

Amendment: Vacant committee member moved from “present” to “not present”.

State Records Committee Meeting

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

Date: May 14, 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

Committee Members Not Present:

Vacant, Electronic Records and Databases Representative
Vacant, Political Subdivision 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
Scott Gollaher
Jann Farris, Morgan County
Stacy Clark, Morgan County Clerk

Others Present via Google Hangout:

Susan Mumford
Sam Straight, Attorney for Brigham Young University
Chris Autry, Brigham Young University
David Anderson, Brigham Young University counsel
Lt. Wade Rob, Brigham Young University
Karen Ellingson, Brigham Young University police
Mark Gajkowski

Agenda:

- Three Hearings Scheduled

- Corbin Volluz v. Brigham Young University Police
- Mistiana Taelle v. Salt Lake City
- Scott Gollaher v. Morgan County
- Business:
- Approval of April 9, 2020, minutes, action item
- SRC appeals received and declined, notices of compliance, and related action items
- Cases in District Court, report
- GRAMA 2020 updates, report
- Other Business
 - Administrative rule edits prepared to submit to Utah Administrative Rules, action item
 - Administrative rule regarding incomplete appeals, action item
 - 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.

1. Corbin Volluz v. Brigham Young University Police

Corbin Volluz Patrick Sullivan was connected telephonically to the hearing. Mr. Williams announced the hearing. The Chair Pro Tem provided instructions and reviewed the procedures.

Petitioner's Statements:

Mr. Volluz stated this appeal is about a private company telling a public agency how to respond to a record request. He stated the emails he is requesting are in the possession of a public entity and the public has a right to know the contents. He stated the private company is Brigham Young University (BYU) and the public entity is Brigham Young University Police Department (BYUPD).

Mr. Volluz stated redactions were made to the records provided to withhold evidence damaging to the University. He stated the public has a right to know if a private company is directing a public agency to redact information to hide the existence of other records.

Mr. Volluz stated he received a privilege log of emails between the BYU counsel and BYUPD related to how to respond to public disclosure requests. He stated these emails detail interference of a private entity with a public entity.

Respondent's Statements:

Mr. Straight stated the only issue before the committee is whether a handful of emails between BYU lawyers and BYU employees are privileged. The answer is yes.

Mr. Straight stated decisions on what to release and when to release it were undertaken by university police and counsel in connection with the state ombudsman to make sure they were complying appropriately. He stated the issue is that the petitioner requested privileged information.

Mr. Straight stated attorney-client privilege was explained by the United States Supreme Court as the oldest privilege known in common law. GRAMA also expressly includes protection for attorney work product and attorney-client privilege.

Mr. Straight stated many private universities, such as Notre Dame and Harvard, have sworn police officers and university lawyers who represent the police as well as other divisions of the university. He stated the same arrangement exists at the University of Utah and Utah State University. He stated it is a similar relationship as city or county attorneys who represent both the entity and its internal departments including sheriff or police.

Questions from Committee:

The Committee asked Mr. Straight if his testimony is that attorney work product includes the preparation of record requests. Mr. Straight stated it does.

Petitioner Closing:

Mr. Volluz stated the United State Supreme Court decision does not address if the division is also a public entity. He stated BYU attorneys were giving advice to a public entity regarding how to respond to a public disclosure request.

Respondent Closing:

Mr. Straight stated there is public interest in protecting attorney-client privilege. BYUPD sought counsel from the ombudsman to make sure they were doing things appropriately. He stated nothing in the 2019 amendments change the fact that the police are still a division of BYU and its officers are employees of BYU. He requested the committee deny the appeal and protect attorney-client privilege and the work product doctrine.

Deliberation:

Motion by Patricia Smith-Mansfield to review the records in camera over the next month and continue the hearing in June. Seconded by David Fleming.

Mr. Williams called for a roll call vote.

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

Discussion on the motion: The Committee stated the only thing at issue is whether the Committee believes the correspondence adheres to the gold standard of attorney-client privilege. Fulfilling a GRAMA request itself is not preparing for an administrative proceeding and would not be privileged.

Motion by David Fleming that the respondent also provide the privileged log with the records for in camera review so the Committee can verify all records at issue are included. Seconded by Tom Haraldsen.

Mr. Williams called for a roll call vote.

Vote: Aye: 5 Nay: 0. Motion carries 5-0. Mr. Williams, Mr. Fleming, Ms. Richardson, Mr. Haraldsen 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.

Five minute break.

2. Mistiana Taele v. Salt Lake City

Ms. Shaw, the Executive Secretary, informed the Committee the petitioner withdrew their appeal that morning and she informed the respondent they did not need to attend the meeting. The Committee moved on to business.

BUSINESS Part 1

Motion to Approve April 9, 2020, Minutes

A motion to approve the minutes as amended was made by Ms. Richardson. Seconded by Mr. Haraldsen.

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

Report on Appeals received

Ms. Shaw reviewed last month's motion to send a notice of non-compliance to the Governor's Office regarding case 2019-120. A notice of compliance was received from the Department of Corrections. She asked if the Committee still wanted to send a letter of non-compliance to the Governor's Office.

Motion

Ms. Smith-Mansfield moved to accept their compliance letter given the circumstances. Seconded by Mr. Haraldsen.

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

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

GRAMA 2020 updates: Mr. Williams reviewed record access changes to the law in the last legislative session. Ms. Smith-Mansfield requested clarification from the Governor's Office on how changes will affect committee appointments. The Committee expressed frustration about the difficulty in filling vacancies.

3. Scott Gollaher v. Morgan County

Mr. Gollaher and Mr. Farris for Morgan County were connected telephonically to the hearing. The Chair Pro Tem announced the hearing and provided instructions and reviewed the procedures.

Petitioner's Statements:

Mr. Gollaher stated there are two appeals being heard. He stated 2020-16 asked for cases paid out over \$1,000. received no responses from Morgan County.

Mr Gollaher stated 2020-19 asked for the employee responsible for the IT department and identification of GRAMA specialists. He stated all three requests are for public records. He stated he was asking for the names of people in these roles and no private information.

Respondent's Statements:

Mr. Farris stated there are no responsive records to appeal 2020-16 and the county is under no mandate to create a record where a record does not exist.

Mr. Farris stated 2020-19 requested information of each information technology professional, and the name and time each was employed. He stated he checked with the clerk and the county does not have a record responsive to the request. He stated one person has been in charge of the IT during the requested time frame but there is no record specific to the request and the county is not required to create a record.

Questions from Committee:

The Committee asked if the information that they have a GRAMA Specialist was provided to Mr. Gollaher. Mr. Farris stated the county does not hire GRAMA specialists. All requests go through the Clerk's office and the clerk has no specific training to GRAMA.

The Committee asks if the county also does not have a specific contract for I.T.. Mr. Farris stated they have an I.T. person. There are only 30-40 employees in the county. One person does IT. There is no "information technology specialist."

The Committee asked if the county has a certified record officer as required by law. Mr. Farris stated he'd have to look at the law. He stated he has never heard of a certification for a GRAMA specialist. He's not aware of a certified record officer.

The Committee asked who the I.T. person is. Mr. Farris stated the county has an I.T. Director.

Petitioner Closing:

Mr. Gollaher stated Mr. Farris plays word games. Morgan County could have responded with the name of the I.T. Director and that they did not have a GRAMA specialist. He stated it's ridiculous that this had to be before the Committee. He thanked the Committee for their service.

Respondent Closing:

Mr. Farris stated the county was not responsible for creating a list of people who worked in the office. He stated the county does not have to create a record.

Deliberation:

Motion by David Fleming to grant the appeal and ask the respondent to provide expense records specific to the request with proper redactions. Seconded by Patricia Smith-Mansfield.

Discussion to the motion.

The Committee stated the respondent has provided no response to the petitioner or the Committee to show they made a diligent effort to search for responsive records for appeal 2020-16.

Mr. Williams called for a roll call vote.

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

Motion by David Fleming to grant the appeal as there must be responsive employment records identifying I.T. and GRAMA roles that are public per 63G-2-301(2)(b). Seconded by Patricia Smith-Mansfield.

Discussion to the motion.

The Committee stated the county knows who is employed to fulfil these roles and records must exist that document it.

Mr. Williams called for a roll call vote.

Vote: Aye: 5 Nay: 0. Motion carries 5-0. Mr. Williams, Mr. Fleming, Ms. Richardson, and Ms. Smith-Mansfield, Mr. Haraldsen voting 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.

Five minute break.

BUSINESS Part 2

Administrative rule edits prepared to submit to Utah Administrative Rules, action item

Discussion Ms. Shaw reviewed previous comments and suggestions for rule edits. The Committee clarified records being reviewed in camera are not in the Committee's custody. The Committee clarified communications that need to go through the Executive Secretary.

Administrative rule regarding incomplete appeals, action item

The Committee clarified rules related to incomplete appeals. The time a petitioner has to complete the appeal and reporting to the Committee by the secretary was added to the rules.

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

Ms. Smith-Mansfield recommended the Committee schedule as many appeals as possible before Ms. Richardson's and Mr. Fleming's terms ends.

Motion to Adjourn

The Chair Pro Tem adjourned the May 14, 2020, State Records Committee meeting at 1:02 p.m.

This is a true and correct copy of the May 14, 2020, SRC meeting minutes, which was approved on June 11, 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