

June 11, 2020

State Records Committee Meeting

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

Date: June 11, 2020

Time: 9:00 a.m. – 1:00 p.m.

Committee Members Present:

Kenneth Williams, State Archivist

David Fleming, Private Sector Records Manager

Holly Richardson, Citizen Representative

Patricia Smith-Mansfield, Citizen Representative

Tom Haraldsen, Chair, Media Representative

Nancy Dean, Political Subdivision Representative

Vacant, Electronic Records and Databases Representative

Legal Counsel:

Paul Tonk, Assistant Attorney General

Nicole Alder, Paralegal, Attorney General's Office

Executive Secretary:

Rebekkah Shaw, Utah State Archives

Telephonic participation:

Corbin Volluz

Kathy Berrett, Salt Lake County Jail

Melanie Mitchell, Salt Lake County Jail

Others Present via Google Hangout:

Susan Mumford

Sam Straight, Brigham Young University counsel

Chris Autry, Brigham Young University

David Anderson, Brigham Young University counsel

Mark Gajkowski

Laron Lind, Assistant Attorney General

Kendall Laws, San Juan County

Sheila Canavan

James McConkie, Counsel for Jill McClusky

Alex Evans, Counsel for Jill McClusky

Rich Richardson

Phyllis Vetter, University of Utah counsel

Lauren Weisman, University of Utah

Dr. Harry Rockland-Miller

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Agenda:

- Five Hearings Scheduled
 - Mohavved v. Salt Lake County
 - Volluz v. Brigham Young University Police (Continuance)
 - Canavan v. San Juan County
 - McConkie v. University of Utah
 - Gajkowski v. Tax Commission

- Business:
- Approval of May 14, 2020, minutes, action item
- SRC appeals received and declined, notices of compliance, and related action items
- Cases in District Court, report
- Other Business
 - Oath of Office for new committee member
 - Committee member's attendance for the next meeting to verify the attendance of a quorum

Call to Order

The State Records Committee Chair Pro Tem, Kenneth Williams, called the meeting to order at 9:02 a.m.

The oath of office was given by Susan Mumford. Nancy Dean was sworn in as the political subdivision committee member. Nancy signed the oath and made arrangements to provide it to Susan for notarization.

1. Mohavved v. Salt Lake County

The respondent informed the Committee the petitioner was unavailable for the hearing. The hearing was postponed to the next meeting.

Motion by Patricia Smith-Mansfield to postpone the hearing until the petitioner can participate. Seconded by Tom Haraldsen.

Mr. Williams called for a roll call vote.

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

BUSINESS Part 1

Motion by Patricia Smith-Mansfield to go into closed session to discuss the records with counsel. Seconded by Holly Richardson.

Mr. Williams called for a roll call vote.

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

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Mr. Williams moved on to business while the secretary created a new meeting link for a closed session and reached out to the parties for the next hearing.

Motion by Patricia Smith-Mansfield to approve the May 14th meeting minutes. Seconded by Holly Richardson.

Mr. Williams called for a roll call vote.

Vote: Aye: 5 Nay: 0 Abstain: 1. Motion carries 5-0-1. Mr. Williams, Mr. Fleming, Ms. Richardson, Mr. Haraldsen, and Ms. Smith-Mansfield voted in favor of the motion. Ms. Dean abstained.

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

2. Corbin Volluz v. Brigham Young University Police (Continuance)

The Committee went into closed session to discuss the content of the records with counsel.

Motion by Patricia Smith-Mansfield to return to open session. Seconded by Nancy Dean.

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

Deliberation

The Chair reviewed the process of in-camera records. Records were taken to the Archives and the Chair Pro Tem took possession of the records. They were reviewed by each member of the committee by appointment.

Motion by Patricia Smith-Mansfield the records are appropriately classified per Utah Code 63G-2-305(17) and (18). Seconded by Holly Richardson.

Discussion

Mr. Fleming stated if there was no question on whether BYUPD is a public entity, they'd make the same decision.

Mr. Williams called for a roll call vote.

Vote: Aye: 4 Nay: 0. Abstain: 2. Motion carries 4-0-2. Mr. Williams, Ms. Richardson, Mr. Haraldsen, and Ms. Smith-Mansfield voted in favor of the motion. Mr. Fleming and Ms. Dean abstained.

The hearing 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.

3. Sheila Canavan v. San Juan County

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The Chair Pro Tem announced the hearing and provided instructions and reviewed the procedures.

Petitioner's Statements:

Ms. Canavan stated she is requesting the addresses on a land-use petition related to Spanish Valley. She stated her request did not request the date of birth or the actual signatures in light of the legislature's recent action.

Ms. Canavan petitions can only be signed by registered voters. Signatories cannot have an expectation of privacy in information classified as public. She stated it is important to give citizens the chance to talk to each other about land-use legislation.

Respondent's Statements:

Mr. Laws stated the county relied on 63G-2-305(11). He stated the land use petition has been contentious. He stated nothing in Utah Code 20A-7 requires people signing the petition be anything but residents of the county and registered voters. They do not have to live in a certain part of the county.

Mr. Laws stated the petition did not get to the ballot and when emotions are high, a request came in that they wanted to go to people's homes and talk to them. The county uses this designation for the safety of the signees and those seeking them out.

Mr. Laws stated nothing on the petition packet states the information could be made public. Information required does not mean they cannot have an expectation of privacy. He reviewed recent legislative changes and stated the address was not made public. He stated anyone participating in a referendum process can have someone show up at their door unsolicited, it will have a chilling effect.

Questions from Committee:

The Committee commented the request was in February and asked if the county's argument is relying on the new legislative changes for this presentation.

Mr. Laws stated there was ambiguity in the law and 63G-2-305.5 was created after their response. It is not a new argument but the code did not exist yet. The Committee asked what part of the address is required. Mr. Laws stated it must be enough to determine residency. He stated the zip code isn't as relevant as the physical address. The county would be willing to provide the zip codes to the petitioner.

The Committee asked if the signatures and voter ID were provided to the petitioner. The petitioner stated they were not. Mr. Laws stated he thought they were turned over but the numbers might not be a part of the requested records.

The Committee asked if someone running for office could get a list of voters and their addresses for campaigning. Mr. Laws stated that would be a different kind of request, but they would get addresses.

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Petitioner Closing:

Ms. Canavan stated there is a conflict in the revised law. She stated there is no bases in GRAMA to call a residential address protected. She stated there is a chilling effect, as not releasing the records kills the opportunity for citizens to talk to each other.

Respondent Closing:

Mr. Laws stated if public safety was not a concern, it wouldn't be in the code. He stated there are other avenues to communicate with other citizens. The county's position is still that the physical address should be protected in light of comments of wanting to go door to door to speak to residents.

Deliberation:

The Committee stated using 63G-2-305(11) is not appropriate here. If they want to know if the signers are in the community, they have a right to the city and zip code.

Motion by Holly Richardson that the appeal be granted. The addresses should be considered public per 63G-2-301(2)(b) and 63G-2-305.5, excluding signatures and date of birth.

Discussion to the motion:

The Committee stated there is a fundamental misunderstanding about what is allowed to be released. A Utah Supreme Court decision allows people to get addresses from voting records to target people who signed a petition and persuade them. Nothing in 20A-7 or 63G-2-305.5 protects a voter's address. The Committee stated their name, address and the fact they are a registered voter is only private if declared private.

Mr. Williams called for a roll call vote.

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

The hearing 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.

4. James McConkie v. University of Utah

Mr. Williams announced the hearing. The Chair Pro Tem provided instructions and reviewed the procedures.

Petitioner's Statements:

Mr. McConkie stated he represents the McClusky family. They are trying to get counseling records from the University Counseling Center. He stated Jill McClusky was appointed guardian of Lauren McClusky by the Third District Court prior to requesting the records. He stated Jill stands in the place of her deceased daughter and her request is as though Lauren were requesting the records herself.

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Mr. McConkie stated they are also requesting any records showing who had access to the counseling records.

Mr. Evans stated there are exceptions that allow medical records to be released to an authorized agent and Jill McClusky is the authorized agent. He stated the access log is not a medical record in itself and there is no reason that cannot be provided.

Respondent's Statements:

Ms. Vetter stated the University is not confirming or denying the existence of the records sought because it would violate student privacy. She stated this hearing is about the proper classification under GRAMA for adult college student mental health counseling records and whether GRAMA supports campus mental health providers in their ethical duties to students who are their patients. She stated the records are private and controlled under GRAMA. Ms. Vetter introduced two witnesses.

Witness Statements:

Ms. Weisman was sworn in as a witness by the Chair pro tem.

Ms. Weisman stated the counseling center's reputation is fundamental to effectively serve students. She stated strict adherence to professional and ethical standards is important so federal and state authorities recognize the importance of confidentiality so students have a safe place to address their concerns.

Ms. Weisman stated confidentiality is discussed with students during the intake session and defined in the service agreement signed at the beginning of counseling. She stated Utah law protects the confidentiality and information cannot be disclosed without the express consent of the patient. Exceptions for disclosure do not include the death of the patient.

Dr. Rockland-Miller was sworn in as a witness by the Chair pro tem.

Dr. Rockland-Miller stated confidentiality is the foundation on which mental health care is built. Clients are informed of possible exceptions at the outset of treatment. He stated students often ask about potential disclosure to their parents.

Questions from Committee:

The Committee asked if records are released in a court order. Dr. Weisman stated court orders are an exception provided in the legal space, not the code of ethics. Ms. Vetter stated the University complies with court orders.

Petitioner Closing:

Mr. McConkie stated statute gives a guardian the right to stand in place of a person. He stated the statute overrides professional ethical considerations. He stated hospitals don't own medical records, the patient does.

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Respondent Closing:

Ms. Vetter stated the record is controlled under GRAMA because the patient herself isn't necessarily entitled to the records. She stated the law treats mental health care records with a higher level of protection. She stated the University is not saying the records even exist because the patient has a right of privacy for the mere fact that they sought counseling. GRAMA does not require them to create a record. She stated the counseling center is not part of the hospital or psychiatric institute.

Ms. Vetter stated they are relying on statute in addition to medical professional standards. She stated an access log is a creature of HIPPA and HIPPA does not apply to the student counseling center. She stated she has not heard how release of the records are in the best interest of the student.

Deliberation:

Motion by Holly Richardson that the appeal be granted per 63G-2-201(6). The argument from the petitioner was compelling that Lauren would have access to her own record and there is legal precedent someone can act on behalf of a deceased person.

Discussion to the motion.

Patricia Smith-Mansfield stated she believes the motion goes too far, but granting access is appropriate. She doesn't believe the deceased has rights of confidentiality or privacy. Ms. Richardson stated patients can expect to get access to their records, even for the purpose of changing providers.

Mr. Williams called for a roll call vote.

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

The hearing 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.

5. Gajkowski v. Utah Tax Commission

Mr. Williams announced the hearing. The Chair Pro Tem provided instructions and reviewed the procedures.

Petitioner's Statements:

Mr. Gajkowski stated his request is related to a schedule to obtain titles and get estimates that devalue vehicles. He stated the investigating officer at the Motor Vehicle Investigation Division mentioned multiple frauds that could be brought to a district attorney. He stated he has an interest in all the trucks taken from him.

Respondent's Statements:

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Mr. Lind stated records were provided when it was determined the case was closed. The investigation file was produced with some third party information redacted. He stated they didn't produce the criminal background information because that is protected under separate provisions. He stated the records really belong to the Driver License Division. He stated the petitioner's primary concern is that criminal charges were not filed, which is not relevant to the request. The petitioner has all he needs to pursue a civil action.

Questions from the Committee:

The Committee asked Mr. Lind who the records belong to. Mr. Lind stated they belong to the Driver's License Division and Bureau of Criminal Investigations under the Department of Public Safety.

Petitioner Closing:

Mr. Gajkowski stated the information should be public because it is vital to the public. He stated a civil action would be too expensive and the fraud is against the state.

Questions from the Committee:

The Committee asked the petitioner to define which records he is seeking. Mr. Gajkowski stated the redactions have no reference of what was redacted.

Respondent Closing:

Mr. Lind stated someone needs to file suit to establish security interest in a vehicle. He stated the title lien was redacted and descriptors were on the top of the page.

Motion by Mr. Fleming to uphold the entity's classification and all responsive records have been provided. Seconded by Ms. Dean.

Mr. Williams called for a roll call vote.

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

The hearing 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.

BUSINESS Part 2

Report on Appeals received

Ms. Shaw reviewed the status of appeals. The Committee requested appeals that were on hold until the Committee can meet in person again be scheduled.

Discussion Ms. Smith-Mansfield requested the status of the committee's updated administrative rules. Ms. Shaw informed the Committee they will be posted for public comment and be in effect by August.

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Committee members' attendance polled for next meeting, format and quorum verification.

The Committee scheduled a second meeting in August for the 27th, with the 28th as a possible backup if no quorum is present.

Motion to Adjourn

The Chair Pro Tem adjourned the June 11, 2020, State Records Committee meeting at 2:32 p.m.

This is a true and correct copy of the June 11, 2020, SRC meeting minutes, which was approved on July 9, 2020. An audio recording of this meeting is available on the Utah Public Notice Website at <https://archives.utah.gov>.

X /e/ Rebekkah Shaw
Executive Secretary