

August 13, 2020

**State Records Committee Meeting**

Date: August 13, 2020

Time: 9:00 a.m. – 2:00 p.m.

**Committee Members Present:**

Kenneth Williams, State Archivist  
Kendra Yates, State Archivist Designee  
David Fleming, Private Sector Records Manager  
Holly Richardson, Citizen Representative  
Patricia Smith-Mansfield, Chair, Citizen Representative  
Tom Haraldsen, Media Representative  
Nancy Dean, Political Subdivision Representative

**Committee Members Not Present:**

Vacant, Electronic Records and Databases Representative

**Legal Counsel:**

Paul Tonk, Assistant Attorney General  
Nicole Adler, paralegal

**Executive Secretary:**

Rebekkah Shaw, Utah State Archives

**Telephonic participation:**

Patrick Sullivan

**Others Present via Google Hangout:**

Susan Mumford  
Lana Taylor, Judicial Conduct Commission  
Blake Johnson  
Tracy Taylor, Wasatch Taxpayer Association  
Mary Duggin, Wasatch Taxpayer Association  
Jared Anderson, Wasatch County School District  
Paul Sweat, Superintendent for Wasatch County School District  
Brady Eames  
Craig Hale, Utah Local Government Trust  
Justin Anderson, Assistant Attorney General  
Trevor Lee

**Agenda:**

- Six Hearings Scheduled
  - Blake Johnson v Judicial Conduct Commission

August 13, 2020

- Wasatch Taxpayer Association v. Wasatch County School District
- Patrick Sullivan v. Department of Corrections
- Trevor Lee v. Department of Corrections
- Brady Eames v. Utah Local Government Trust
- Brady Eames v. Logan City
  
- Business:
- Approval of July 9, 2020, minutes, action item
- SRC appeals received and declined, notices of compliance, and related action items
- Cases in District Court, report
- Other Business
  - R35-2-2 public comment received on administrative rule, action item
  - Status of pending committee member approval, report
  - Fiscal year summary, report
  - Committee member's attendance for the next meeting to verify the attendance of a quorum

### **Call to Order**

The State Records Committee Chair, Patricia Smith-Mansfield, called the meeting to order at 9:03 a.m.

### **Business part 1 of 3**

The Chair read a letter stating the meeting will be held electronically and telephonically without an anchor location pursuant to Utah Code 52-4-207(4). The public may monitor the meeting and any public wishing to comment in the meeting can submit their request to the Executive Secretary. The letter is active for 30 days.

### **1. Blake Johnson v. Judicial Conduct Commission**

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

The respondent had a motion to dismiss the appeal based on jurisdiction. The Chair asked each party to speak to the motion for five minutes.

#### **Respondent's statement:**

Ms. Taylor stated the Judicial Conduct Commission is part of the judiciary and not subject to part four of GRAMA. She stated she didn't believe the Committee had the authority to order release of their records. Ms. Taylor stated the JCC is in the Judicial title of the Utah Code and the Supreme Court indicated the JCC is an independent advisory body to the court.

#### **Petitioner's Statements:**

Mr. Johnson stated the JCC determined only certain provisions apply to them. He stated the Executive Director informed him the appeal rights were provided in Utah Code 63G-2-401. He stated the JCC is picking and choosing which provisions of GRAMA they want to follow. Mr. Johnson stated the JCC never designated the records according to 63G-2-702. He stated if the

August 13, 2020

Committee body doesn't have authority, the JCC is in violation of 702(4)(b) because they have no appellate board.

**Questions from Committee:**

The Committee asked Mr. Johnson why he didn't appeal to district court. Mr. Johnson stated he asked the Executive Director what statute governed the appeal. He also stated he would like to avoid a filing lawsuit.

**Motion** by Nancy Dean moved to dismiss the appeal based on jurisdictional issues per Utah Code 63G-2-702(2)(a). Seconded by Holly Richardson. Aye: 6 Nay: 0. Mr. Williams, Mr. Fleming, Mr. Haraldsen, Ms. Dean, Ms. Richardson, 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.

**2. Wasatch Taxpayer Association v. Wasatch County School District**

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

**Petitioner's Statements:**

Ms. Taylor stated they requested all engineer invoices and reports done on 66 acres where a new high school was going to go. They requested BioWest's delineation report and invoices. They received the invoice, but did not get the wetlands study. The respondent stated it was a draft. They requested the contract with BioWest which states there were four stages. The first being the wetlands delineation field study. It was included in the contract, and the invoice shows the study was paid for and delivered to the School District. Ms. Taylor stated they still want it to be released because the property has been purchased.

**Question from the Committee:**

The Committee asked about the public interest claim. Ms. Taylor stated they spoke to the Army Corps of Engineers. They can't imagine what private information could be involved in the report. There is public interest because wetland will cost taxpayers to mitigate the property in perpetuity.

**Respondent's Statements:**

Mr. Anderson stated there is no relevance to tax funds and the request has no public interest. The document is speculative because it may show what is wetlands. The determination is made by the Army Corps of Engineers and any report by BioWest has no relevance to the decision. He stated the first phase of the contract does not mention a report. The third phase in the contract was to create a report and follow up with the Army Corps of Engineers.

Mr. Anderson stated BioWest did not complete any phase of the contract and a replacement contractor was hired. CRS created a report which has been made public and shared with the Army Corps of Engineers. He stated the records from BioWest are incomplete, were not circulated or relied upon for any decisions, and of no value to the public.

August 13, 2020

**Question from the Committee:**

The Committee asked if BioWest materials were provided to the second contractor. Mr. Anderson stated they were not. The Committee asked why BioWest was paid if nothing of value was provided to the District. Mr. Anderson stated he is not privy to the decision, but he doesn't think it's been fully resolved.

**Petitioner's Closing:**

Ms. Taylor stated the 62 acres are in a sensitive area. She stated the BioWest study was done in May, which is the wettest and the CRS study was done in August. She stated the timing of studies matter. She stated all records the Association receives are posted to their website.

**Respondent's Closing:**

Mr. Anderson stated the Association is attempting to disparage the project. He stated it's not a report and has no impact on the ultimate mitigation and cost.

**Deliberation:**

**Motion** by Mr. Williams to deny the appeal because the records are appropriately classified per Utah Code 63G-2-205(22). Seconded by Mr. Fleming.

**Discussion to the motion:**

The Committee stated they are not convinced incomplete work is a draft. The Committee stated taxpayer money was spent so the record should be public.

Vote: Aye: 2 Nay: 4. Mr. William and Ms. Dean voted in favor of the motion. Ms. Richardson, Mr. Fleming, Mr. Haraldsen, and Ms. Smith-Mansfield voted against the motion.

**Motion** by Mr. Fleming to grant the appeal because the records were not properly classified as protected per Utah Code 63G-2-201(2). Seconded by Mr. Haraldsen.

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

The Committee sauntered for five minutes.

**Business part 2 of 3**

**Motion** by Mr. Williams to approve the July 9 minutes. Seconded by Ms. Dean.

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

August 13, 2020

**Report on Appeals and the FY summary received**

Ms. Shaw reviewed the status of appeals and a summary of the last fiscal year. The Committee provided suggestions for the annual report.

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

The Committee sauntered until 11:00 am.

**3. Trevor Lee v. Utah Department of Corrections**

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

**Petitioner's Statements:**

Mr. Lee stated he is representing Patrick Sullivan in a criminal case addressing whether his guilty plea was voluntary. He stated they are requesting records for the criminal case. He was informed of a fee of \$6,000 for documents referencing his client. He stated no one disputes Mr. Sullivan is the subject of the records and his legal rights are implicated. He stated Mr. Sullivan is impecunious.

Mr. Lee stated the trial attorney does not have all the records, which is why a GRAMA request was submitted. He stated UDC has provided no authority to deny a fee waiver because it's voluminous as the petitioner is the subject of the records and using the records in a criminal proceeding. He stated he is willing to work with UDC if it's voluminous because he only wants what is related to his client.

Mr. Lee stated the fee is based on time for compiling the records using a process he did not request. He stated part of the fee is "outreach" to contact affected individuals which they cannot charge the petitioner for.

**Question from the Committee:**

The Committee asked why he isn't using discovery. He stated they are before the appeals court where no discovery is available. He stated they believe records that were not provided in previous discovery will be found in this request.

**Respondent's Statements:**

Mr. Anderson stated Mr. Lee did not request a fee waiver based on Mr. Sullivan being impecunious or his legal rights being affected. It was only based on Mr. Sullivan being the subject of the records therefore the other arguments are not before the Committee.

Mr. Anderson stated Mr. Lee has not met the burden to prove Mr. Sullivan is impecunious or his legal rights are affected. He stated this request is very similar to a request from Mr. Sullivan in April. The Committee granted that fee waiver stating if UDC had addressed Mr. Sullivan was the subject of the records, the denial would have been reasonable.

August 13, 2020

Mr. Anderson stated this request is two years rather than 11 months with the same search terms. It also contains requests for incident reports and other things. He stated this is a significantly larger request than what was made in April.

Mr. Anderson stated UDC is only asking for a \$50 deposit and the fee is an estimate. He stated at least a third of the records requested are not related to the criminal case. He stated there may be names or security information that needs to be redacted.

**Questions from the Committee:**

The Committee asked if they are charging for work that has been done for a prior request. Mr. Anderson stated they are appealing the previous Committee decision so those records have not been provided. They may need to do that work for this request and not Mr. Sullivan's April request.

The Committee asked if his argument is that no new arguments may be presented to the State Records Committee by the entity or the petitioner. Mr. Anderson stated the question is whether the fee waiver denial is unreasonable, not if he has a right to a fee waiver.

**Petitioner Closing:**

Mr. Lee stated his initial request stated he needed the documents for Mr. Sullivan's criminal case. He stated he knows exactly what was not provided in discovery. He stated he doesn't care how UDC searches for the records, but he doesn't want to pay for a process unnecessarily expensive.

**Respondent Closing:**

Mr. Anderson stated Mr. Sullivan was found impecunious in May 2019. He stated that finding isn't relevant to the time of the request. He stated the record request includes records dated seven months after the case was finished. He stated UDC cannot be found unreasonable based on arguments they were not asked to consider previously.

**Deliberation:**

**Motion** by Ms. Dean to grant the fee waiver based on his rights directly implicated, and the court has determined he is impecunious and there is no opportunity for discovery per 63G-2-204(4)(b & c). Seconded by Mr. Fleming.

Vote: Aye: 6 Nay: 0. Mr. Williams, Mr. Fleming, Ms. Richardson, Mr. Haraldsen, 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.

The Committee sauntered for 2 minutes. Mr. Williams left the meeting and Ms. Yates joined as his designee.

August 13, 2020

#### **4. Patrick Sullivan v. Utah Department of Corrections**

The petitioner requested the hearing be postponed because he was not aware his hearing was scheduled for today.

**Motion** by Mr. Fleming to postpone the hearing to September 10th. Seconded by Ms. Richardson.

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

#### **5. Brady Eames v. Utah Local Government Trust**

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

##### **Petitioner's Statements:**

Mr. Eames stated he discovered certain officers have engaged in a scheme to steal over ten million dollars of public funds. He stated some of the public funds belong to the citizens of Logan City.

He stated that he believes he has every right to watchdog by requesting and inspecting financial records. Mr. Eames stated the \$7,500 fee is an attempt to remedy the past theft of public funds. He stated the fee includes \$10 per paper copy.

##### **Respondent's Statements:**

Mr. Hale stated all records have been provided in 2020-52. He stated appeal 2020-60 contains a request for 17.5 years of financial records related to virtually every transaction the trust has. He stated the agency provides insurance coverage for its members, so there are hundreds of thousands of transactions over that time frame.

Mr. Hale stated they do not deny his right to access them, but does not believe it can be provided without adequate compensation. He stated it would take months to get all the records together. He stated they are happy to work with him if he would provide a deposit.

##### **Question from the Committee:**

The Committee asked both parties if copies are to be provided. Mr. Hale said the fee was not for the production of documents, but the gathering of documents. The Committee asked if there are paper or electronic copies. Mr. Hale stated the date range will include both, but it is not factored into the fee. He stated the time would involve hundreds of hours. The Committee asked if they use the Transparency website. Mr. Hale stated they do.

The Committee asked Mr. Eames what years he was requesting. Mr. Eames stated his request starts January 1, 2010 thru April 23, 2020. The Committee asked if he wanted copies. He stated the Open Records Portal said \$10 for 500 documents and \$2,500 as a fee for preparing the documents with a grand total of \$7,500. He stated he'd be willing to go look at the records first.

August 13, 2020

**Petitioner Closing:**

Mr. Eames stated he is devoting his life to researching this crime. He stated he's not out to slander but expressing concerns regarding a crime he believes was covered up.

**Respondent Closing:**

Mr. Hales stated he is new to the Open Records Portal and was not sure how to show the fees. He stated Mr. Hansen has been treasurer or director for 17.5 years. He stated they were not clear he only wanted 10 years. He stated the year span is long enough many of the requested records may not exist anymore. Mr. Hales stated they have done all they can to work with Mr. Eames.

**Question from the Committee:**

The Committee asked about how many hours the work entailed. Mr. Hale stated the estimate is 375 hours using the lowest compensation of the person who could do it. The Committee asked what system they use. Mr. Hale stated he's not certain but Mr. Eames is asking for receipts and backups of every transaction.

**Deliberation**

**Motion** by Ms. Yates to deny appeal 2020-52 because all records have been provided. Seconded by Mr. Fleming.

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

**Motion** by Mr. Fleming to deny the appeal for a fee waiver. Seconded by Ms. Yates.

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

**6. Brady Eames v. Logan City**

The Chair announced the hearing and provided instructions and reviewed the procedures. The respondent was not in attendance.

**Petitioner's Statements:**

Mr. Eames stated Logan City is maintaining an electronic city hall at loganutah.org. Many public records are published there, but many more vital records should be there. He stated he requested to see electronic copies of reports not published on the website maintained by the Treasurer. He stated the respondent informed him the records are stored by a third party.

Mr. Eames stated the respondent charging a fee means they believe deposits and investment reports do not benefit the public.

**Questions from the Committee:**

The Committee asked what reports he does not have. Mr. Eames stated he requested reports

August 13, 2020

from 2010 thru 2019. The Committee asked how he got the 2020 report. Mr. Eames stated it was provided in a separate GRAMA request.

**Motion** by Mr. Haraldsen to grant the appeal for a fee waiver because the records are classified as public. Seconded by Ms. Dean.

**Discussion to the motion**

The Committee stated 51-7-18.2 states the records are public and should be available for inspection.

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

**BUSINESS Part 3 of3**

**Public comment received on R35-2-2 administrative rule**

The Committee reviewed the public comment and considered how to soften the language so it's clear the intent is to clarify the jurisdiction.

**Motion** by Mr. Fleming for Ms. Yates to submit an amendment to strike the second sentence and improve the language. Seconded by Ms. Richardson.

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

The Chair verified a quorum will be present at the August 27th meeting.

**Motion to Adjourn**

The Chair adjourned the August 13, 2020, State Records Committee meeting at 1:47 p.m.

**This is a true and correct copy of the August 13, 2020, SRC meeting minutes, which was approved on August 27, 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**