

September 24, 2020

**State Records Committee Meeting**

Date: September 24, 2020

Time: 9:00 a.m. – 3:00 p.m.

**Committee Members Present:**

Kenneth Williams, State Archivist

David Fleming, Private Sector Records Manager

Patricia Smith-Mansfield, Chair, Citizen Representative

Tom Haraldsen, Media Representative

Nancy Dean, Political Subdivision Representative

Holly Richardson, Citizen 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:**

Eric Morgan, KSL

**Others Present via Google Hangout:**

Nicole Noren, ESPN

Jeremy Brodis, ESPN

Jeffrey Hunt, ESPN

Alexander Cramer, Park Record

Bubba Brown, Park Record

Rayna B.

Carolyn Hong

Jill McClusky

Rodney Chatman, Police Chief, University of Utah

Robert Payne, University of Utah

Rebekah Bradway, University of Utah

Shawn Wood

Stacie Simpson

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Susan Mumford

Dan Harrie

Cindy Willard

TJ Quinn

Courtney Tanner, Tribune

Dennis Johnson, Treasurer

Alison Garner, Assistant Attorney General

Kirt Slaugh, Treasurer

Leo Holtz

Katie Ellis, Layton City

Robert Tripp, Davis County

Eydie Dorko, Layton Police

Neal Geddes, Davis County

Blaine Thomas, Summit County

**Agenda:**

- Four Hearings Scheduled
  - Eric Morgan (KSL) v. Department of Health
  - ESPN v. University of Utah
  - Leo Holtz v. State Treasurer
  - Alexander Cramer (Park Record) v. Summit County
  
- Business:
- Approval of September 10, 2020, minutes, action item
- SRC appeals received and declined, notices of compliance, and related action items
- Other Business
  - New committee member appointments, report
  - Departing committee members
  - Committee members' attendance polled for next meeting and second September meeting, format and quorum verification
- 

**Call to Order**

The State Records Committee Chair, Patricia Smith-Mansfield, called the meeting to order at 9:02 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. KSL v. Layton City**

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

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**Petitioner's statement:**

Mr. Morgan stated this request is for a 911 call of suspect Ethan Hunsaker in an alleged murder in Layton City. He stated the request was denied because there was an active investigation. He stated releasing the call would not interfere with the investigation or inhibit a right to a fair trial.

**Respondent's statement:**

Mr. Tripp stated he is the prosecutor for Davis County. He stated the prosecutors are against releasing the recording. He stated all 911 calls are not created equal. The content is different. Mr. Tripp stated 63G-2-305(10) doesn't require them to prove there is a danger of impeding a fair trial. He stated releasing the audio could persuade, inflame, or entice a jury to make their decision beforehand. He stated it would cause problems for the defense and prosecution. Mr. Tripp stated releasing the audio would not be worth the risk of having to change venues or having a jury thrown out.

Mr. Tripp stated the audio may be released after the trial. He stated reading the call and hearing it are different. He stated the public knows as much as they need to. He stated the public does not need details from the call that will change their perception of the case.

Ms. Ellis stated prosecutors and law enforcement are warned against making a statement that could prejudice a proceeding. She stated freedom of expression is an important right but needs to be balanced with a right to a fair trial. She stated confessions are prejudicial. She stated they are under a professional and ethical obligation to protect the record under 63G-2-305(10). She asked the Committee to uphold their decision.

**Question from Committee:**

The Committee asked Layton if there is a transcript of the call. Mr. Tripp stated the content of the call was released to KSL as part of the appeal process and KSL already wrote a story about it, therefore the call does not need to be released.

**Petitioner closing:**

Mr. Morgan stated the public's right to know outweighs the need to withhold the record. He stated there are other ways to make sure the jury is impartial. He stated he didn't think releasing the audio would impact Mr. Hunsaker's right to a fair trial.

**Respondent closing:**

Ms. Ellis stated the public's interest has already been met. She stated hearing the emotion and context will cause an emotional reaction and prejudice the trial. She stated having to change the venue or jury is not in the public interest.

**Question from Committee:**

**Deliberation:**

**Motion** by Mr. Williams to go in camera to review the record. Seconded by Ms. Dean.

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

**Motion** by Mr. Williams to return to open session. Seconded by Mr. Haraldsen.

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

**Motion** by Ms. Dean that the record has been classified correctly. Seconded by Mr. Fleming.

### **Discussion to the motion**

Ms. Richardson stated the information of the call is available to the public, but the call is properly classified. Ms. Smith-Mansfield stated she agrees not all 911 calls are equal.

Aye: 6 Nay: 0. Ms. Smith-Mansfield, Mr. Williams, Ms. Dean, Mr. Fleming, Ms. Richardson, Mr. Haraldsen 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. ESPN v. University of Utah**

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

### **Petitioner's statement:**

Mr. Hunt stated this request is a matter of the conduct of university police in the McClusky case. He stated the university's handling of the matter has significant public interest. It focused a national issue on campus safety and how complaints by students are handled. He stated GRAMA is critical to the process because it has been used as an investigative tool by reporters to release critical information to the public that may never have come to light. He stated this includes the conduct of officers on campus.

Mr. Hunt stated ESPN has been trying to get records related to the case for over a year. He stated the University's responses state they will produce records but move the deadlines down the road and then miss the deadlines they provided. He stated the respondent provided surveillance footage but blurred the officers' images. Mr. Hunt stated the respondent has not provided anything to prove releasing the unredacted video would jeopardize the life and safety of the individuals. He stated the university has already released images of Officer Deras so there is no reason to pixelate the video. He stated the video would not disclose where they live. Mr. Hunt stated the faces of the officers are important for the same reason Lauren's face is important.

### **Respondent Statement:**

Mr. Payne stated the University does not have a dog in the fight because both officers are no longer on the university police force. He stated the University has released substantial information regarding the case and Officer Deras. He stated the redactions were about protecting the officers.

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Mr. Payne stated releasing the video unredacted would place their safety in jeopardy which outweighs public interest. He stated there is a great deal of hostility toward police right now. He stated the current general unrest and anger towards police has created a real risk for the officers involved in the case. Mr. Payne stated there is a lot of information out there, but no media outlet has asked for images of the officers. He stated their faces cannot be found when searching the web.

**Witness testimony:**

Chief of University Police, Rodney Chatman was sworn in as a witness by the Chair.

Chief Chatman stated he has been the Chief since February and has not met Officer Deras. He stated the hostility to police should not be a surprise. He stated since May 30th there has been a protest daily. He stated officers have found people following them, and have been struck with water bottles with human waste in it.

Chief Chatman stated he has had face to face conversations with officers to not get dressed in uniform at home because there is vitriol to the uniform and remove stickers or flags that identify themselves or family members as a police family. He stated some attacks do not have a threat first, but the threat is recognition of a person in this line of work. He stated he has had to change the way he engages with people on a daily basis out of fear of what may happen.

**Question from Committee:**

The Committee asked if the names of the officers was sufficient to find an address rather than the faces of the officers. Mr. Payne stated the real consequences are for the police doing their jobs, not the specific issues surrounding it. He stated there is a heightened level of animosity and concern.

The Committee asked Mr. Payne when he last searched the web for images of the officers because they found one. Mr. Payne said it had been a few days.

**Petitioner closing:**

Mr. Hunt stated the current climate is not before the committee. He stated the officers' names have been known for months. He stated he has not heard anything that substantiates risk to the officers if the video is released unredacted. He stated Lauren's face is unredacted so the officers' should be as well. He requested the Committee order the video be released.

**Respondent closing:**

Mr. Payne thanked the Records Ombudsman for her work. He stated officers are at a heightened risk because of the political climate. He stated Chief Chatman instructs officers not to wear their uniforms to the office because there is hostility directed to the police officers in this case. He stated the general hostility creates a real risk of harm. He stated the public interest in knowing what the officers look like is outweighed by the potential harm.

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**Deliberation:**

**Motion** by Ms. Richardson to grant the appeal. Seconded by Mr. Williams.

**Discussion to the motion:**

Ms. Smith-Mansfield stated it was easy to find Officer Deras' face online. She stated she believes officers are held to a higher standard because they affect the rights of citizens on a daily basis. She stated they know what they are taking on and she is not convinced releasing the images heightens the risk because their names would be most jeopardizing. She stated increased transparency of official business would help the climate.

Ms. Richardson stated she found the petitioner's arguments compelling. She stated she understands the concerns of the entity but she is not convinced releasing the images would increase animosity to the individual.

Mr. Fleming stated the heightened hostility to officers is concerning but he is not persuaded it has any bearing on the Committee's decision. He stated they can only determine if a record is public or not and in this case he believes that the record is public.

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

**Business part 2 of 3**

**Motion** by Ms. Dean to approve the minutes of September 10th. Seconded by Mr. Haraldsen.

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

**3. Leo Holtz v. State Treasurer**

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

**Petitioner's statement:**

Mr. Holtz stated he represents disenfranchised private citizens who lack a means to navigate the system to claim their rightfully owned property held by the State Treasury. He stated he wants to facilitate transparency and aid the disenfranchised citizens who fall through the cracks of the Treasurer's outreach efforts. He stated his business is taking a direct approach to connect claimants and their heirs and relatives using case by case research.

**Question from Committee:**

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The Committee stated his request asked for excel format of raw data including name, address, date of foreclosure, and funds received. The Committee asked if he meant raw data or excel because excel is not raw data. Mr. Holtz stated he just wants the rows of data and it does not have to be in excel.

The Committee asked if the company gets a fee or if it is a free service. Mr. Holtz stated they ask a fee commensurate with the service which is negotiable based on the client. The Committee asked if it was a non profit or for profit business. Mr. Holtz stated they are a for profit business.

**Respondent's statement:**

Ms. Garner stated the request was denied because GRAMA does not require entities to create a record, compile information to answer a request, or provide a record in a format not maintained by the entity. She stated GRAMA also does not require them to fulfil a request if the records are publicly accessible. Ms. Garner stated the database is not capable of producing information in a spreadsheet or being copied in whole or part. She stated there is a website that can be searched by name.

Ms. Garner stated the Division of Unclaimed Property has many efforts to publicize the funds including social media, advertisement, radio, and media coverage. She stated the division does not charge a fee for unclaimed property.

**Question from Committee:**

The Committee asked how the claims totalling \$250 and lower being classified as public was determined. Ms. Garner stated it is considered negligible. The Committee asked why they did not include Utah Code 67-4a-14 in their argument. Ms. Garner stated they determined GRAMA applied more because the request would require creation of a record and manipulating the data.

The Committee asked Ms. Garner to respond to the petitioner's statement that excel format was not required. Ms. Garner stated the software cannot be copied in whole or in part. She stated the database includes a lot of private information including social security numbers, and bank account numbers which cannot be segregated from the public information.

**Petitioner closing:**

Mr. Holtz stated the outreach strategies are effective for average citizens but not for outliers who live in different states. He stated people assume they would get a check in the mail and do not know they may have to sit before a judge to go over what is left from foreclosure. He stated releasing the information would be a net positive benefit.

**Question from Committee:**

The Committee asked if they can assist people using the state website. Mr. Holtz stated every state does things differently. He stated every state has a website but the funds derived from delinquent tax foreclosures are not listed and requires going through the GRAMA process to request a specific data set to audit the records. The Committee asked if he has made requests

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for this data from other states and received it. Mr. Holtz said yes.

**Respondent closing:**

Ms. Garner stated every state has an unclaimed property law. She stated Mr. Holtz is welcome to go to the counties and seek information on foreclosures because the Treasurer database does not delineate the source of the funds.

**Questions from the Committee:**

The Committee asked if the form hinders inspection of the record per 63G-2-201(13). Ms. Garner stated the database is for internal use. She stated the website is easily navigable and accessible to the public. The Committee asked if there is public information in the database which is not accessible on the website. Ms. Garner said she didn't think so.

The Committee asked if a list can be run of the public information available on the website. Ms. Garner stated Dennis Johnston would know about that.

**Witness statement:**

Mr. Johnston was sworn in as a witness by the Chair.

Mr. Johnston stated the data is generated in a batch process and sent to the state version of the website every week. He stated there are firewalls between the database and the website so only public information is there to peruse.

**Questions from the Committee:**

The Committee asked if there is public information not available on the website but in the database. Mr. Johnston said no.

**Questions from the Petitioner:**

Mr. Holtz asked if there is a way the data can be copied and shared. Mr. Johnston stated they do queries of the database to do their work, but not in the manner he was asking about. He stated they created a website with current information as part of the design.

**Deliberation:**

**Motion** by Ms. Richardson to uphold the denial because the information is already publicly available per Utah Code 63G-2-201(8)(e)(i)(A) and 67-4a-14. Seconded by Mr. Williams.

**Discussion to the motion**

The Committee stated getting information out of the database is not creating a record. Part of records management is providing access to the information.

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

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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. Alexander Cramer (Park Record) v. Summit County**

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

##### **Petitioner's statement:**

Mr. Cramer thanked the Committee for hearing the appeal. He stated in March a stay at home order in Summit County was expected to be extended to May 15th but was lifted in April. He stated officials said it was to coincide with the Governor's order.

Mr. Cramer stated county officials have indicated they needed political capital and the public has a right to know if the order was rescinded to gain political capital. He stated the public has a right to know how and why officials came to the decision to rescind the order.

Mr. Cramer stated the respondent has stated the records are protected per 63G-2-305(12), (17), and (22). He stated it is overreach to state all records created in the Emergency Operation Center are confidential because the county cannot make decisions without public scrutiny. He stated the records are not drafts because they were used to make a policy. He stated the records are not subject to attorney-client privilege because they are not created in anticipation of litigation.

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

Mr. Thomas stated there was little argument on appeal disputing if the records are protected. He stated there are three reasons the records should be protected. He stated all of the records fall under 63G-2-305(12). He stated the exchange of ideas should not be subject to the chilling effect the threat of public scrutiny can bring, especially under a state of emergency.

Mr. Thomas stated the program is the Emergency Operations Center (EOC) established under Homeland Security directive. He stated the operation center is a federal mandate. He stated the purpose is to have intergovernmental communications in time of emergencies which is an executive function of the government.

Mr. Thomas stated some records are drafts and some documents are protected under 63G-2-305(17) because the purpose of the record is to get legal advice. He stated the public interest is not greater than the interest in restricting access. He stated the records fall under 63G-2-201(3)(b) because the creation of the emergency operations center falls under a federal program.

Mr. Thomas stated executive privilege applies to the records because the policies always outweigh the public's right to know. He stated the program is an executive function so executive privilege applies.

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**Question from Committee:**

The Committee asked if he says 63G-2-305(29) is part of his executive privilege argument. Mr. Thomas said sort of. The Committee asked him to clarify how executive privilege applies.

Mr. Thomas stated executive privilege involves policies that always outweigh the public's right to know. He stated GRAMA presumes things should be released but executive privilege almost says they need to be restricted. He stated this program is federally mandated.

The Committee asked what other state statute or court rule applies per 63G-2-201(3)(b). Mr. Thomas stated the court rule is executive privilege per United States v. Nixon. He stated the EOC is an executive function of government. He states the case applies to the county manager and state governor. Mr. Thomas stated the orders from the EOC are public. If the records were public it would prevent the county from responding quickly, efficiently, and effectively to declared emergencies.

The Committee asked if his position is that Utah's participation in the EOC program means it falls under another federal regulation for that program. Mr. Thomas stated the Homeland Security directive that all counties and states adopt a national incident management system. He stated the EOC is established under a federal regulation.

**Petitioner closing:**

Mr. Cramer stated that Summit County was the epicenter of the pandemic in the country in March and it was scary. He stated the county rescinded a stay at home order on May 1st, weeks before planned and the public has a right to know why that decision was made. Were they pressured? We haven't heard the benefits of openness. It may inspire confidence. He stated they do not deny the need for a swift, efficient response. He stated they want to know if state officials influenced the decision. He asked the Committee to review the records in camera.

**Respondent closing:**

Mr. Thomas stated the state of emergency has not passed yet. He stated after the state of emergency has passed there will be less interest in restriction. He stated officials need to be able to be candid and come to a conclusion quickly without fear of public scrutiny. Under a state of emergency there is a heightened interest in having the records protected.

**Question from Committee:**

The Committee asked how many records there are. Mr. Thomas stated there are about 400 pages of communications and within those there are attachments. He stated the attachments are about 1,100 pages.

The Committee asked if any of these documents have been released to the requester. Mr. Thomas said if outside entities spoke to the EOC or asked questions, those were released. The Committee asked if those are included in the in camera records. Mr. Thomas said they are not.

**Deliberation:**

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**Motion** by Mr. Williams to review the records in camera. Seconded by Mr. Haraldsen.  
Aye: 6 Nay: 0. Mr. Williams, Ms. Richardson, Mr. Fleming, Mr. Haraldsen, Ms. Dean, and Ms. Smith-Mansfield voted in favor of the motion.

**Motion** by Ms. Dean to continue the hearing to November 12th to give the Committee time to review the records in camera. Seconded by Mr. Haraldsen.

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

**Business part 3 of 3**

The Committee bid farewell to two departing members, Ms. Richardson and Mr. Fleming, and thanked them for their wonderful service for two terms on the Committee.

**Committee members' attendance polled for next meeting, format and quorum verification.**  
The Chair verified a quorum will be present at the October 8th meeting.

**Motion to Adjourn**

The Chair adjourned the October 8, 2020, State Records Committee meeting at 2:39 p.m.

**This is a true and correct copy of the September 24, 2020, SRC meeting minutes, which was approved on October 8, 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