

March 11, 2021

State Records Committee Meeting

Date: March 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:

Blake Hamilton
Mark Burns, Assistant Attorney General
Brian Graf, Washington County
Robert Latham
Harry Souvall, Unified Police Department
Dan Pender, Unified Police Department
Tiffany Gilman
Sandra Guzman
Deborah Wood, Assistant Attorney General
Wendy Park, Center for Biological Diversity
Wesley Stapley, Department of Workforce Services
Steven Onysko
Susan Mumford
Kendra Yates
Rosemary Cundiff

Agenda:

- Five Hearings Scheduled

March 11, 2021

- o Darren Rosenstein v. Utah Department of Transportation (Continuance. 2020-105)
- o Robert Latham v. Washington County (Cont. 2020-94)
- o Tiffany Gilman v. Unified Police Department (2020-107)
- o Sandra Guzman v. Division of Child and Family Services (2020-127)
- o Center for Biological Diversity v. Department of Workforce Services (2020-42)
- o Business:
 - o Approval of February 11, 2020, SRC Minutes, action item
 - o SRC appeals received and declined, notices of compliance, and related action items
 - o Cases in district court, report
 - o Updating administrative rules, action item
 - o Review of appeal denial process, action item
 - o Legislative update, report
 - o Committee members' attendance polled for next meeting, format and quorum verification

Call to Order

The Chair called the meeting to order at 9:05 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. Darren Rosenstein v. Utah Department of Transportation (2020-105. Continuance)

The Chair announced the hearing.

Respondent Statement

Mr. Burns stated he had been working with the petitioner to narrow the request. He stated several records had been provided and the parties are working together cooperatively. He stated some dates for range of search to focus some, and some email accounts were removed from the scope of the search. He stated an estimate of cost and time was provided to the petitioner.

He stated the scope has been narrowed because there are a lot of project managers. Making progress moving forward, assembled in google drive.

Questions from the Committee

March 11, 2021

The Committee asked if the project managers are contractors. Mr. Burns stated they are UDOT employees, but there is turnover and he is not sure how many former project managers' emails will need to be searched.

Petitioner Statement

Mr. Hamilton stated he concurs with Mr. Burns summary. He stated they have been working diligently and he expressed appreciation for Ms. Cundiff's assistance. He stated they will be providing a payment and an estimate of 10 business days was given to get the documents together.

Mr. Hamilton stated his biggest concern is time. He stated the request was made last June and they still do not have the bulk of the documents. Mr. Hamilton requested this appeal be placed on the schedule for the Committee's next meeting.

Mr. Burns stated he disagrees that the bulk has not been provided. He stated neither of them have a sense of how much has been provided compared to how much is left.

Motion by Ms. Smith-Mansfield to continue the hearing to next month's agenda for another update. 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.

2. Robert Latham v. Washington County (Continuance 2020-94)

The Chair announced the hearing and provided instructions.

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. 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.

Deliberation:

Motion by Ms. Smith-Mansfield that the records are classified appropriately and the appeal should be denied. Seconded by Dr. Cornwall.

March 11, 2021

Discussion to the Motion

Ms. Smith-Mansfield stated having reviewed the records, the entity was careful in providing classification and dividing it out. She thanked the entity for the organization of the record provided to the Committee. She stated the records are classified private under 63G-2-302(2)(d) and 63G-2-305(10)(17) and (18) according to the respondent's classification index. She stated there are also a few non-records. These are also juvenile records which are important to get right.

Dr. Cornwall stated she agrees. She stated the most important thing is that they are juvenile records. She stated the attorneys are discussing cases and reviewing information about underage youth and that needs to be kept private. Ms. Dean stated she agrees.

Mr. Williams stated he appreciated the effort of the governmental entity to organize the records in a way that was easy for the Committee to review. Ms. Smith-Mansfield stated she appreciated they classified some as not records. Dr. Cornwall stated the classification index provided was far and above what the Committee often sees and it was very helpful. She stated she searched them all.

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 until 9:40 am.

Business part 2 of 3

Approval of February 11, 2020, SRC Minutes, action item

Motion by Ms. Dean to approve the February 11, 2021 minutes. Seconded by Ms. Smith-Mansfield.

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

Updating administrative rules, action item

Ms. Shaw stated the Committee needed to vote on any rule changes in the April meeting if the Committee would like the rule to be active by July 1st. Ms. Smith-Mansfield asked if there was anything she would like changed. Ms. Shaw stated the process of denying appeals may need an update. The Chair moved to that action item for discussion.

Review of appeal denial process, action item

Ms. Shaw stated she was wondering if there was a process the Committee would prefer. She stated she rotates through the Committee for the second person to review appeals for denial

March 11, 2021

with the Chair. She stated she does not know if the time works for the second person and she cannot email the entire committee.

Ms. Smith-Mansfield stated this change does not need to be a rule, but a procedure. She stated the state email is not easy to get to. Ms. Shaw stated the Committee could rotate who the second person is each week or month. Mr. Williams stated he liked the idea of rotating by month. He asked what the Committee thought. Dr. Cornwall stated it was a good idea because then she would be aware she has an extra assignment.

Ms. Dean stated a text would be helpful so if there is no way she can get to it that day, someone else can be asked. Ms. Smith-Mansfield stated she liked the idea of a text reminder to check her email. Dr. Cornwall agreed. Mr. Williams asked if a text prompt would work for Mr. Haraldsen. Mr. Haraldsen stated that would work for him. Ms. Dean volunteered for the rest of March.

Updating administrative rules, action item

The Chair said this needs to be on the agenda more often. He stated if anything happened in the session to necessitate a rule change, the Committee can update the rules.

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

The Chair verified a quorum will be present at the April 8th meeting. Mr. Tonk stated he will be late, but another assistant attorney general will be present.

SRC appeals received and declined, notices of compliance, and related action items (part 1 of 2)

Ms. Shaw stated there are several appeals related to officer-involved critical incidents between Sam Stecklow and a law enforcement entity. She stated the petitioner is agreeable to the idea of having a second Committee meeting in April to address these appeals together. Ms. Smith-Mansfield stated the respondents should agree to combine the hearing. She asked if Ms. Shaw had asked the respondents. Ms. Shaw stated she has not heard from them all yet, but her understanding is that they would be agreeable. Ms. Smith-Mansfield stated they should agree to the appeals being combined. She stated she would ask the entities if they want to have a common response.

Ms. Shaw stated her original plan was to have a second meeting day, not a single hearing. They could have a single response, but every entity could present. She stated she had not reached out because she wanted to know if the Committee would be able to meet on a second day in April. Ms. Dean stated there may be a tremendous amount of records to review in camera. Ms. Shaw stated she imagined the parties present in the morning, and the Committee break for lunch and in-camera review, then reconvene in the afternoon to deliberate. Dr. Cornwall asked if these have the same underlying request. Ms. Shaw stated yes. Ms. Dean asked if the denial is about classification. Ms. Shaw replied that they are.

3. Tiffany Gilman v. Unified Police Department (2020-107)

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

March 11, 2021

Petitioner's statement:

Ms. Gilman stated the records interest her because she is working on a documentary on the Ted Bundy case with another documentarian. She stated she is also writing a book that is going to focus on the victims. She stated Nancy Wilcox is the only victim she does not have the case file records for.

Ms. Gilman stated all other twenty-one victims across the country have their records released either because their bodies were found or Bundy confessed to the murder. She stated Nancy's case is important to the narrative because she was the first Utah victim and very little is known about her. She stated Bundy confessed to her murder and gave directions to her gravesite in 1989.

Ms. Gilman stated the records were requested in October 2019 because it was listed as solved on the cold case website. She stated her request was denied because it was considered open despite the website saying it was solved. She stated Mr. Souvall told her it was closed due to clerical error and reclassified as an open case.

Ms. Gilman stated a problematic precedent is set if a case can be changed from closed to open when records are requested. She stated there is no unwarranted invasion of privacy. She stated she would like to interview friends and family of the victims and give a story of the whole person instead of focusing on the killer. She stated she is not asking for anything gruesome from the case, and nothing about her sexual activity would be considered outrageous today. She stated she is not interested in those details beyond what could be involved in Nancy's disappearance. Ms. Gilman stated most of Nancy's family has passed away so there are not a lot of privacy concerns left to protect.

Ms. Gilman stated several other cases have been considered solved and closed because of Bundy's confessions. She stated Bundy confessed to murdering Susan Curtis in Utah 45 minutes before execution. She stated Susan's body was not found, but the case is considered solved and closed. She stated Brigham Young University Police has released the case file. She stated other states have also released the case file for victims whose bodies have not been found. She stated Nancy Wilcox is the only case file the police have not released.

Ms. Gilman stated she sent confession excerpts and press conference clips from the Salt Lake County Sheriff press conference the day of the execution. She stated the sheriff and detective said in no uncertain terms the Wilcox case is solved and Bundy's confession closed the case.

Ms. Gilman stated one victim's remains were found based on Bundy's confession, and she believes he was being truthful in hopes to buy time before he was executed. She stated if he was lying, it would not have benefited him because he needed remains to be found so he could live longer to provide more confessions.

Respondent's statement:

March 11, 2021

Mr. Souvall stated GRAMA allows for the designation of records on request. He stated Bundy's confession was a last minute effort to get as much information from him as possible before he was executed. He stated in the course of the interview there are some concerns. He stated Bundy did not know Nancy's name and he gave vague answers.

Mr. Souvall stated Ted Bundy probably did it, but there is no certainty. He stated the case was reopened because the Unified Police Department has a cold case unit. He stated they were already looking into this case when the record request came. He stated a case from 1979 was recently solved.

Mr. Souvall stated there is a phenomenon called 'false confession' when killers claim responsibilities for more than they are guilty of to enhance their notoriety. He stated this is a possibility in Nancy Wilcox's case. He stated the case is potentially still solvable. He stated the veracity of the confession may be called into question if she is not in the location he said.

Mr. Souvall stated they do not want to release anything that may clue in the real perpetrator. He stated even though the case is old, there is still reason to protect it. He stated opening the case may harm the investigation. He stated there are privacy concerns whenever there is a missing person. He stated people who were named as possible suspects are still alive and releasing the case file could harm their reputation because they may appear to be a suspect in the case.

Mr. Souvall stated there are parts of the case file with no basis to be public. He stated Nancy still has living relatives. He stated if the file is not protected, it would need to be substantially redacted. He stated Ms. Gilman may not care about some of the information released, but once it is released to one person it is released to all.

Mr. Souvall stated prison guards from Nazi Germany have been shipped back this year to face justice. He stated Ms. Wilcox's case is not too old to be an open case.

Questions from Committee:

The Committee asked what classification he is relying on for the privacy interest because the only classification provided was 63G-2-305(10)(a). Mr. Souvall stated the entire file is protected. He stated there is a redacted version prepared in case it is not protected, which is heavily redacted for privacy concerns. He stated their classification is the case is protected because it is an open case. He stated the privacy classification would be a clear and unwarranted invasion of privacy. The Committee asked how releasing the record could reasonably be expected to interfere with the investigation. Mr. Souvall asked for Mr. Pender to answer that.

The Chair swore in Detective Dan Pender as a witness.

Witness statement:

Mr. Souvall asked Mr. Pender to describe his background. Mr. Pender stated he has been in law enforcement for 31 years, half of his career with narcotics, the other half in the homicide unit. He stated the last few years he has been working on cold case homicides. Mr. Pender also listed some training and seminars he attended.

March 11, 2021

Mr. Souvall asked Mr. Pender to describe the cold case unit. Mr. Pender stated a few years prior to coming in, another detective in the homicide unit started looking at cold cases. He stated Unified Police is fortunate to have a cold case unit so the cold cases get more attention. He stated that detective threw things on the website. He stated detectives in the homicide unit are really busy and are constantly pulled away to other current cases. He stated he came into the unit when that detective retired. He stated it is difficult to step away from cold cases to work on active cases. He stated in the cold case unit he is called out once or twice a year instead of once or twice a week. He stated this helps detectives focus on the cases. He stated this is unique because most agencies investigate cold cases as they have time, and so many cases do not get actively worked on. Mr. Pender stated the only difference between a cold case and an active case is the time that has gone by. He stated cold cases deserve as much attention as a case that happened yesterday.

Mr. Souvall asked how many cases are in the cold case unit. Mr. Pender stated there are 34 cold case homicides and 15 missing adults. Mr. Souvall asked how the cases are classified. Mr. Pender stated they can be ruled as homicide even without a body found. He stated Nancy Wilcox's case could go either way, but it has a homicide classification.

Mr. Souvall asked how many cases were solved. Mr. Pender stated eight homicide cold cases have been solved and two missing persons. Mr. Souvall asked what the date range was for those cases. Mr. Pender stated they are late seventies, some eighties and nineties. He stated a 2010 cold case was recently solved.

Mr. Souvall asked if they solved the disappearance of the woman who was murdered on 700 East. Mr. Pender stated they had solved Sherry Black's case. Mr. Souvall asked what needed to be protected in a cold case generally. Mr. Pender stated all information needs to be protected because only certain things are known by the perpetrator. He stated information they do not think will affect the case could be information only the perpetrator knows and could help solve the case. Mr. Souvall asked if the protected information in Sherry Black's case helped solve it. Mr. Pender stated it did.

Souvall asked why releasing the whole file in the Wilcox case could harm an investigation. Mr. Pender stated information released to one is released to all. He stated if they cannot get information from a suspect that is already public. He stated it would be hard to get the District Attorney's office to prosecute the case because some information was general knowledge.

Mr. Souvall asked if Mr. Pender was familiar with false confessions. Mr. Pender stated he was and had a recent case of false confession in a homicide. He stated in a Utah County case from the 1970s, an individual came forward claiming they murdered the victim. He stated the individual claimed many murders and eventually the case was closed in 1983 based on that information. He stated the case was reviewed and through investigation, a false confession was found. He stated a number of agencies are now scrambling to reopen cases and figure out what they are supposed to do because the cases were closed. He stated this would be similar to the Wilcox case.

March 11, 2021

Mr. Souvall asked if Ted Bundy is not the killer, how releasing the information would damage the investigation. Mr. Pender stated he did not think the District Attorney could take the case because of all the information that had been released to the public. He stated he has solved cases where the suspect was deceased, but he provided a letter from the District Attorney's office to the victim's family that if the suspect was alive, they would be charged. He stated the District Attorney's office has not signed off on Nancy Wilcox's case as closed. He stated they agree the case should be protected.

Questions from the Committee:

The Committee asked for dates or evidence of when the case was changed from solved to unsolved. Mr. Pender said the status of the case was not changed. He stated it was changed on the website when they got a record request. He stated he was not working on the website. He stated the person who posted the case to the website was not working in cold cases full time. He stated he did not know why it was on the website.

The Committee asked if his files said the case was closed. Mr. Pender stated it was only the website that said it was closed. The Committee asked if that means they have never changed the classification of the case. Mr. Pender stated they have not as far as he knows. He stated he just asked that it be removed from the website.

The Committee asked how intense investigation is at this time. Mr. Pender stated the case was worked on in January 2015, March, September 2016, December 2018, and December 2019. He stated in 2020 he began working with individuals to identify potential burial sites to clarify Bundy's confession. He stated Nancy Wilcox was entered in a national missing persons database in 2020. The Committee thanked him for having that information ready to answer that question.

The Committee asked if portions of the file related to Ted Bundy could be released. Mr. Pender stated they do not know if anything released could harm the investigation because technology is changing all the time. He stated a cold case that could not be solved years ago is solvable today.

The Committee asked if there was anything specific to Bundy that could be released. Mr. Pender stated Bundy was not the focus of the investigation until some time later. Mr. Souvall stated Bundy became a suspect when Utah realized there was a serial killer.

The Committee asked if there is a document in the file that helps pinpoint the time when Bundy became the focus. Mr. Pender stated there is a point in the record that would indicate that, but he was concerned that if it was released and Nancy's remains were located, he would like to go to the District Attorney's office and get a letter that based on the information provided, they would charge the suspect. He stated if the information was released to the public, the District Attorney would not provide the letter that the case is solved.

Committee asked how many other victims are considered false confessions by Bundy. Mr. Pender stated he did not know. Ms. Gilman stated there are no false confessions associated

March 11, 2021

with Bundy. She stated there are other cases that Bundy denied involvement despite law enforcement feeling certain he did it. She stated in 2018 those cases were solved with DNA evidence and it was proven Bundy was not the killer. She stated Bundy refused to admit to murders they were sure he did. Mr. Souvall stated they have no evidence to the contrary.

Petitioner questions for witness:

Ms. Gilman asked Mr. Pender if there were any other missing girls south and east of Salt Lake City in that time period that Bundy could have been referring to. Mr. Pender stated he was not sure. He stated he has fifteen missing persons, and every jurisdiction has missing persons. He stated his guess is yes. He stated there are a lot of missing individuals in Salt Lake Valley and it covers several police jurisdictions.

Ms. Gilman asked if his other solved cases were solved with DNA evidence. Mr. Pender stated some did, and some were based on interviews. Ms. Gilman asked if he is saying a confession would not close the case by today's standards. Mr. Pender stated the District Attorney would never let him close a case based on that. He stated he understands the sheriff did a press conference saying the case was closed, but the actual case file does not provide enough information to close the case. He stated he had other cases with more information and he cannot get the District Attorney to listen without more information.

Ms. Gilman asked if they have anything that is testable for DNA. Mr. Pender stated everything is testable at some point because technology is always changing. Ms. Gilman stated Nancy Wilcox left home and was never seen again. She stated there is no body and nothing to be tested. Mr. Pender stated that generally, in missing person cases, other items may be collected. He stated detectives do not walk away from a missing person case with nothing. He stated they could look at the residence, and they do not know what is or is not important.

Petitioner closing:

Ms. Gilman stated Bundy was vague, but he killed a lot of people. She stated he wanted to show where she was on a street map, but it was not available. She stated she is not aware of any searches done for Nancy's remains since 1989.

Ms. Gilman stated she is not aware of any false confessions from Bundy. She stated Henry Lee Lucas confessed to over 500 murders which is a completely different case. She stated false confessions are not applicable to this case because there are no other missing girls from that area he could have been referring to.

Ms. Gilman stated if there are other suspects, those names can be redacted. She stated Detective Couch says the case is closed. She stated the case being active is just a way to keep the case file from the public. She stated Nancy Wilcox's case file is the only one in the nation that has not been released. She stated Susan Curtis has not been found but BYUPD released the case file to her. She stated she does not understand why the cases are treated differently.

March 11, 2021

Ms. Gilman stated redacting possible grave sites would solve the security issue. She stated Bundy's confession is already public. She stated she did not understand why law enforcement would tell the press the case is solved only to close it as unsolved thirty years later.

Respondent closing:

Mr. Souvall stated we've covered the issues in great detail. He stated this is an unsolved case. He stated Bundy probably did it, but it is not certain based on his vague interview. He stated the cold case unit makes them different from other places because Unified Police still works on the cold cases. He stated that is all the unit does. He asked the Committee to rule the record is protected and they be allowed to continue to work the case.

Deliberation:

Ms. Smith-Mansfield stated privacy isn't an issue in this case. She stated the clear and unwarranted invasion of privacy really refers to the deceased. She stated the respondent's argument is undercut by stating Bundy probably did it. She stated she does not see anything that would reasonably interfere with the investigation per 63G-2-305(10)(a) when it comes to material related to Bundy.

Dr. Cornwall stated the respondent has convinced her that they need to keep the content not for privacy, but for the investigation. She stated the petitioner did not argue that it is in the best interest of the public to know this information right now. She stated the case is getting worked more and she would like to give the respondent more time to solve the case.

Ms. Smith-Mansfield stated the material might be segregated. She stated it is a cold case, and the age of the file does contribute. She stated she sees many entities argue the need to keep records protected because it will interfere with an investigation. She stated that given the notoriety of the case, she does not see how releasing the record could interfere further.

Dr. Cornwall stated she has to trust Detective Pender's expertise. She stated if she were to support Ms. Smith-Mansfield's position, she would have to look at the file and she does not want to do that.

Ms. Smith-Mansfield stated 63G-2-305(10) is overused.

Question from the Committee:

Mr. Buchanan asked Mr. Pender if there are concrete plans to work on this case. Mr. Pender stated there are. He stated he has been consulting with people to get the location of Nancy's burial pinpointed. He stated his goal this year is to get a group to go out and see if they can locate her.

Ms. Smith-Mansfield asked if he is looking at the area Bundy talked about. Mr. Pender stated they are. He stated he is getting help from people better versed in the area.

March 11, 2021

Motion by Mr. Haraldsen to continue the hearing and review the record in camera. Seconded by Ms. Smith-Mansfield.

Discussion to the Motion

Mr. Haraldsen stated he wouldn't feel comfortable making a decision without seeing the file. He stated the respondent has a redacted version, which shows they anticipated they may have to release some of the file at some point.

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

Mr. Haraldsen asked the respondent to provide both the redacted and un-redacted copy. Mr. Souvall stated they 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.

The Committee sauntered until noon for lunch.

4. Sandra Guzman v. Division of Child and Family Services (2020-127)

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

Petitioner's statement:

Ms. Guzman stated she requested the records three months ago. She stated her understanding was that she could not get the records because of pending criminal charges against her and her husband. She stated her daughter came home and her charges were dismissed. She stated it does not matter if she gets the records now or not. Ms. Guzman stated her husband's attorney would be requesting the records for his court hearing.

Questions from Committee:

Mr. Williams asked if she was withdrawing and suggesting her husband will be making the same request. Ms. Guzman stated his attorney will get the records for him.

Respondent's statement:

Ms. Woods stated she's not sure how to respond. She stated they have not received a request from Mr. Guzman. She stated the records from 2020 were denied because of a pending criminal investigation per 63G-2-305(10).

Ms. Woods stated another set of records from 2014 were denied because they were unsupported and there was no finding against a perpetrator. She stated Ms. Guzman was not the alleged perpetrator so the records could not be released to her. She stated records prior to

March 11, 2021

2014 were provided in October 2020. She stated that 62A-4a-412 governs access to the child abuse neglect reports and supports the restrictions.

Questions from Committee:

The Committee asked if the petitioner is requesting this be withdrawn. Ms. Guzman stated she is not. She stated she is happy if she can get the records, but if not, it is fine.

The Committee asked Ms. Woods to clarify the difference between 62A-4a-412 and 63G-2-202(10) given that 62A-4a-412 talks about who records can be released to. One being the parents, and unsubstantiated investigations in 63G-2-202(10). Ms. Woods stated 62A-4a-412(1)(e) stated the records may be released to a parent unless they fall under 63G-2-202(10). She stated it limits what parents can receive unless they are the alleged perpetrator. She stated they are going by the statute.

The Committee asked if the request was for 2014 records or just the 2020 records. Ms. Woods stated Ms. Guzman's attorney filed a subsequent request four days after the initial request that broadened the request. She stated the only records that were denied are the 2014 and 2020 records.

The Committee asked if the investigation is now closed. Ms. Woods stated she learned it was closed just prior to the meeting. She stated charges to Mr. Guzman are still pending. The Committee asked if the records related to Ms. Guzman can be segregated from Mr. Guzman's investigation. Ms. Wood stated they could try.

The Committee asked if 62A-4a-412 sets up a conflict for parental access to the records if the investigation is about the parent. Ms. Woods stated that is correct until the proceedings are completed.

The Committee asked Ms. Guzman if she still wants the 2014 records or if she would be happy with the 2020 records. Ms. Guzman stated she would be happy with the 2020 records.

The Committee asked the respondent if they were willing to go back and look at the request through the lens of the closed case. Ms. Wood stated that they are.

Petitioner closing:

Ms. Guzman stated she has nothing to add.

Respondent closing:

Ms. Wood stated she has nothing to add.

Deliberation:

Motion by Ms. Dean to continue this hearing so the respondent can review the records and determine which records can be provided to the respondent. Seconded by Ms. Smith-Mansfield.

March 11, 2021

Discussion to the Motion

Ms. Dean stated she would like the Government Records Ombudsman to assist the parties.

Ms. Smith-Mansfield stated 63G-2-202(10) is not a classification, but would apply if the records are classified correctly. She stated the Committee could determine the classification of the 2014 records next time because the hearing is continued. She stated there would be no order on the classification or the Children's Justice Center interviews which are not records. Mr. Tonks stated the petitioner can withdraw the appeal if they are satisfied, or come back if they are not satisfied.

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 two minutes.

5. Center for Biological Diversity v. Department of Workforce Services (2020-42)

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

Petitioner's statement:

Ms. Park stated she has been attempting to resolve the matter with the respondent informally. She stated both parties are in agreement that the respondent will be able to provide the disputed records. She stated the Center would like assurance the records would be provided.

Ms. Park stated both parties propose the Committee order the production of records within thirty days. She stated that would give assurance the hearing would not be continued indefinitely. She stated the appeal has been pending since May 2020.

Ms. Park stated they would like the continuance so they can challenge any records withheld under privileges in GRAMA. She stated any of those disputes could be resolved by the Committee in May.

Respondent's statement:

Mr. Stapley stated he agrees with what Ms. Park said in terms of what they'd propose. He stated records were provided to the petitioner and the Center believed some records were missed. He stated they conducted a more extensive search that involved the Department of Technology Services. He stated he has only started reviewing those but he is confident the records will be provided in the next thirty days. He stated the respondent does not want to withhold the petitioner's right to object to any privileges presented in the records.

Questions from Committee:

March 11, 2021

The Committee asked Mr. Stapley if the problem has always been a delay. Mr. Stapley stated he was on a leave of absence for medical issues when the request was made. He stated when the initial appeal was made, no records had been produced. He stated they were provided in August 2020.

Mr. Stapley stated Ms. Park objected that what was provided could not be all there was. He stated that acting in good faith, and hoping to resolve the appeal, they did another search. He stated the records provided by the Department of Technology Services were not in a usable format and they had to wait for assistance to reformat those, which took months. He stated he has been given access to those the last ten days and there are thousands of emails to review.

The Committee asked both parties if they agree to the terms of the final outcome of this hearing. Ms. Park and Mr. Stapley stated they are.

Deliberation:

Motion by Ms. Smith-Mansfield to continue the hearing to allow the entity to review the records and classify the records. Seconded by Mr. Haraldsen.

Discussion to the Motion

Ms. Smith-Mansfield stated the hearing would be continued to May. Ms. Dean asked if the Committee needs to order the 30 days in an order. Mr. Tonks stated that has not been done before. He stated the order can include a statement that the parties agreed the records would be provided in 30 days. Ms. Smith-Mansfield stated the Committee has no idea what the classification may be. She stated it is an order of continuance and not an order of production.

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.

Business part 3 of 3

Cases in district court, report

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

Business SRC appeals received and declined, notices of compliance, and related action items (part 2 of 2)

Ms. Shaw reviewed appeals withdrawn, and notices of compliance received. She stated Mr. Pace requested the Committee reconsider the denied appeal. The Committee reviewed the request and appeal and determined records were denied.

