

February 11, 2021

State Records Committee Meeting

Date: February 11, 2021

Time: 9:00 a.m. – 4:00 p.m.

Committee Members Present:

Kenneth Williams, Chair, State Archivist

Nancy Dean, Chair pro tem, Political Subdivision Representative

Patricia Smith-Mansfield, Citizen Representative

Mark Buchanan, Private Sector Records Manager

Marie Cornwall, Citizen Representative

Tom Haraldsen, Media Representative

Committee Members Not Present:

Vacant, Electronic Records and Databases Representative

Legal Counsel:

Paul Tonks, Assistant Attorney General

Anne Nelson, paralegal

Executive Secretary:

Rebekkah Shaw, Utah State Archives

Others Present via Zoom:

Steven Onysko

Lonny Pehrson, Assistant Attorney General

Blake Hamilton

Mark Burns, Assistant Attorney General

Mark Tracy

Jeremy Cook, attorney, Emigration Improvement District

Eric Hawkes

Sherrie Maxwell, Washington County

Kent

Julian Hatch

Caralee Woods

Nicole Hanna, attorney, Utah Department of Agriculture and Food

Melissa Ure, attorney, Utah Department of Agriculture and Food

Robert Latham

Brian Graf, Washington County

Susan Mumford

Kendra Yates

Rosemary Cundiff

APPROVED

February 11, 2021

Agenda:

- Six Hearings Scheduled
 - Darren Rosenstein v. Utah Department of Transportation (Continuance. 2020-105)
 - Steven Onysko v. Attorney General's Office (Continuance. 2020-18, 2020-87)
 - Mark Tracy v. Emigration Improvement District (2020-115, 2020-121, 2020-125)
 - Julian Hatch v. Department of Agriculture and Food (2020-124)
 - Rob Latham v. Washington County (2020-94)
 - Brady Eames v. Logan City (2020-95)

- Business:
 - Agenda for 20201, action item
 - Approval of January 14, 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 9:03 am.

Business part 1 of 2

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

The Chair announced the hearing.

Motion by Ms. Smith-Mansfield to go in camera. Seconded 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.

Motion by Ms. Smith-Mansfield to go in camera. Seconded by Mr. Buchanan.

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

Deliberation:

February 11, 2021

Motion by Ms. Smith-Mansfield that these records are not exempt under the Utah Administrative Procedures Act per 63G-2-104 and 63G-2-201(3)(b). This is also addressed in the Supreme Court Case Salt Lake City Corporation v. Jordan River Restoration in footnote 71-74. Under 63G-2-207, subpoenas and other methods of discovery are not written requests under 63G-2-204. Seconded by Ms. Dean.

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

The Committee stated a sample of the records were provided for review in camera. The request had eight parts and the sample did not include all eight parts. The Committee stated that similar to SUWA v. AGRC (2008), classification of the records must consider their creation in the original course of business. The Committee stated the respondent needs to do more in classifying the records.

Motion by Dr. Cornwall that the respondent must review the records again per 63G-2-201 and determine whether the records are private, controlled and protected. Also to continue the hearing to the next meeting. Seconded by Ms. Dean.

Discussion to the Motion

Ms. Smith-Mansfield stated there were a lot of records and they might need more time. Mr. Tonks stated the parties could ask for more time if they are not ready.

Ms. Smith-Mansfield asked Mr. Burns how much time he thought the entity may need to gather all responsive records and classify them. Mr. Burns stated he plans to work with Mr. Hamilton to clarify the scope of the request. He stated he is concerned about the voluminous quantity. He stated now that they are under GRAMA, the entity has certain procedural rights such as charging a fee.

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

The hearing concluded. An order will be issued within seven business days and both parties will receive a copy of the order. Each party has 30 days to appeal the Committee's decision to district court.

The Committee sauntered for 2 minutes.

2. Steven Onysko v. Attorney General's Office (2020-18, 20220-87. Continuance.)

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

February 11, 2021

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

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 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.

Deliberation:

Motion by Ms. Smith-Mansfield the records are generally public but would have restricted information and redactions may be made per 63G-2-301(3)(d) and (e). Seconded by Ms. Dean.

Discussion to the Motion

Ms. Smith-Mansfield stated she does not think there would be extensive redaction required, but some redaction will be needed. Ms. Dean stated she agreed.

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

Ms. Smith-Mansfield asked if the motion on fees from last time would be in this order. Mr. Tonks said it would.

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. Mark Tracy v. Emigration Improvement District (2020-115, 2020-121, 2020-125)

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

Petitioner's statement:

Mr. Tracy stated he submitted an objection to the twenty minute limitation. He stated there are three separate appeals and none were addressed by the Chief Administrative Officer. He requested a motion that Mr. Cook be disqualified as opposing counsel.

The Chair asked counsel for advice. Mr. Tonks asked what the basis was for disqualification.

Mr. Tracy stated one request includes legal invoices. He stated the Emigration Improvement District has no physical presence. He stated the operation was transferred to a private entity called Simplifi. Mr. Tracy stated public records were in the household of the director of Simplifi,

February 11, 2021

Jennifer Hawkes. He stated Eric Hawkes is the general manager for the District. He stated Exhibit F shows an invoice for Mr. Cook submitted to the federal court. He stated legal services were billed to Emigration Canyon residents.

Ms. Smith-Mansfield asked if this is testimony or if he was talking about a motion. Mr. Tracy stated he was discussing the motion to disqualify Mr. Cook. He stated these are invoices of current counsel. He stated the argument is public funds are being misused for the private defense of Simplifi.

Mr. Williams asked if anyone on the Committee was willing to take up the motion. Ms. Smith-Mansfield stated she is unclear on the reasoning. She asked if it was because he is the attorney in question of the records. Ms. Smith-Mansfield stated the entity is always the subject of the records. Mr. Tracy stated the entity is an issue. Ms. Smith-Mansfield stated she would suggest they proceed. Dr. Cornwall stated she agreed.

Mr. Tracy stated invoices are not private records. He stated they only reflect the services performed. He stated Mr. Hawkes is the record officer for the District. He stated the original request explicitly states "office for governmental entity". He stated there are two cases pending in the court of appeals. He stated public record statutes do apply to private companies if they are doing government business and receive public funds.

Mr. Tracy stated he received a response from Mr. Cook denying the request. He stated the Chief Administrative Officer did not respond to the appeals. He stated the fireflow test results are public records. He stated there is no legal basis to deny access to those.

Mr. Tracy stated the last issue was correspondence. He stated that Utah Code required records to be on business premises. He stated he has been working on this case for six years. He stated water has been contaminated since 1994 but no one knew until October 2018. He stated Dr. Onysko has been litigating this and still has not received all the lead contamination results. He stated these records are important to public health and safety. He stated the records should be on business premises for inspection during normal business hours but the records are in a private residence.

Mr. Tracy stated under criminal statutes there are penalties allowed. He stated GRAMA applies to private companies. He stated if they refuse to release the record at the order of the Committee, it is a class B misdemeanor.

Mr. Tracy stated his request is specific. He stated the records may be damaging to the respondent in pending cases. He stated that Utah courts are openly hostile to the idea that GRAMA applies to private companies and private individuals. He stated the court awarded attorney fees against him for saying the records are subject to GRAMA and it will be appealed.

Mr. Tracy asked the Committee to determine who to penalize and how to get the records if they are public records. He stated the court or the Committee could set legal precedent that a private company or citizen is exempt from GRAMA which would give a green light to any entity

February 11, 2021

to take public records out of their control and add a level of complexity. He stated if people understood anyone can knock on the door and ask for a public record, business would be run a certain way.

Respondent's statement:

Mr. Cook stated this is hard to sit through because he heard the exact same arguments yesterday in district court. He stated Judge Kouris dismissed the case. He stated attorney fees were awarded because the case was filed in bad faith and it was frivolous to name individuals. He stated the petitioner is not trying to get records.

Mr. Cook stated the petitioner has not cited anything in GRAMA supporting his position to sue an individual for failing to respond to a GRAMA request. He stated the request was not made to the governmental entity, but to Simplifi Company, Mr. Hawkes, and Mrs. Hawkes. He stated two judges have found this to be improper and not allowed under GRAMA. He stated numerous requests sent to the District have been answered. He stated the petitioner knows how to make a record request to the District.

Mr. Cook stated the only issue is if the Committee should rule against two judges who have already ruled on the case. He apologized for being frustrated. He stated this is the third time he has made these arguments. He stated the petitioner needs to comply with GRAMA if he wants the records.

Questions from Committee:

The Committee asked who Eric Hawkes is. Mr. Cook stated he is the General Manager and the record officer. The Committee asked if the request was made to him. Mr. Cook said it was sent to Simplifi Company, Jennifer Hawkes, and Eric Hawkes.

The Committee asked if the request was made to three people: Simplifi Company, Jennifer Hawkes, and Eric Hawkes, the record officer. Mr. Cook stated Eric Hawkes is the record officer. The Committee asked if the request was sent to the respondent's address. Mr. Cook stated it was emailed. The Committee asked which request was made just to Simplifi. Mr. Cook stated the fireflow test result request was made to Simplifi. He stated the others included Eric Hawkes, who is the record officer.

The Committee asked what Simplifi is. Mr. Cook stated it's a company the respondent contracts with. The Committee asked if the third request for email was to the respondent and they had no responsive records. Mr. Cook stated they provided one responsive record. The Committee asked why they responded if it was made to Simplifi. Mr. Cook stated he did not believe they did respond. The Committee asked if Simplifi responded that the correspondence and legal invoices were protected. Mr. Cook stated these are cases appealed to district court. The Committee stated the question was who responded. Mr. Cook stated he responded on behalf of the entity, but he does not think they responded to the fireflow test results.

Mr. Tonks asked for a case number for the district court case. Mr. Cook provided it.

February 11, 2021

The Committee asked if there was a request made to the respondent. Mr. Cook stated there are three appeals. He stated the legal invoices and email correspondence requests were addressed to Mr. Hawkes, not as the records officer, but as an individual. The Committee asked if he is the records officer. Mr. Cook stated he is.

The Committee asked if all lead test results are available online. Mr. Cook stated they are but that is not an issue in the appeals because that was appealed to district court. The Committee asked if appeal 2020-125 was for test results and correspondence. Mr. Cook stated it is just for correspondence.

The Committee asked if the request for correspondence extended beyond Mr. and Mrs. Hawkes, but also the Board of Trustees. Mr. Cook stated it was. The Committee asked if they only found one responsive email in all those accounts. Mr. Cook stated that was correct.

The Committee asked if the legal invoices were not provided because they are protected under attorney-client privilege. Mr. Cook stated they were not provided because the request was not made to the Improvement District.

The Committee asked who the petitioner should email to request a record from the respondent. Mr. Cook stated the petitioner knows how to request records from the District. He stated the petitioner has made numerous requests. He stated the petitioner's intention is to name individuals instead of the entity to set up an argument that the individuals are liable.

The Committee asked if the correspondence was requested correctly. Mr. Cook stated it was.

Mr. Tonks asked if the records involved in the hearings are the same records that were before the court. Mr. Tonks asked if the requests are the same or different. Mr. Cook stated they are different requests.

The Committee asked if the effort in court is to protect the liability of Mr. and Mrs. Hawkes. Mr. Cook stated his effort is to make sure the petitioner understands he needs to request records from the entity. The Committee asked if he is working to make the distinction to keep Mr. Hawkes out of legal jeopardy. Mr. Cook stated they are his clients as well, but GRAMA requires the request be made to the entity. He stated individuals are not criminally liable for not responding to record requests.

The Committee asked if Mr. Hawkes is the appointed records officer. Mr. Cook stated he is definitely the records officer.

Mr. Tonks stated this has come up with the Committee before. He stated when petitioners name members of the Committee in appeals to district court. He stated he would file motions to dismiss the individual members because the Committee is the party.

Petitioner closing:

February 11, 2021

Mr. Tracy stated that he appreciates the discussion. He stated the email sent to Eric Hawkes is the address registered with the Lieutenant Governor. He stated the request went to the right people. He stated Simplifi has physical custody of the records. He stated who he can sue is not before the State Records Committee. Mr. Tracy stated physical custody is not debatable. Mr. Tracy stated the record requests were served on the right people. He stated Mr. Hawkes is the certified records officer. He stated the only reason there is a hearing is because the District has not provided the records.

Mr. Tracy stated the records posted to the website are incomplete. He stated he has a hard time believing there is only one responsive email to his request. He stated he would like an affidavit stating that if it is true.

Mr. Tracy stated this exact request was made to the District by Dr. Onysko and it is still being litigated. He stated this shows motivation to stop the records from seeing the light of day. He stated he cannot inspect the records during business hours because they are in a private residence.

Respondent closing:

Mr. Cook stated this is simple. He stated the petitioner clearly is making the argument he served the request to individuals, not the entity. He stated the irony is the court has already found this improper. He stated the petitioner should be required to go back and make the request correctly.

Deliberation:

Mr. Tonks reviewed the Judge Faust case which stated Simplifi and Mr. and Mrs. Hawkes are not governmental entities. Ms. Smith-Mansfield stated requests are made to people who work for the entity. She stated Mr. Hawkes email address was provided by the entity. She asked the Chair if she could ask Ms. Yates, the Chief Records Officer from the Division of Archives and Records Service, a question.

Ms. Smith-Mansfield asked if it is correct that small organizations hire small corporations to do records management and answer record requests. Ms. Yates stated it is correct. Ms. Smith-Mansfield asked if GRAMA requires the records officer to be a government employee. Ms. Yates stated it does not.

Ms. Smith-Mansfield stated the request made to Simplifi, and Mr. and Mrs. Hawkes is open for debate. She stated it is hard to say it was sent to a private individual when they are using the entity email address.

Mr. Williams asked Mr. Cook if they brought the responsive records to the hearing. Mr. Cook stated they did not.

Ms. Smith-Mansfield stated Simplifi is a contractor, not an entity. She stated the request should be made to the entity.

February 11, 2021

Mr. Tonks stated the District was not a named party in the court case and the court cannot direct the entity to do something if they are not a named party to the case.

Ms. Smith-Mansfield asked how they are supposed to interpret the request if it's addressed to the record officer of the entity, who is also the owner of Simplifi.

Ms. Dean reviewed the definition of an entity in GRAMA. She stated the District is consistent in their response. She stated she does not like thinking a records officer would not respond to a request. She stated she is not convinced 2020-115 and 2020-121 were addressed properly.

Ms. Smith-Mansfield reviewed the definition of a contractor in 63G-2-103(5).

Motion by Ms. Dean in appeal 2020-115 and 2020-121, Simplifi is not a governmental entity per 63G-2-103(11)(b) and 63G-2-103(5). The petitioner needs to make the request to EID.

In case 2020-125 the Committee is not convinced a thorough search was done and the respondent needs to do a more thorough search and provide responsive records to the petitioner. Seconded by Dr. Cornwall.

Discussion to the Motion

Ms. Smith-Mansfield stated it is important to know this is not meant to allow entities to defer their responsibilities especially when a request via email goes to a person who is a representative of the governmental entity. She stated that according to the testimony, the argument was that these were individuals, not contractors. She stated the Committee wants to affirm the entity is the holder of the records, and the contractor is the mechanism. If the request was made to the entity, the Committee may have ruled differently. Ms. Dean agrees that should be clear in the order.

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.

Mr. Tracy thanked the Committee for their discussion and service.

The Committee sauntered for 30 minutes.

4. Julian Hatch v. Department of Agriculture and Food (2020-124)

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

February 11, 2021

Petitioner's statement:

Ms. Woods stated she is not with Boulder Group. She stated she made a request after speaking with Mr. Hatch about the problems in Boulder Town regarding a permit. She stated the property is protected by a conservation easement. She stated her name is on the request because Mr. Hatch did not have the internet and could not make the request. Ms. Wood stated the respondent combined their appeals. She stated she asked for a copy of her request to be provided to Boulder Regional Group to help her friend. She stated she requested a fee waiver due to public interest, which was denied. She stated the Committee should order the respondent to provide all the records. She stated she is asking about the easement and the request could have easily been answered.

Mr. Hatch stated a twelve house development is going to be built on the property next to his and he is worried. He stated he filed FOIA requests during the months he waited for this hearing.

Mr. Hatch stated he only knows about a theatre amendment for the conservation easement because a conditional use permit was given in June to the developer. He stated that he is worried he may get sued for appearing before the State Records Committee. Mr. Hatch stated he asked for the conservation easement. He stated he spoke with the respondent's counsel who said a GRAMA request was necessary.

Respondent's statement:

Ms. Hanna explained what a conservation easement is. She stated they do yearly reports and monitoring. She stated the goal is to preserve agriculture interests in Utah.

Ms. Hanna stated they received the request on September 3rd, 2020. She stated they used the email provided by Ms. Woods. She stated they declined to provide records already part of the public record per 63G-2-201(8)(e). She stated no amendment has been finalized. She stated the department does not have a draft of any amendment to this easement. She stated the only information they have is a proposed amendment. She stated no amendment exists and that is why they cannot provide it.

Ms. Hanna stated the required documents to amend the easement have not been submitted yet. She stated that they tried to mediate this appeal but the petitioner was not interested. She stated Mr. Hatch has been antagonistic. She stated they cannot provide records that are protected or do not exist. She stated they have responded appropriately and did their best to respond with the information they had.

Ms. Hanna stated the department often receives ideas for amendments, but they might be denied or never implemented.

Questions from Committee:

The Committee asked if public records online and other records were protected as drafts under 63G-2-305(22) and the records don't exist. Ms. Hanna stated if there was a final amendment it would've been on file with the county recorder's office. There are additional documents but

February 11, 2021

there has been no amendment. She stated the process has barely started and it takes a couple years.

The Committee asked if there is a time for public comment to finalize an amendment. Ms. Hanna stated this is private property. She stated the department is only involved to ensure the owner is conforming to the terms of the easement.

Petitioner closing:

Mr. Hatch stated he asked if an amendment was filed by anyone. He stated at the hearing for the conditional use permit the amendment was already done. He stated an answer to the request could have been simply that no amendment has been received.

Mr. Hatch stated that the second part of the request was for copies of requests to amend the easement in the last two years. He stated the public needs to know. He stated no one can comment why it should not be changed without it. He stated if they wait until it is filed with the county they will have no input.

Mr. Hatch stated a theatre cannot be built because there is no place for those visitors to stay. He stated the ranch house has already been removed for the theatre location. He stated changes are already made. Mr. Hatch stated they should not have to go through this process to get an answer to their question.

Respondent closing:

Ms. Hanna stated most of the information the petitioner is discussing would not be provided to the department because that is not their role. She stated other entities go through the process of amending the easement. She stated most easements have a structure envelope that allows buildings to be constructed. She stated this provides some flexibility for things such as houses and barns. She stated those questions are Garfield County records.

Questions from Committee:

The Committee asked if a record was classified protected. Ms. Hanna stated Boulder met with the department to see if they would be amenable to changes if they were made. She stated there were a couple meetings to discuss the process before coming to the department with a formal request. The Committee asked if those are the respondent's records. Ms. Hanna stated they are not, but were provided by Boulder attorneys.

Deliberation:

Motion by Ms. Smith-Mansfield to go in camera and review the records. 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.

February 11, 2021

Motion by Ms. Smith-Mansfield to return to open session. 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.

Questions from Committee:

Dr. Cornwall asked Ms. Hanna to explain why these records are a draft. Ms. Hanna stated they are not a draft of an amendment to the easement. She stated they are preliminary because they may rely on the records to create the final agreement in the future. She stated they are not created by the respondent.

Ms. Smith-Mansfield asked if she was referring to private entities who provided the records. Ms. Hanna stated she is. She stated these were given during a meeting as a proposal for consideration. Ms. Smith-Mansfield asked if they wanted the records released. Ms. Hanna stated they do not.

Motion by Dr. Cornwall that the records are properly classified per 63G-2-305(6). Seconded by Ms. Smith-Mansfield.

Discussion to the Motion

Ms. Smith-Mansfield said a procurement entity is any entity that procures things. Dr. Cornwall stated this is an idea. Ms. Smith-Mansfield stated the idea is well planted.

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. Smith-Mansfield to release the records due to public interest under the weighing provision per 63G-2-403(11). Seconded by Mr. Buchanan.

Aye: 4 Nay: 2. Mr. Buchanan, Ms. Dean, Mr. Haraldsen, Ms. Smith-Mansfield voted in favor of the motion. Mr. Williams and Dr. Cornwall voted against the motion.

The hearing concluded. An order will be issued within seven business days and both parties will receive a copy of the order. Each party has 30 days to appeal the Committee's decision to district court.

The Committee sauntered for 3 minutes.

5. Rob Latham v. Washington County (2020-94)

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

February 11, 2021

Mr. Latham shared his screen to display a powerpoint presentation.

Petitioner's statement:

Mr. Latham stated he is the subject of the records he is seeking. He stated about 300 emails have been classified as non-public. He stated he does not understand how communications between Eric Clarke and the Indigent Defense Committee are not public. He stated he is wondering if the county is misinterpreting Utah Code 17-18a-802(2)(a) by asserting attorney client privilege. Mr. Latham stated one member of the Indigent Defense Committee is not an attorney. He stated all communications within that committee cannot be considered under attorney client privilege.

Mr. Latham stated having a personal interest in the records does not defeat public interest in the records. He stated he is trying to make the system better. He stated GRAMA requires the respondent to disclose private records to the subject of the record.

Mr. Latham stated there were no redacted records. He stated he wonders if that means other records are being withheld but he does not know because there is no privilege log. He stated other people mentioned in the correspondence could be redacted. Mr. Latham both GRAMA and case law provide for these redactions so the records can still be provided.

Mr. Latham stated some records were not provided because he is no longer an attorney on the case. He stated there could be redactions, but rules of professional conduct provide that he is still obligated to protect the interests of former clients and he cannot use the information in an adverse way.

Mr. Latham stated draft object to a subpoena stated the respondent is concerned about members of the Indigent Defense Committee subpoenaed to testify in cases involving a contract public defender. He stated it is in the public interest for people who cannot afford an attorney to see they are not treated differently. He stated a lawyer touching a document does not mean it is subject to attorney-client privilege.

Mr. Latham asked the Committee to review the records in camera to determine if the records are classified protectly.

Respondent's statement:

Mr. Graf stated the petitioner's presentation was well done. He stated Mr. Latham had a contract with Washington County to provide representation in juvenile court. He stated the contract was not renewed in 2020.

Mr. Graf stated the request is regarding 263 emails. He stated many are from Ms. Adams, who is one of the prosecutors in juvenile court so she and the petitioner were opposite in many cases. He stated the bulk of the emails are Ms. Adams working her cases.

Mr. Graf stated being named in email correspondence does not make Mr. Latham the subject of the record. He stated an email between Ms. Adams and Mr. Latham could have been

February 11, 2021

forwarded to someone else asking for assistance in answering a request for a case. He stated that does not make him the subject of the record if he's the attorney on the other side of the case she is working on.

Mr. Graf stated the search terms for these requests included "Rob", "Robert", "Latham", and his two email addresses. He stated a search for "rob" pulled up a large volume because anything with the words such as "problem" or "probably" were included. He stated someone went through all the emails to determine if they were responsive to the request. He stated he does not know if there were errors made, but if there are any discrepancies, they are willing to look into that.

Mr. Graf stated most emails are in the context of Ms. Adams working a case. He stated the rest are private because releasing them would be a clear invasion of personal privacy. He stated some are not records under 63G-2-103(22).

Mr. Graf stated that Mr. Clarke was the Chief Deputy in the civil division. He stated the attorney does represent the county, but an elected official or a person doing their job duties, can receive legal advice from the county attorney.

Mr. Graf stated he does not know why Mr. Latham's contract was not renewed. He stated the fact that it was not renewed does not indicate corruption. He stated the petitioner has a personal interest in the case and alleging inappropriate conduct does not create public interest in the records.

Mr. Graf stated there are a little over 1,000 pages. He stated he broke it down by group in the Bates stamps.

Questions from Committee:

The Committee asked how the Indigent Defense Committee was established. Mr. Graf stated it was by ordinance. The Committee asked if they advise the County Commission. Mr. Graf stated they are an advisory board to the commission.

Petitioner closing:

Mr. Latham thanked the respondent for their work in their search. He stated if his name is included, he is the subject of the records and other information can be redacted.

Mr. Latham stated the respondent has been overly restrictive. He stated someone needs to be a subject of the record. He stated there may be other subjects of the record. He stated they could release what is relevant to him and redact the rest.

Mr. Latham stated he disagreed with Mr. Graf that a county employee consulting with the county attorney becomes a client. He stated the county is still the client, not the individual. Mr. Latham stated no records from the County Commissioners were provided, but he asked for those.

February 11, 2021

Questions from the Committee

The Committee asked if he is questioning the totality of the records and the classification of some that were withheld. Mr. Latham stated he is not clear on the question. He stated a privilege log would be helpful so an assessment could be made if there was proper justification for the classifications. He stated the Committee should not take the respondent's word as face value.

Respondent closing:

Mr. Graf stated the county welcomes the Committee reviewing the records. He stated the petitioner indicated they have not justified their reasons or proved the records were accurately categorized. He stated he believed they have classified the records correctly.

Mr. Graf stated the county is their client. He stated the people who work for the county on behalf of the residents make up the county, their client. He stated some of the records are subject to attorney-client privilege, and others are attorney work product.

Mr. Graf stated being mentioned in the records does not make you the subject of the record. He stated the subject of the record may be the standard for private records, but even the subject of the record is not entitled to protected records.

Questions from the Committee

The Committee asked if the classifications are provided in a way for the Committee to compare the classification to the record. Mr. Graf stated he did provide classifications by Bates stamp numbers.

Deliberation:

Motion by Ms. Dean to review records in camera and continue the hearing to March 11th. Seconded by Mr. Buchanan.

Discussion to the Motion

Ms. Smith-Mansfield stated the subject of the record is not defined in GRAMA. She stated the Committee's rule of thumb has been that the record needs to be about the person, and not simply someone copied in an email. She stated the Rules of Civil Procedures are outside GRAMA and the scope of the Committee. Ms. Smith-Mansfield suggested the entity work with I.T. to put a space after "Rob" if they are getting a lot of subwords in their search.

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

6. Brady Eames v. Logan City (2020-95)

The petitioner withdrew the appeal the night before the meeting.

February 11, 2021

Business part 2 of 2

Approval of January 14th, 2021 minutes, action item

Motion by Ms. Dean to approve the minutes. Seconded by Mr. Haraldsen.

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

Cases in District Court, report

Mr. Tonks reviewed cases in district court.

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

Ms. Shaw reviewed appeals that have been received and were declined.

Committee vacancy role change, action item

Mr. Williams stated one final push will be made to find someone to fill the seat as described in the current statute. He stated if that fails, he will work in the interim to get the role changed in statute. He stated he hoped the Utah Technology Council would provide a recommendation but that did not work out.

Agenda for 2021, action item

Motion by Ms. Smith-Mansfield to set the meeting date every second Thursday of the month. 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.

The Committee discussed bills that may change GRAMA in the legislative session. Ms. Smith-Mansfield stated there is a bill regarding reporting to the State Auditor why collect information. She asked if the sponsor is aware of 63G-2-601. Mr. Williams

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

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

Motion to Adjourn

The Chair adjourned the February 11, 2021, State Records Committee meeting at 4:20 p.m.

This is a true and correct copy of the February 11, 2021, SRC meeting minutes, which was approved on March 11, 2021. An audio recording of this meeting is available on the Utah Public Notice Website at <https://archives.utah.gov>.

February 11, 2021

X /e/ Rebekkah Shaw
Executive Secretary

APPROVED