

January 14, 2021

State Records Committee Meeting

Date: January 14, 2021

Time: 9:30 a.m. – 4:00 p.m.

Committee Members Present:

Patricia Smith-Mansfield, Chair, Citizen Representative

Kenneth Williams, Chair pro tem, State Archivist

Mark Buchanan, Private Sector Records Manager

Marie Cornwall, Citizen Representative

Nancy Dean, Political Subdivision Representative

Tom Haraldsen, Media Representative

Kendra Yates, State Archivist Designee

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

Others Present via Zoom:

Judith Zimmerman

Jessica Miller, Tribune

Taylor Stevens, Tribune

Bradley Jeppson, West Valley City

Jeremy Beckham, UARC

Nicole Hanna, UDAF

Melissa Ure, UDAF

Mark Tracy

Matthew Pierce, Archives

Luis Sanchez

John Q Public

David Quealy, West Jordan Police

Eric Magnuson

Mark Burns, UDOT

Brady Eames

Patrick Finlayson, Millard County

Steven Onysko

January 14, 2021

Lonny Pehrson, Assistant Attorney General
Ashley Gregson
Erika Larsen
Sherrie Maxwell, Washington County
Susan Mumford
Rosemary Cundiff
Blake Hamilton, Attorney
Peri Brimley

Agenda:

- Six Hearings Scheduled
 - Utah Animal Rights Coalition v. Department of Agriculture & Food (2020-131. Continuance)
 - Jessica Miller (Tribune) v. West Valley City Police (2020-109. Continuance)
 - Sanchez (Defense Guide) v. West Jordan Police (2020-110)
 - Darren Rosenstein v. Utah Department of Transportation (2020-105)
 - Brady Eames v. Millard County (2020-22)
 - Steven Onysko v. Attorney General's Office (2020-18, 2020-87)

- Business:
 - Appoint Executive Secretary, action item
 - Appoint Committee Chair, action item
 - Approval of December 10, 2020, SRC Minutes, action item
 - SRC appeals received and declined, notices of compliance, and related action items
 - Cases in district court, report
 - Committee vacancy role change, action item
 - Committee members' attendance polled for next meeting, format and quorum verification

Call to Order

The Chair called the meeting to order at 9:04 am.

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. Utah Animal Rights Coalition v. Department of Agriculture & Food (2020-131. Continuance)

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

January 14, 2021

The Committee went in camera.

The Chair apologized for forgetting to take a motion to go in camera. She stated there was no deliberation in camera.

Motion by Mr. Williams to return to open the meeting. Second by Ms. Dean.

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

Deliberation:

Mr. Williams thanked the respondent for the organization of the records provided to the Committee.

Motion by Mr. Williams that the meeting records numbered 00705-00801 are public records and should be provided to the requester. Seconded by Ms. Dean.

Dr. Cornwall offered a friendly amendment to allow redactions of the identity of the farms. Mr. Williams accepted the amendment.

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

Motion by Ms. Dean that the investigation records part one numbered 00240-00353 and investigation records part two numbered 00354-00481 are properly classified as protected under 63G-2-305(10) and (49). Seconded by Dr. Cornwall.

Discussion to the Motion

Ms. Dean stated they did consider the public's interest and felt the interest in classifying the records as protected was greater than the public's right to know.

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

Motion by Mr. Williams that the record group titled cooperation numbered 00532-00704 are generally public and can be provided with information identifying specific farms and individuals redacted per 63G-2-305(12) and (31). Seconded by Ms. Dean.

January 14, 2021

Discussion to the Motion

Mr. Williams considered the weighing provision. Dr. Cornwall said descriptions of the property should be considered for possible redaction.

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

Motion by Mr. Williams that the record group titled compensation numbered 00482-00531 are generally public and can be provided with information identifying specific farms and individuals redacted per 63G-2-305(12) and (31). Seconded by Ms. Dean.

Substitute Motion by Mr. William that the record group title compensation numbered 00482-00531 are generally public and can be provided except to the extent that redactions can be made for the identity of properties under 305(24), (25) and (49). Seconded by Ms. Dean.

Discussion to the Motion

Dr. Cornwall stated she does not think it can be redacted enough to provide useful information to the public.

Aye: 4 Nay: 1. Abstain: 1. Mr. Buchanan, Ms. Dean, Mr. Williams, Mr. Haraldsen voted in favor of the motion. Dr. Cornwall voted against the motion. Ms. Smith-Mansfield abstained.

Motion by Dr. Cornwall the record group titled reports numbered 00101-00239 are properly classified as protected 63G-2-305(10) and (49). Seconded by Mr. Williams.

Discussion to the Motion

Ms. Dean stated they did consider the public's interest.

Aye: 5 Nay: 0. Abstain: 1. Mr. Buchanan, Dr. Cornwall, Ms. Dean, Mr. Williams, Mr. Haraldsen voted in favor of the motion. Ms. Smith-Mansfield 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.

The Committee sauntered for 5 minutes.

2. Jessica Miller (Tribune) v. West Valley City Police (2020-109. Continuance)

The Chair announced the hearing and provided instructions. The Chair asked if the Committee needed to go in camera.

January 14, 2021

Motion by Mr. Haraldsen to go in camera. Seconded by Ms. Dean.

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

Motion by Ms. Dean to return to open session. Seconded by Mr. Williams.

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

Deliberation:

Motion by Ms. Dean the records are properly classified as the investigation is ongoing.

Motion by Mr. Haraldsen that the records are generally public in that the content has already been released. Inasmuch as what has not been released is properly classified as protected under 63G-2-305(10), the information should be released because the public right to know is greater than the interest in keeping them protected per 63G-2-403(11)(b). Seconded by Mr. Williams.

Discussion to the Motion

Dr. Cornwall stated even though people want us to think the nine hours is irrelevant, nine hours is what gives us valuable information that leads up to the event. For that reason she would support the motion. We do not usually see what happens before the incident. Mr. Haraldsen stated the purpose of the body camera program is for this reason. Ms. Smith-Mansfield stated it is for transparency.

Aye: 5 Nay: 0. Abstain: 1. Mr. Buchanan, Dr. Cornwall, Ms. Dean, Mr. Williams, Mr. Haraldsen voted in favor of the motion. Ms. Smith-Mansfield 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. Sanchez (Defense Guide) v. West Jordan Police (2020-110)

Both parties being present, the Chair announced the hearing and provided instructions and reviewed the procedures.

Petitioner's statement:

Mr. Sanchez stated he saw the videos a couple years ago and the dog being retired is not relevant. He stated his appeal to the CAO stated why release of the records are in the public interest. He stated concealment of evidence and redactions show a clear indication of either incompetence or corruption which needs to be scrutinized by the public.

January 14, 2021

Mr. Sanchez stated the investigation does not benefit him. He stated everyone present is paid except him which shows release of the records does not benefit him personally. He stated the fee amount was unreasonable.

Mr. Sanchez stated when he released footage it was viewed, shared, and commented on. He stated the Facebook account has more traffic than the Youtube page.

Questions from Committee:

The Committee asked how viewing or sharing the information benefits the public. Mr. Sanchez stated that the canine attack is not an isolated incident. He stated he wants people to become aware of how serious these attacks have been. He stated he wants to give the public an opportunity for discussion so they are aware and can do something. He stated when he saw these videos a few years ago, he also requested the police reports. Mr. Sanchez stated the reports did not match what he saw in the video.

The Committee asked if Mr. Sanchez has the videos he requested or if this is just about the fee. Mr. Sanchez stated he does not have all of the videos but this is just about the fee.

Respondent's statement:

Mr. Quealy stated he would like the submitted declarations of Mr. Korban Lee and Ashley Jarvis to be used in lieu of testimony. He stated he'd like to focus on the law relative to fee waivers and what the City considered.

Mr. Quealy stated the initial request didn't say anything about a fee waiver. He stated the initial response denied a fee waiver due to a lack of information. He stated the appeal to the Chief Administrative Officer stated the petitioner works with mydefenseguide.org and other media organizations where findings would be released. He stated the city did not have much to go on. Mr. Quealy stated Mr. Lee considered three general things. He stated the first thing is how long ago the incident happened. The incident at issue happened in 2013 and the video requested has been destroyed per the retention schedule. The one that still exists is in a litigation file.

Mr. Quealy stated the second category was that these records are already in the public domain. He stated this case was in federal court and the plaintiff held a press conference. He stated several articles and news stories were released specific to these records.

Mr. Quealy stated the third category was the identified conduits for the public in this case. He stated the petitioner only provided the Defense Guide and "independent media organizations". He stated Mr. Lee had no way to know what media organizations were included. He stated the stated purpose found on the Defense Guide included informing people of criminal code, not publishing information about investigations or conducting investigations.

Mr. Quealy stated the Supreme Court gives entities great discretion in determining how to apply 63G-2-203(4)(a). He stated Mr. Sanchez has not met his burden in this case. He stated the

January 14, 2021

Youtube video has 30 views and the city should not have to assume there may be interest on other social media platforms. He stated the City has already been held accountable for this incident.

Questions from Committee:

The Committee asked if the records themselves are in the public domain or is he referring to information about the case covered by the media. Mr. Quealy stated the records are in the public domain. He stated the primary records are body camera footage of a dog engaging with a suspect. He stated the petitioner stated he has already seen these videos.

The Committee asked if the petitioner has access to all the videos. Mr. Quealy stated he does except the one destroyed per the retention schedule. The Committee asked what the fee is for. Mr. Quealy stated it is for redactions. He stated Ms. Jarvis' declaration details what he did in twelve hours of redaction and Mr. Sanchez was only charged for seven of those hours.

The Committee asked how he established the fee. Mr. Quealy stated it is based on the lowest hourly rate for a person qualified to do the work. The Committee asked what the \$25 per video was for. Mr. Quealy stated that is the standard fee schedule for zip drives, disks, and pulling the information.

Petitioner closing:

Mr. Sanchez stated he saw parts of the videos in the past, but only small sections. He stated the full videos cannot be found online. He stated his facebook page states they are a news media organization. He stated there is no statute of limitations for fee waivers. He stated he was not asking the City to foresee if the video would be viral. He stated the fee waiver is because the record would benefit the public and it has started a lot of discussions across the country.

Mr. Sanchez stated the videos he requested would benefit the public and the fee waiver should be applied.

Respondent closing:

Mr. Quealy stated the petitioners arguments were not provided to the Chief Administrative Officer and he responded appropriately.

Deliberation:

Motion by Ms. Dean to deny the fee waiver because the entity analyzed the standards in 63G-2-203(4) when making the decision about the fee. Seconded by Mr. Williams.

Discussion to the Motion

Ms. Smith-Mansfield stated there is definitely a public interest. She stated the age of the records probably are not relevant. She stated the law has changed since the incident, but there is enough information available for the petitioner to provide perspective on the event.

January 14, 2021

Mr. Haraldsen stated it sounds like they have the records but he has not paid the bill. He stated it is different from what is normally before the Committee. He stated he is inclined to agree with the motion.

Aye: 6 Nay: 0. Mr. Buchanan, Dr. Cornwall, Ms. Dean, Mr. Williams, Mr. Haraldsen, 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 5 minutes.

Business part 2 of 3

Appoint Executive Secretary, action item

Motion by Mr. Williams to appoint Rebekkah Shaw as the Executive Secretary. Seconded by Ms. Dean.

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

Appoint Committee Chair, action item

Motion by Mr. Haraldsen to appoint Mr. Williams the Committee Chair. Seconded by Dr. Cornwall.

Discussion to the motion Mr. Williams stated he is happy to accept.

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

Ms. Smith-Mansfield stated Mr. Williams will be the Chair starting next meeting. Ms. Smith-Mansfield stated a Chair pro tem needs to be appointed. She stated this person would get experience in being the Chair.

Motion by Mr. Haraldsen to appoint Ms. Dean the Chair pro tem. Second by Mr. Williams.

Discussion to the motion Ms. Smith-Mansfield asked Ms. Dean if she was willing to be the Chair pro tem. Ms. Dean stated she is. Ms. Smith-Mansfield stated being pro tem means she may be Chair once in a while. Ms. Dean stated she would like to be more familiar with the process of being Chair.

January 14, 2021

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

Approval of December 10, 2020 Minutes, action item

Motion by Mr. Williams to approve the December 10, 2020 SRC minutes. Seconded by Ms. Dean.

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

Cases in District Court, report

Mr. Tonks reported the status of cases in district court.

4. Darren Rosenstein v. Utah Department of Transportation (2020-105)

Both parties being present, the Chair announced the hearing and provided instructions and reviewed the procedures.

Petitioner's statement:

Mr. Hamilton stated the initial request was made June 23rd, 2020, and the respondent provided a blanket objection on July 21st. He stated he would address the issue of discovery. Mr. Hamilton stated there is an administrative hearing set for his client. He stated the respondent claimed they did not need to respond to the request because discovery under the Administrative Procedures Act was utilized.

Mr. Hamilton stated the Administrative Procedures Act does not prevent his client from accessing records under GRAMA. He stated the respondent's argument contradicts the purpose of GRAMA. He stated the Administrative Procedures Act only limits discovery, but does not touch GRAMA. He stated the respondent's argument would allow third parties to access these records but not his client because he is involved in an administrative proceeding.

Mr. Hamilton stated entities should not try to determine the purpose for the use of records. He stated all they can do is determine if it is a record and what the classification is. He stated that has not happened.

Mr. Hamilton stated litigation is irrelevant. He stated there have been multiple decisions from the Committee that GRAMA is separate from discovery. He stated Mr. Gollaher v. Morgan County is one example, and the McClusky case is another. He stated litigation does not matter, but whether a record is public under GRAMA. Mr. Hamilton stated the respondent is withholding some records based on relevance. He stated relevance does not matter because this is not a discovery dispute.

January 14, 2021

Mr. Hamilton stated witness names should not be redacted because the audit is over and there would not be any witness tampering in this case. He stated an administrative hearing is scheduled soon so the names will come out eventually.

Mr. Hamilton stated this has caused severe damage to his client and his business. He stated his client wants to know if he was treated differently. He stated any protected information can be redacted and the records provided.

Mr. Hamilton stated the respondent has improperly characterized this as a discovery request. He stated the Committee has been clear on the difference. He stated his client has a right under GRAMA to access public records and asked the records be released.

Questions from Committee:

The Committee asked the respondent to address specifically 63G-2-104 that the Administrative Procedures Act does not apply except as provided in 63G-2-603 which is amending a record. The Committee asked the respondent to address why the Administrative Procedures Act can be considered in this proceeding.

Respondent's statement:

Mr. Burns stated he would answer that first. He stated The Administrative Procedures Act provides hearing an appeal when an agency makes a decision on an application or agency action. He stated he believed the legislature added this exclusion to prevent multiple administrative proceedings going on that may produce inconsistent results. He stated other provisions of GRAMA do not exclude the application of the Administrative Procedures Act. He stated the concept of having dual administrative proceedings would create significant confusion.

Mr. Burns stated this issue arises from an audit conducted considering billings from TEA Group and affiliated entities. He stated the audit is complete but they are still in the process of enforcing the findings. He stated TEA Group has been the contractor on many contracts which generates a lot of records and a lot of search terms and phrases apply. He stated he brought a sample for the Committee.

Mr. Burns shared his screen to share a presentation.

Mr. Burns stated GRAMA has a few provisions when other statutes apply. He reviewed 63G-2-201, 63G-2-203(1). He stated UDOT took that direction and applied it to their rules. He reviewed Utah Administrative Rule R907-1-4.

Mr. Burns stated this is in exchange for what is intended to be a summary proceeding focused narrowly on the issues of a notice of agency action that the request or entity has a right to see everything the action is based on. He stated in this case UDOT provided with some limitations, such as witness names, the entire audit file. He stated thousands of pages were provided.

January 14, 2021

Mr. Burns stated if the party of agency action wants to engage in broader actions, they can convert from an administrative proceeding to adjudication. He stated the Committee cannot engage in discovery.

Mr. Burns shared his screen to share a presentation.

Mr. Burns stated if this were before the court, the amount of records you get is based on what is in controversy. He stated in rules of civil procedure a court order is required to get access to more records. He stated if this is not followed, every entity is at a disadvantage because a requester can submit infinite GRAMA requests and the entity cannot. He stated entities may issue subpoenas. He stated they are trying to follow the rules. He stated their response is based on the discovery limitation in the Administrative Procedures Act.

Mr. Burns went through the initial request and informed the committee which items in the request had been provided. He stated the request for documents, notes, or recordings related to TEA Group or Darren Rosenstein does not have a time frame limitation. He stated the request for emails regarding TEA Group or Mr. Rosenstein including ten individuals does not have a time frame limitation. He stated the representative sample covered these records.

Mr. Burns stated the provision of GRAMA directs them to the Administrative Procedures Act. He stated that the act is clear that discovery is prohibited. He stated people can make a GRAMA request, but the issue is what stage of administrative proceedings they are seeking record access for, or if any pending investigation is ongoing. He stated the legislative intent is also the interest of restricting access for the public good. He stated the Committee cannot deviate from that legislative direction.

Mr. Burns stated the emails provided for the Committee's review are correspondence with in-house attorneys and others including witnesses participating in investigative proceedings. He stated this is already interfering with ongoing litigation because he is before the Committee instead of preparing for the March administrative hearing. He stated the request includes but is not limited to twenty people that have connections to TEA Group.

Petitioner closing:

Mr. Hamilton stated the only records that have been provided are the audit file, which are required to be produced under the Administrative Procedures Act. He stated the respondent is arguing the Administrative Procedures Act prohibits access under GRAMA the same way FERPA does. He stated the Act does not say anything about GRAMA. He stated that

Mr. Hamilton stated the Committee has made multiple decisions that GRAMA is not discovery. He stated discovery serves a different purpose. Mr. Hamilton stated under GRAMA a person is entitled to records that are public. He stated that is the determination the entity should be making. He stated his client wants these records, and he is entitled to them just as if he were anyone else. He stated nothing about an ongoing administrative proceeding prevents someone

January 14, 2021

from making a record request. He stated the audit file being provided does not prevent someone from making a GRAMA request.

Mr. Hamilton stated it is a dangerous precedent if an entity can shut down a record request because they started an administrative process that does not allow discovery and prevents someone from making a record request. He asked the Committee to require the respondent to provide the records.

Respondent closing:

Mr. Burns stated the Committee should honor the provision in GRAMA that says if another law governs the records, that procedure should be followed. He stated that is what the respondent is doing. He stated he can answer any questions the Committee has.

Deliberation:

Ms. Smith-Mansfield stated the Committee has long held discovery and GRAMA are different tracks. She stated there was a court case where a GRAMA request done to subvert discovery was addressed as a side issue. Someone engaged in discovery does not prohibit a GRAMA request. She asked Mr. Tonks if he remembered the case.

Ms. Smith-Mansfield stated the Administrative Procedures Act is exactly what it states. She stated it is a procedures act that does not deal with classifications. She stated when someone makes a request and it comes to the Committee, the issue is whether the records are public or non-public. She stated discovery comes into effect because petitioners can get records that are non-public. She stated a public record is public regardless if it's subject to discovery or GRAMA. She stated the Committee does not consider discovery a classification justification. She stated the Committee would turn to whether the records are classified properly under 63G-2-305(10).

Dr. Cornwall stated she vaguely remembers the case from when she was on the Committee before. She stated the Committee's job is to determine whether records are classified correctly. She stated she cannot answer whether they should look at the records in camera until she knows why they are looking at the records. She asked if it would be to decide if the records were protected or if it would be for the discussion about discovery.

Mr. Williams stated they have heard two different arguments. One that a lot of records have been provided and the other that production of records has been limited due to ongoing matters.

Mr. Williams stated this motion steers away from the question of GRAMA versus an administrative hearing.

Ms. Smith-Mansfield stated it may be worth looking at the records for classification to have more time to research the court case. She stated discovery is independent of GRAMA. She stated they have had many cases with petitioners engaged in an administrative proceeding. She

January 14, 2021

stated that has always been treated independent of the GRAMA appeal. She stated this is a new argument she is not persuaded by.

Motion by Mr. Williams to review the records in camera and focus on the classification issues. Seconded by Dr. Cornwall.

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

The Chair asked if a sampling was brought. Mr. Burns confirmed it is just a sample. The Chair asked how many records were brought in the sampling. Mr. Burns stated there are just under 7,000 emails related to TEA Group. The Chair stated they would accept the sampling. The Chair asked for a motion to continue the hearing.

Motion by Ms. Dean to continue the hearing. Seconded by Mr. Williams.

Aye: 6. Nay: 0. Mr. Buchanan, Dr. Cornwall, Ms. Dean, Mr. Williams, Mr. Haraldsen, 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 Secretary informed the Chair Mr. Eames was unable to connect to the meeting and requested a postponement and a hearing in person. The Chair directed the Secretary to try to determine if the issue is a pop up blocker that can be resolved. Committee sauntered until 1:30 pm.

Mr. Williams left the meeting and Ms. Yates joined the meeting as Mr. Williams' designee.

5. Brady Eames v. Millard County (2020-22)

Both parties being present, the Chair announced the hearing and provided instructions and reviewed the procedures.

Petitioner's statement:

Mr. Eames thanked the Committee for hearing the appeal today.

Mr. Eames stated of all the capital murders that should be reviewed, the killing of Mr. Gordan Ray Church needs to be. He stated the records described in his appeal are public records. He stated he's hoping there are photographs of the physical evidence taken by the county and maintained by the Sheriff's office.

January 14, 2021

Mr. Eames stated that all of the records were in the court and available to the public during the trial. He stated if they were open to the public then, they should be open now. He stated some of the important records are the audio tapes of the statement of Mr. Archuletta and Mr. Wood. He stated they should be public because they have not been designated as non-public. He stated he is doing his best to investigate what Millard County did and whether they did everything in their power to do justice for Mr. Church.

Questions from Committee:

The Committee asked if he is just looking for the evidence. Mr. Eames stated audio and video would fall under GRAMA. He stated he has never been provided copies. He stated he would like another opportunity to go listen to them and see the video again. He stated if they exist he should have the right to listen to them.

The Committee asked which of the nine items requested have not been provided. Mr. Eames stated that he has not been provided access to any of them. He stated he assumes they were created by the Sheriff before the preliminary hearing and before the trials. He stated he was provided the autopsy report. He stated that he would like to see what records the Sheriff made regarding the autopsy report such as notes or opinions.

Mr. Eames stated he has not been provided access to the physical evidence or exhibits. He stated he understands he should not be able to handle the evidence, but he stated he wants to see them. He stated he has not been told they do not exist.

The Committee asked if he has been provided a log of the evidence. He stated he has, but it is the court exhibit list.

Respondent's statement:

Mr. Finlayson stated this crime took place in 1988. He stated there are about eight or ten boxes related to the case. He stated what is there is what they have. He stated the only thing they have not allowed Mr. Eames to see is the physical exhibits. He stated a USB of over 600 photos had been provided.

Mr. Finlayson stated they are not required to take photos of the exhibits for the petitioner because that would create a record. He stated the exhibits are in the evidence facility of the Sheriff. He stated the case is still on appeal because appeals in death penalty cases continue until execution or if the case is commuted. He stated the appeals are active and ongoing. Mr. Finlayson stated the exhibits are not records.

Petitioner closing:

Mr. Eames stated the photos that were provided were compared to the exhibit list and there were certain pictures of physical evidence that were not there. He stated he should be able to listen to the audio and watch the video.

Questions from the Committee

January 14, 2021

The Committee asked if there is audio or video he has not seen. He stated that is correct. The Committee asked where he is saying these recordings are located. Mr. Eames stated they are listed in the exhibit list. The Committee asked how he has identified there are three transcripts. He stated they are in the exhibit list.

The Committee asked Mr. Finlayson to clarify the transcripts in his closing statement.

Respondent closing:

Mr. Finlayson stated that nothing has been destroyed. He stated there are binders of transcripts in the boxes. He stated he is unaware of any audio. He stated Mr. Eames has not been told he is not allowed to come look through the boxes. He stated he spent three days going through the boxes and was given unfettered access.

Mr. Finlayson stated Mr. Eames has been given access to what they have except the actual exhibits themselves.

Questions from the Committee

The Committee asked if exhibits means the actual clothes. Mr. Finlayson stated it includes the tire iron, jumper cables, and other evidence. Mr. Finlayson stated there are photos of everything on the provided jump drive. He stated photos were taken during the investigation, but there are no photos as the items were prepared for exhibits. He stated nothing was used as an exhibit that was not photographed during the investigation.

Deliberation:

Ms. Smith-Mansfield stated evidence and records are different. She stated the retention of evidence is governed by the court. Ms. Yates stated there are records of evidence but the evidence itself is not a record.

Motion by Ms. Yates to uphold the entity's response as appropriate and and the entity provided all responsive records and the exhibits are not records per 63G-2-103(22)(a)(2). Seconded by Dr. Cornwall.

Discussion to the motion:

Dr. Cornwall stated Millard County tried to respond as quickly as their limited staff could. Ms. Yates stated she understands wanting more information, but what is there is what exists.

Aye: 6 Nay: 0. Mr. Buchanan, Dr. Cornwall, Ms. Dean, Mr. Williams, Mr. Haraldsen, 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.

January 14, 2021

6. Steven Onysko v. Attorney General's Office (2020-18, 2020-87)

Both parties being present, the Chair announced the hearing and provided instructions and reviewed the procedures.

The Chair stated there were four motions submitted by the petitioner. She stated only Committee members can make motions. She asked if anyone wanted to make one of those motions. They were not considered.

Petitioner's statement:

Mr. Onysko stated he preserves for appeal the matter of protocol having Ms. Yates on the Committee as a designee. He stated he protests that.

Mr. Onysko stated he would like the Committee to state they do not believe Mr. Tonk's presentation that he is suing the State Records Committee for thousands of dollars.

The Chair stated that as no one took up the request, the petitioner may continue his presentation.

Mr. Onysko shared his screen.

Mr. Onysko stated he had points of order. He stated the Committee has no authority to combine hearings and he preserves that for appeal. He stated there is no authority for the Attorney General's office to be present as counsel to the Committee and as the respondent. He stated the respondent needs to provide records for in camera review before the meeting and asked the Chair to ask the respondent if they provided records for in camera review.

The Chair stated motions are the Committee's to make and he may continue his presentation. Mr. Onysko stated he preserved that for appeal.

Mr. Onysko stated this is not a fee waiver case. He stated redaction fees are unwarranted and illegitimate. He stated the misuse of public funds is an issue citizens of Utah are entitled to know. He stated he is using his Shroeder rights to seek these records.

Mr. Onysko stated the Committee pigeonholed petitioners into fee waivers. He stated a fee waiver only applies if the fees are legitimate. He stated GRAMA does not mention fees for redaction. He stated he is entitled to inspect the records for free. He stated nothing in statute says the respondent must redact records. He stated they are required to weigh the public interest before deciding if the records are released.

Mr. Onysko stated compiling records is not redaction. He stated the respondent wants to provide less than what they have.

January 14, 2021

Mr. Onysko stated 2020-87 is an academic question. He stated he is challenging the validity of redaction fees. He stated GRAMA does not allow for redaction fees.

Mr. Onysko stated it is inappropriate that he condensed two cases into one hearing.

Mr Onysko stated 2020-18 maintains redaction fees were premature. He stated the respondent never classified the disputed records. He reviewed *Deseret News v. Salt Lake County* and *McCoy/UEA v. Office of Attorney General*. He stated the public interest must be weighed even if the records are protected. He stated the public has a right to know about these records.

Mr. Onysko stated the retention schedule for these records states the primary classification is protected, but it cannot be assumed every record is protected without examining it first. He stated the public interest was not weighed. He stated attorney-work product only applies to communications, not facts.

Mr. Onysko stated there are many ways to avoid fees. He stated the records must be looked at. He stated nothing requires the records to be segregated. He stated he is entitled to his Shroeder rights.

Respondent's statement:

Mr. Pehrson stated he will address both appeals at the same time. He stated they are nearly identical and there is no reason not to address them together. Mr. Pehrson stated the petitioner says these requests are about widespread corruption in procurement, but these requests ask for the contract and all other records pertaining to legal services from Ray Quinney and Nebeker including bills and invoices related to two specific lawsuits filed by Paul Amann against the Attorney General's Office.

Mr. Pehrson stated the first involved Mr. Amann's employment case against the office based on his termination. The second is regarding a GRAMA case Mr. Amann brought related to his employment action. He stated the request has nothing to do with possibilities of procurement violation, but to get information about these two lawsuits. He stated the clear intention is to disadvantage the Office of Attorney General in that litigation. He stated he believes the Committee is aware of the petitioner's association with Mr. Amann.

Mr. Pehrson stated the records are properly classified under 63G-2-305(10), (17), and (18). He stated there is no question the records satisfy the provision. He stated these records are not just costs, but contain detailed descriptions of actions taken, strategies, and communications between attorneys. He stated there is an attorney-client relationship between the respondent and Ray Quinney and Nebeker. He stated the purpose of the records was to get legal advice. He stated they define the scope of presentations, issues that may arise, and strategies. He stated they are not just the amounts spent.

Mr. Pehrson stated if the petitioner is interested in the amounts spent, that information is on the Transparency Website and they would be happy to provide that to him. He stated the

January 14, 2021

requested records can reasonably be expected to interfere with proceedings or the right to a fair trial.

Mr. Pehrson stated the fee waiver provision requires a requester to provide evidence the request would primarily benefit the public. He stated the petitioner only stated the public has a right to know about the expenditure of tax dollars. He stated nothing about procurement fraud was mentioned. He stated the background to the request is important because these are two cases involving Mr. Amann.

Mr. Pehrson stated the respondent properly denied the request for a fee waiver. He stated that fee waivers are discretionary and provided the office considered appropriate factors, it should stand. He stated the fee was based on the hourly rate of the lowest paid employee with the necessary skills to do the work. He stated this required someone familiar with the case and therefore the fee is \$50/hour.

Questions from Committee:

The Committee asked if the fee for six hours is the only fee assessed. Mr. Pehrson stated it is. The Committee asked if the classifications are 63G-2-305(17), (18), and (10)(c). Mr. Pehrson stated they are. The Committee asked about the proportion of public to non-public information. Mr. Pehrson stated it is very high. He stated these are not the kind of records to get the facts and figures of billing, but after redaction that may be all that is left.

The Committee asked if contracts, billing, and invoices are generally public. Mr. Pehrson stated generally billing records do not have protected information, but in this case they do. He stated if this was just an invoice of hours and dollars it would be public. The Committee asked if invoices and billing are on the Transparency Website. Mr. Pehrson stated information about billing can be found there.

The Committee asked if it is correct that no records have been provided. Mr. Pehrson stated that was correct. The Committee stated one part of the request was for the contract at the Procurement Code in 63G-6a-2002(3) states contracts should be made available to the public. What is included is the name, procurement item, the date, and expenditure. The Committee asked why a contract would contain so much non-public material that it could not be redacted simply and provided.

Mr. Pehrson stated most of the contract would be public and records required for procurement and kept and available. AG procurement of legal services is different. He stated this is a contract for a specific lawsuit with detailed line items that would involve more analysis. He stated public information is intermixed with info that would be protected. He stated that is the nature of a legal services type of contract rather than a routine contract.

Petitioner closing:

January 14, 2021

Mr. Onysko stated he did not appeal a fee waiver denial to the Committee. He stated it keeps appearing in decisions and orders. He stated he is not asking for a fee waiver. He stated he alleged corruption in procurement in both his appeal to the Chief Administrative Officer and to the Committee in both cases. He stated it is a red herring to say confidential information is in the billing records. He stated there is no billing or amounts available online.

Mr. Onysko stated he resents the character attacks from the respondent. He stated RQN has contributed to political campaigns in Utah. He stated he requested these records because RQN is listed on a website about truth in billing in Utah.

Mr. Onysko stated 2020-87 does not have any individuals involved. He stated in 2020-18 the public has a right to know if the people vetting the contracts are named in the litigation proceedings.

Mr. Onysko stated he is not asking for a fee waiver. He stated he is asking for legitimate fees only to be applied. He stated the standard in Shroeder does not require supportive documentation of corruption, but an allegation. He stated that gives him standing. He stated he is concerned thousands of dollars have been spent to fight a GRAMA appeal.

Mr. Onysko stated the records should be released because the public has a right to know why money is going to some law firms in a noncompetitive bid process.

Question from the Committee:

The Committee asked if his argument is that the records have been improperly classified as protected, but even if they are properly classified, the public's right to know demands that they be released. Even if they are redacted, redaction is not an authorized fee under GRAMA. He stated yes, but he hopes to get two decisions from the Committee. He stated 2020-87 he is arguing redaction fees are illegitimate and 2020-18 even if they are classified correctly they should be released to the public. He stated 2020-87 is more interesting academically.

Respondent closing:

Mr. Pehrson stated the records were classified correctly. He stated they provided an option to provide the records through redaction. He stated this is a fee case because the only way to provide the records thru redaction is to assess fees.

Mr. Pehrson stated the request focuses on two lawsuits involving Mr. Amann and the fact that both involve the same law firm is coincidence. Mr. Pehrson stated the petitioner has provided no evidence of corruption. He stated there is no reason for the two appeals not to be addressed together because they involve the same type of records.

Mr. Pehrson stated the respondent properly reviewed and classified the records based on three provisions. He stated that governmental entities have discretion in fees. He asked the Committee to deny the appeal.

January 14, 2021

Deliberation:

Motion by Ms. Yates redaction fees are appropriate under GRAMA per 63G-2-203(1) and (2).
Seconded by Ms. Dean.

Aye: 6 Nay: 0. Mr. Buchanan, Dr. Cornwall, Ms. Dean, Mr. Yates, Mr. Haraldsen, Ms. Smith-Mansfield voted in favor of the motion.

Dr. Cornwall stated the Committee's job is to consider whether records have been classified correctly. She stated the question in 2020-18 is if the records are classified correctly or if there is sufficient doubt to go in camera to review the records. She stated that is the process the Committee uses.

Ms. Smith-Mansfield stated it is a good idea to go in camera to review the records because there is often an overbroad application of this classification in attorney records. She stated it could also give them an idea of the contract.

Motion by Mr. Buchanan to review the records in camera and continue the hearing. Seconded by Mr. Haraldsen.

The Chair stated this means the other motion will also be put on hold until the next meeting.

Aye: 6 Nay: 0. Mr. Buchanan, Dr. Cornwall, Ms. Dean, Mr. Yates, Mr. Haraldsen, Ms. Smith-Mansfield voted in favor of the motion.

Dr. Cornwall stated it was a good idea to combine the appeals because that helped her understand the argument.

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.

Mr. Haraldsen left the meeting.

Business part 3 of 3

SRC appeals received and declined, notices of compliance, and related action items

Ms. Shaw reviewed appeals that have been received and were declined and incomplete. She stated a notice of compliance was received from Beaver Valley Hospital and the Attorney General's Office. She reviewed the appeals that have been withdrawn.

A letter was received from Mr. Onysko that an order was inaccurate. The Chair stated she reviewed the order. She stated the issue is that Mr. Onysko is not asking for a fee waiver but

January 14, 2021

the Committee discussed a fee waiver. She stated the Committee only hears appeals on an unjustified denial of a fee waiver or denial of access to records.

The Chair stated the Committee would like to see all hearings that related to fees. Ms. Shaw stated she is working on a spreadsheet and any appeal related to administrative costs can be added as a tag.

Committee vacancy role change, action item

Ms. Shaw stated Mr. Williams is talking to the Executive Director's Office about changing the role.

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

The Chair verified a quorum will be present at the February 11th meeting.

Motion to Adjourn

The Chair adjourned the January 14, 2021, State Records Committee meeting at 4:20 p.m.

This is a true and correct copy of the January 14, 2021, SRC meeting minutes, which was approved on February 11, 2021. 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

APPROVED