project and has garnered public interest. SCIC must fulfill its duties under GRAMA to maintain records and promptly and appropriately provide them to the public when requested.

**Questions** **from Committee**

The Committee determined the SCIC granted a fee waiver to the Center for one of their four requests.

**Respondent Statements**

Mr. Johnson stated that the request for a fee waiver was not about access to records. It was a question of whether the release benefits the public or a person. Every record request received from the Center, under GRAMA, has asked for a fee waiver. SCIC had to start evaluating whether each one is entitled to a fee waiver. Mr. Johnson reviewed Mr. Beam’s positions as a campaigner and an activist for the Center. He stated that this is why the fee waiver was denied. It is not a matter that the Center does not disperse the records. It is for a personal reason that they disperse them. They are advocating a certain position. Mr. Johnson explained that SCIC considered whether they should be funding personal advocates. When SCIC receives a traditional record request from a media source a fee waiver is granted. Mr. Johnson stated that their conclusion is that the Center requested a fee waiver for their own advocacy purposes.

**Questions from Committee**

The Committee determined that the fee is for $150.00 to compile the information. There are other costs associated with fulfilling the request that are not being charged. The Center paid the $150.00 fee and are appealing for the fee to be reversed. The Committee determined that there is a general public interest for the information.

**Petitioner Closing**

Mr. Beam stated that the Center is not a partisan organization. It is a 501(c)(3) non-profit entity. The Center’s position on any particular issue should not have a bearing on whether it qualifies for a fee waiver. Because of the Center’s views on this issue they are trying to obtain information so they can have an informed perspective. The SCIC also strongly advocates a position on this issue. SCIC paid a public relations firm hundreds of thousands of dollars for strategic public communications. The Center reports the public costs and public health impacts. The Uinta Basin Railway is a significant public interest. The Center has the ability and intent to distribute the information to the general public. In instances where releasing the records benefit the public, GRAMA encourages a governmental entity to waive fees.

**Respondent Closing**

Mr. Johnson stated that the issue is not about access to records. SCIC believes that the Center is using the records for their private purposes and not for public dissemination like a media outlet.

**Motion** by Mr. Williams: The appeal is granted. The Committee is persuaded and finds compelling the arguments that a fee waiver benefits the public interest under Utah Code §63G-2-203(4)(a) and (6).

Seconded by: Ms. Smith-Mansfield.

**Discussion** on the Motion

The Committee discussed the benefit to the public and reviewed the appeal for a fee waiver de novo. The Center serves a public role rather than a certain perspective. The governmental entity did not argue the amount of work or other formats required to compile the information. The Center is an advocate and intends to broadcast the information to the public. The Committee recognizes that the governmental entity is not required to waive fees simply because there is a public interest. The $150 fee is for six hours of staff time at $25.00/hour.

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

**Five-minute break.**

**Reconvene**.

Ms. Richardson is absent for the remainder of the meeting.

1. **Mike Favero v. Logan City School District (LCSD)**

Mike Favero was connected telephonically to the hearing. The Chair announcedthe hearing, provided instructions, and reviewed the procedures. The Committee members introduced themselves. Patrick Tanner, representing Logan City School District (LCSD) and Jeff Barber, Business Administrator and Records Officer, were introduced. 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. Favero stated that he filed a request asking for all information associated with legal fees. He was originally provided partial information. He did not receive an explanation why the excluded information was withheld. Mr. Favero reviewed his request process with LCSD. Mr. Favero stated that most of the 63 pages of billing statement were blacked out. He stated that other school districts did not redact any information when he requested similar records. Superintendent Schofield denied the appeal and classified the redactions as protected by attorney-client privilege. Mr. Favero then appealed to the State Records Committee (SRC) and was granted a hearing. Mr. Favero stated that he is requesting the Committee to review the redacted information, protected classification, and provide any public information to him.

**Respondent Statements**

Mr. Tanner stated that Mr. Favero’s request was for information related to legal fees for a certain period of time. The response identified the attorneys involved with billing LCSD, dates of service, time spent, billing rate, total amounts charged, and total amounts paid. LCSD redacted information describing the scope of the services and the work provided. LCSD reviewed their response in anticipation of the hearing and concluded that some information was overly redacted. They considered the authorities that were cited in their written statement and previous Committee decisions with regard to attorney billings and how those are facilitated. LCSD recently provided a new set of documents that includes redactions for only those portions that are within the attorney-client privilege. There is an attorney-client relationship between attorneys and the school. The interactions take place to provide legal opinions and guidance to the school district. The redactions are within the scope of attorney-client privilege because they describe attorney-client communication. Mr. Tanner explained that he brought copies of the disputed records. LCSD believes that the lesser redacted records are appropriately redacted.

**Questions from Committee**

The Committee determined that they should go into *in-camera* review. The Committee discussed that the governmental entity is required to review their previous decisions in preparation for the hearing and provide any records, if appropriate.

**Motion** to go into *in-camera* review by Mr. Fleming

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 is absent.

**Petitioner Closing**

Mr. Favero stated that he would like any and all information provided to him from his original request according to GRAMA laws. If any of the information is protected by GRAMA laws and attorney client privilege, it can be redacted.

Mr. Fleming proposed a stipulation that the statement made by Mr. Favero is on the record.

**Respondent Closing**

Mr. Tanner stated that he understands Mr. Favero’s frustration with the appeal process.

**Motion** by Mr. Fleming: The Committee grants the appeal and finds that, consistent with prior SRC Case No. 09-11, *Johnson v. Salt Lake City Department of Public Utilities*, the currently redacted information does not contain legal advice, analysis, or discussion of confidential or privileged communication between attorney and client and does not meet the definition of attorney work-product. Therefore, the information should not be redacted. The records should be provided to the Petitioner in unredacted form.

Seconded by: Ms. Smith-Mansfield.

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 is 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 decision of the State Records Committee to district court.

**Five-minute break.**

**Reconvene**.

1. **Paul Amann v. Unified Police Department of Greater Salt Lake (UPD)**

The Chair announcedthe hearing, 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. Paul Amann, Petitioner, and Harry Souvall, for Unified Police Department, introduced themselves.

Mr. Amann objected to Paul Tonks, Assistant Attorney General, representing legal counsel to the State Records Committee.

**Petitioner Statements**

Mr. Amann described the procedural history of his appeal that was continued from November 14, 2019, State Records Committee Meeting. Mr. Amann stated that the case came about because the Attorney General’s Office (AGO) made a false police report to Unified Police Department (UPD) against him.

Mr. Amann reviewed the circumstances surrounding his appeal to the Committee regarding the AGO and the same records that was heard on February 9, 2017. Mr. Amann related the history of his request to UPD. He related that in anticipation of this hearing, Mr. Souvall reviewed the appeal and determined that the statute of limitations was expired on UPD’s investigation, resulting in no charges filed. Mr. Souvall worked with Mr. Amann to provide the responsive records that are private to Mr. Amann. The remainder of the disputed records are on the hard drive from the computer that was assigned to Mr. Amann when he was an employee of the AGO. The AGO gave UPD a mirror image of the hard drive. Although Mr. Souvall has provided some of the private documents contained on the hard drive, Mr. Amann is not certain that he was provided everything that are his private records.

The hard drive was subject to a warrant. Chris Earl at the Information Technology (IT) office, classified the hard drive as protected. He demanded that UPD get a warrant for the hard drive. Some files and folders on the hard drive were overlooked by Mr. Souvall during his review of every folder and file to determine whether it is private to Mr. Amann.

Mr. Amann compared his appeal with Schroeder v. Attorney General’s Office and the State Records Committee case. Mr. Amann reviewed the case. Mr. Amann said he is trying to expose corruption in the AGO. Mr. Amann stated that the records on the hard drive, that are privileged or private, are records that he originally generated. Mr. Amann reviewed that UPD is the custodian of the records of a reported crime. The AGO provided the hard drive to Detective Child at UPD. Mr. Amann believes that the hard drive is a public record. The AGO did not provide a privilege log for the records contained on the hard drive. Mr. Amann stated that there is no legal weight to Mr. Earl’s statement that the hard drive records are privileged. Mr. Souvall may not have the ability to go through the entire hard drive and determine what is privileged. The AGO provided the hard drive as evidence in hopes Mr. Amann would be charged with a crime. If the Committee has any concern whether Mr. Amann will provide the records to the public, a protective order could be extended to cover the hard drive records so that he can use them in his litigation with the AGO.

**Respondent Statement**

Mr. Souvall stated that the references to the AGO, by Mr. Amann, are not pertinent to UPD. UPD does not have sufficient information related to a false report. UPD received an allegation and they looked into it. UPD did not develop a sufficient amount of evidence about the criminal allegation. From the information provided to UPD, they could not determine who mailed the packets.

Mr. Souvall reviewed the request and determined that the statute of limitations had expired for the investigation. It is a closed file by operation of law. Mr. Souvall began the production of records. Some evidence involved a privacy interest of the subject of the mailing packets and there was concern that the hard drive was from a business computer assigned to an attorney. Mr. Souvall explained that there are 180 gigabytes of data that includes 50,000 files. Mr. Souvall is the only attorney for UPD. No one else can go through the hard drive. Mr. Souvall disclosed all of the personal or private files to Mr. Amann. The UPD records related to the AGO investigation were disclosed to Mr. Amann. This case is closed to UPD. Mr. Souvall would like to return the hard drive to the AGO and let the AGO do an appropriate privilege review. It is the AGO’s privilege. Mr. Amann created the documents but there may be other privileged documents. UPD is not in a position to make a detailed review. There may be third party communications, drafts, work product, or records related to Anti-trust investigations or Internet Crimes Against Children investigations on the hard drive. UPD should not be the one to make these determinations. UPD was instructed by the AGO to sequester private and protected information by attorney-client and attorney work-product privileges under GRAMA. UPD maintained a copy of the hard drive and preserved it for this appeal hearing. Mr. Souvall stated that he is not asserting a privilege for the AGO. Mr. Souvall stated that no one is charged in the AGO’s investigation. Mr. Amann created the documents. The AGO is the owner of the privilege. Instead of trying to find private documents that belong to Mr. Amann and records that the state has no concern with protecting, he suggests that he give the hard drive back to the AGO and let them determine the privileges.

**Questions from Committee**

The Committee determined that the AGO believed that the hard drive would tie Mr. Amann to mailing the packets. Only the client can waive the privilege. The attorney is required to assert the privilege on behalf of the client. In this case, the client and the attorney are the AGO. UPD is an inerlocal entity, not associated with the state.

The accuracy of the records reviewed by UPD and produced is not certain. Mr. Souvall reviewed the folders that appeared to be private to Mr. Amann or related to this investigation. A lot of data was produced. UPD is in a position to meet its obligations but has difficulty in having an attorney’s hard drive in their hands on a closed investigation. UPD does not know the significance of the non-investigation documents to the state or the parties in an investigation. There are greater consequences to disclose records that are not appropriate to release.

**Petitioner Closing**

Mr. Amann stated that Mr. Earl did not share the hard drive pursuant to Utah Code §63G-2-206. It was provided due to a warrant. He stated that the records on the hard drive are from old investigations over four years ago. Mr. Amann stated that he should be the one to go through the folders and retrieve his records. Mr. Amann explained that this is similar to Schroeder case. Legal errors such as the incorrect interpretation of a statute or improper application of a legal standard are usually an abuse of discretion. Mr. Amann stated that there is no privilege log to determine privacy interest. The AGO could have provided one. Mr. Amann reviewed Utah Code §63G-2-102(3)(c). Mr. Amann said that in weighing interests, his interest is greater than any interest in privacy or attorney-work product. The work-product is for his own work. The AGO disregarded the Committee’s order for documents relevant to this case. They filed a false report with UPD to try to convict him of a crime.

**Questions from the Committee**

The Committee discussed the Schroeder case. The Committee determined that there is no evidence that the hard drive records are private or protected. There is only a note from the IT office that told UPD to give the AGO a chance to go through anything UPD finds that is private or protected. If this was shared under an agreement, the privilege in §63G-2-206 may be a valid agreement. There is no agreement. UPD obtained a warrant for the hard drive. The warrant says that UPD can search anything on the hard drive. If the AGO provided a privilege log and explained why the records are private or privileged then they could likely be protected under GRAMA.

**Respondent Closing**

Mr. Souvall explained that the AGO is the attorney and the client is the state of Utah. It is the Utah Attorney General and the State that holds the privilege. Mr. Amann does not have the privilege. He may be familiar with the documents but the privilege is the State’s. The letter states that the AGO is not waiving any privilege on the hard drive given to UPD. UPD provided the non-privileged records that were determined to be private to Mr. Amann. UPD is not in a position to do the privilege review. Mr. Souvall provided the folders related to GRAMA, this investigation, or investigation of AGO misconduct. Mr. Souvall did not give him third party investigations that he was involved in while employed with the AGO. He did not given him folders unrelated to the investigation. In this case, other investigation records that are unrelated to this investigation, should not be given to Mr. Amann.

**Deliberation**

The Committee discussed the warrant submitted to the AGO for a hard drive. The hard drive is the property of a governmental entity, not an individual as an employee. The governmental entity owns the records that the employee creates. The Committee determined that the Schroeder case is not relevant because the Utah Supreme Court overturned the trial court in that bank records are not protected under GRAMA and nothing under federal provisions made them protected under GRAMA. Attorney-client privilege is protected under GRAMA but it is no longer relevant. The Committee discussed that the hard drive was provided to UPD via a warrant. Under a warrant, the hard drive is part of an investigative file. There is a requirement to go through the hard drive to determine what is responsive. UPD could claim extraordinary circumstances and provide an extended time frame for how long it would take to go through it. All the information is specific to the request because the hard drive was asked for as part of the investigation. The hard drive has to be looked through as an investigation file.

The Committee discussed that evidence is maintained if it is required. The hard drive is considered third-party property on a case not pursued in court. It is to be returned back to the owner from whom it was seized. UPD kept a copy of the hard drive because it is under consideration for this appeal.

The Committee determined that the custodian of the hard drive is the AGO. The Committee has the ability to order the release of records or not. The Committee cannot make UPD determine what is privileged. It is the AGO’s privilege. It is reasonable to assume the privilege is valid. Some of the cases on the hard drive could be ongoing. The proposal from UPD to send the hard drive d back to the AGO so they can determine what is privileged is a reasonable request but the SRC does not have the authority to order that. It is not third-party evidence when part of an investigation. UPD should have returned the hard drive when case closed. It is UPD’s record, not the AGO’s record because it is part of UPD investigation file. UPD could decide what attorney-client privilege is if they went through it, but they did not. It is a closed investigation record, which does not negate the potential privilege. The Committee reviewed §63G-2-305(10), whether releasing the record could reasonably be expected to interfere with an investigation, audit, enforcement proceedings, right to fair trial, disclose a person not generally known outside government, disclose investigative or audit techniques, etc.

**Motion** by Mr. Williams: Return the hard drive to AGO. UPD followed the procedure of evidence and it is time to return it to the rightful owner.

**Motion** by Mr. Fleming: The Committee is persuaded to grant the appeal with a protective order for no further release of the record pursuant to Utah Code §403(11)(c).

Seconded by: Ms. Mansell.

**Substitute Motion** by Ms. Smith-Mansfield: The Committee will continue the appeal in order for the Committee to review the records in camera to implement the weighing provision, pursuant to Utah Code §403(9)(a)(i)(B).

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 is 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 decision of the State Records Committee to district court.

**Five-minute break.**

**Reconvene**.

1. **Paul Amann v. Unified Police Department of Greater Salt Lake (UPD)**

The Chair announcedthe hearing, 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**

Mr. Amann stated that he is requesting that UPD provide a statement that a definitive thorough search was conducted and provide an affidavit or certification that a thorough search was conducted. If there are any public records then provide them to him.

**Respondent Statement**

Mr. Souvall stated that he would agree to Mr. Amann’s request for an affidavit that a thorough search was previously conducted. He agreed to provide the affidavit and certification of the search when he submits the Notice of Compliance to the Committee for today’s order.

**Motion** by Ms. Smith-Mansfield: The Committee finds that UPD shall provide documentation of a thorough search was conducted with their Notice of Compliance with this request.

Seconded by: Mr. Fleming.

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 is 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 decision of the State Records Committee to district court.

**Five-minute break.**

**Reconvene**.

**BUSINESS**

**Motion to Approve December 12, 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.

Declined Appeal:

2019-145 Brady Eames v. Utah Local Governments Trust: Requesting access to 55 times in his request related to public tax dollars.

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

**Other Business:**

Ken Williams thanked Tom Haraldsen for serving as the State Records Committee Chair during 2019.

**Nomination of Committee Chair, action item**

Mr. Williams nominated Patricia Smith-Mansfield as the Committee Chair during 2020.

Seconded by Mr. Fleming

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

**Nomination of Committee Chair pro-tem, action item**

Mr. Williams nominated Cindi Mansell as the Committee Chair pro-tem during 2020.

Seconded by Mr. Fleming

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

**Nomination of executive secretary, action item**

Ms. Mansell nominated Gina Proctor as Executive Secretary during 2020.

Seconded by Mr. Fleming.

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

**Approval of 2020 State Records Committee Meeting dates, action item**:

Motion by Ms. Smith Mansfield for the SRC meeting dates be held on the second Thursday of each month during 2020.

Seconded by Mr. Fleming.

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

**Open and Public Meeting Act Training**

The Committee approved a motion to reschedule the OPMA training at a later date to accommodate the possibility of 2020 legislative session updates to the statute.

The next meeting is scheduled for Thursday, February 13, 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 Mr. Haraldsen will not be present. Ms. Richardson will arrive at 11:00. The Committee will begin the meeting at 11:00 a.m.

**Motion to Adjourn**

The Chair adjourned the January 9, 2020, State Records Committee meeting at 5:05 p.m.

**This is a true and correct copy of the January 9, 2020, SRC meeting minutes, which was approved on February 13, 2020. An audio recording of this meeting is available on the Utah Public Notice Website at** [**https://archives.utah.gov**](https://archives.utah.gov)**.**

 **X\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Executive Secretary**