

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: April 9, 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:

Nicole Alder, Paralegal, Attorney General’s Office

Executive Secretary:

Rebekkah Shaw, Utah State Archives

Telephonic participation:

Chad Bennion

Patrick Sullivan

Cody Young

Others Present via Google Hangout:

Justin Anderson, Assistant Attorney General

Lonny Pearson, Assistant Attorney General

Ryan Peters

Rosemary Cundiff

Susan Mumford

Avalon Snell

Public attendance via streaming not included in this count

Agenda:

- Three Hearings Scheduled
 - Patrick Sullivan v. Utah Department of Corrections
 - Chad Bennion v. Attorney General’s Office

- Cody Young v. Juab County Jail
- Business:
 - Approval of February 21, 2020, minutes, action item
 - SRC appeals received and declined, notices of compliance, and related action items
 - Cases in District Court, report
 - Administrative Rule regarding third party participation, action item
- Other Business
 - Next meeting format and scheduled for May 14, 2020.
 - Committee member's attendance was polled 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.

1. Patrick Sullivan v. Utah Department of Corrections

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. Sullivan stated his appeal is regarding a fee waiver. He stated the main issue is that the statute provides for a fee waiver if the petitioner is the subject of the record. This is independent of whether his legal rights are directly affected or whether or not he is impecunious.

He stated he was asked to provide proof that his legal rights are affected and he is impecunious. He stated a judge determined he was impecunious enough to provide an attorney at the state's expense. GRAMA does not require proof to be provided.

He stated his requests are for articles he's writing for the Utah Advocate Prisoner Network (UAPN), therefore access to these records benefits the public. Lastly, GRAMA provides there are certain things an entity cannot charge fees for. One is reviewing records to determine if they are subject to disclosure.

Respondent's Statements:

Mr. Anderson stated that Mr. Sullivan claims he's impecunious and his rights are directly affected by these records. The court finding Mr. Sullivan indigent was several months ago, and his situation may be different now. What an appellate court considers indigent doesn't inform indigency for this.

Mr. Anderson stated the court has been clear the petitioner making a claim has the burden to support it. Mr. Sullivan has not met his burden supporting his claims of his indigency or his rights are affected. Mr. Anderson stated that even if Mr. Sullivan is indigent, even if he is the subject of the record, these fees are reasonable.

The court found the fees reasonable due to the voluminous and burdensome nature of the request. Mr. Sullivan requested emails from 16 accounts for an 11 month period. The

respondent estimates 80-100 responsive emails per account. Several are going to be multiple pages. Although the emails are public, private and protected information is often discussed in email. Mr. Anderson stated fees were created specifically for requests such as this.

Questions from Committee:

The Committee asked why the respondent did not address the fact that Mr. Sullivan was the subject of the record. Mr. Anderson agreed he is the subject of the record. The fee is reasonable because of the nature of the request. Mr. Anderson stated the estimate of 2,500 pages that needed to be reviewed.

The Committee asked if the estimated 80 emails have Mr. Sullivan as the subject of the record. Mr. Anderson said the estimated 80 emails are ones where Mr. Sullivan is mentioned. This estimate may include non-responsive records for which there will be no charge. Mr. Anderson stated the fee is an estimate and they are asking for a small deposit up front. If it takes less time than estimated the petitioner will be refunded.

Petitioner Closing:

Mr. Sullivan said that the respondent had not granted any of his appeals. His requests have largely been for the public interest. He stated he has provided UAPN newsletters showing he has written articles for them. Mr. Sullivan stated the respondent has not granted fee waivers for years and uses fees to get out of disclosing records. He stated that is not what the legislature intended.

Respondent Closing:

Mr. Anderson stated access to records has not been denied. They denied the fee waiver. If Mr. Sullivan pays the deposit and fees, the records will be provided. He stated the fee waiver is reasonable because the specific request is voluminous and time consuming.

Deliberation:

Motion by Patricia Smith-Mansfield moved that it was an unreasonable denial of a fee waiver in that the Department of Corrections did not address the fee waiver based on the requester being the subject of the record. Seconded by David Fleming.

Mr. Williams called for a roll call vote.

Vote: Aye: 4 Nay: 1. Motion carries 4-1. Mr. Williams, Mr. Fleming, Mr. Haraldsen and Ms. Smith-Mansfield voted in favor of the motion. Ms. Richardson voted against the motion.

Discussion on the motion

Ms. Smith-Mansfield stated that if the respondent had addressed Mr. Sullivan as the subject of the record in the denial, then the fee waiver denial based on testimony would have been appropriate, but it should have been addressed before the hearing. Mr. Fleming acknowledged the response of UDC during the hearing, that Mr. Sullivan was the subject of the records. Ms. Smith-Mansfield stated the fee waiver was unreasonably denied to the petitioner before it got

to the Committee. Mr. Fleming stated that in all their responses UDC ignored the fact that the petitioner is the subject of the record.

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. Cody Young v. Juab County Jail

Mr. Young was connected telephonically to the hearing. Mr. Williams announced the hearing and provided instructions and reviewed the procedures. The Committee members introduced themselves. Ryan Peters, legal counsel for Juab County, introduced himself.

Petitioner's Statements:

Mr. Young stated that he numbered the items in his request and several are still outstanding. He stated he was taken to jail and there is no record of him being there so he is trying to get a record of who put him in jail and information related to his van and his dog. He stated he is not asking for a roster, but who was working in the jail while he was there. Mr. Young stated he never got a receipt for the property taken from him when he was booked.

Questions from Committee:

The Committee asked Mr. Young if the records were provided to his attorney. Mr. Young stated that his attorney does not have the missing information.

Respondent's Statements:

Mr. Ryan explained that he is the prosecuting attorney in this case representing Juan County Sheriff's office in this appeal. He stated this is not a request for a record, but a request for information. He has done an extensive search with the sheriff office. Rosters documenting who worked on October 13, 2018, no longer exist.

Mr. Ryan stated he had told Mr. Young where he could find the information he was seeking in the records that have been provided to him. He stated he has confirmed with Mr. Young's attorneys that the petitioner is in possession of the related police reports. He stated other agencies were involved in Mr. Young's arrest and they may own footage or records, but to his knowledge, from discovery in the criminal case, the records do not exist. He stated surveillance footage of the jail is protected.

Petitioner Closing:

Mr. Young stated he does have some responsive records. He stated there is no record of his van itself being taken. The warrant only addresses what was in his van. He stated he was not given anything to sign when he received his property back. Mr. Young stated he is trying to find any record that shows him in jail and any order to seize his property.

Respondent Closing:

Mr. Ryan stated the search warrant that was provided to Mr. Young, mentions his van. He stated that the only record available was that the court ordered retention of his van and property. This appeal is about whether there is a record, not if they have authority to hold the van. The records have been provided to Mr. Young and there is nothing further the County can provide. He stated they have provided every record requested except the surveillance footage that related to jail security which is protected.

Deliberation:

Motion by Ms. Smith-Mansfield: the entity provided a thorough response in that they answered each part of the request specifically. The records are properly classified. The entity has done a thorough search to ensure no other records are available and if they believe other entities possess the records, they have referred the petitioner to those entities. Therefore, the Committee upholds the response of the governmental entity and denies the petitioner's appeal. Seconded by Ms. Richardson.

Discussion on the motion:

The Committee stated that it would be nice to verify that Mr. Young's attorney has the related records, but the governmental entity's response is so thorough it seems they would not go through such effort and not provide the records to the attorney.

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. Each party has 30 days to appeal the Committee's decision to district court.

5 minute break.

BUSINESS Part 1

Motion to Approve February 21, 2020, Minutes

A motion to approve the minutes as amended was made by Ms. Smith-Mansfield. 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, the executive secretary, reviewed the status of appeals received and the appeals declined. Ms. Shaw reviewed a motion submitted by Patrick Sullivan regarding the case 2019-120.

Motion

Ms. Smith-Mansfield moved to send a notice of non-compliance to the Governor's Office per 63G-2-403(15)(d)(i)(B). Seconded by Mr. Fleming.

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.

Report on Cases in District Court: Nicole Adler, Paralegal, Attorney General Office, provided updates on the current appeal cases under judicial review.

3. Chad Bennion v. Attorney General's Office

Mr. Bennion was connected telephonically to the hearing. The Chair Pro Tem announced the hearing and provided instructions and reviewed the procedures.

Petitioner's Statements:

Mr. Bennion stated this request is similar to a previous appeal, but for a different time period. He stated that he requested records documenting costs and legal fees related to Senate Bill 54 including litigation that went forward.

He stated that nothing was provided after his initial request. He stated in response to his appeal to the Chief Administrative Officer, he was provided a compiled list of the time and dates which is prohibited by GRAMA. Mr. Bennion stated he believes there are underlying documents which were used to create this list that should be provided.

Respondent's Statements:

Mr. Pearson stated this is a repeat of an appeal filed in January 2018 with an updated time frame. When that was before the Committee was whether there were additional billing records. There were none because that information was not tracked until 2018.

Mr. Pearson stated there is no client so they are not required to keep comprehensive records. He stated that the record provided is not a compiled list, but a printout of the billing entries from the Legal Files software. He stated that there is nothing in the provided record to indicate there are additional records and Mr. Bennion has the burden to provide evidence that additional records exist.

Questions from Committee:

The Committee asked if no one is billed for work like this. Mr. Pearson stated that was correct. The Attorney General's Office is statutorily mandated to defend the constitutionality of statute like this. The entries were for internal office tracking purposes.

The Committee asked if the list that was provided is complete. Mr. Pearson said yes. He stated ordinarily when there's a client the printout would look different.

Petitioner Closing:

Mr. Bennion stated the state is the client. He stated that it is not reasonable to not track expenditure of state funds because there is no client. He asked that the Committee order the respondent to provide all records regarding legal fees and costs associated with the initial Senate Bill and any subsequent legislation on the matter.

Respondent Closing:

Mr. Pearson stated for ISF billing purposes there is no client. He stated that ultimately the state is the client, but the state is always the client. This is not a matter covered by ISF so records created for this are for internal record keeping purposes. He stated he checked multiple times to verify there are no additional records and he doesn't know what more they can do.

Deliberation:

Motion by Ms. Smith-Mansfield to deny the appeal based on testimony that there are no records subject to the request. Seconded by Mr. Fleming.

Discussion to the motion.

The Committee understands Mr. Bennion's frustration, but notes the Committee can only determine if records are properly denied and not whether records keeping is done correctly.

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.

BUSINESS Part 2

Administrative Rule regarding third party participation, action item

Discussion Ms. Smith-Mansfield stated that third party participation is rare. She stated the rule is listed to come before closing statements in the rule. This allows the petitioner a chance to respond. Mr. Fleming stated third party participants are not witnesses so petitioners should not be able to question them. He believes the rule is fine. Mr. Haraldsen suggested adding "must be presented prior to closing arguments". Mr. Fleming, Mr. Williams, and Ms. Smith-Mansfield state they're ok with that addition.

Motion by Mr. Fleming moves to add "must be presented prior to closing arguments" to Administrative Rule R35-1-2(6) and that the Executive Secretary take steps necessary to submit all the pending approved rule changes. Seconded by Ms. Smith-Mansfield.

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.

Discussion on today's meeting format and scheduling the next meeting

The Committee discussed the use of video conferencing and the quality of today's meeting. The Committee plans to meet this way going forward, but wants to limit the number of hearings that can be heard.

Motion to Adjourn

The Chair Pro Tem adjourned the April 9, 2020, State Records Committee meeting at 12:40 p.m.

This is a true and correct copy of the April 9, 2020, SRC meeting minutes, which was approved on May 14, 2020. An audio recording of this meeting is available on the Utah Public Notice Website at <https://archives.utah.gov>.

X _____
Executive Secretary