

April 29, 2021

State Records Committee Meeting

Date: April 29, 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

Committee Members Not Present:

Tom Haraldsen, Media Representative
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:

Sam Stecklow, Salt Lake Tribune
David Quealy, Attorney, West Jordan
Riche Willie, Attorney
John Brems, Attorney, Cottonwood Heights
Michael Houtz, Attorney, Clinton City
Steven Scott, Attorney, Washington County
Mark Kittrell, Attorney, Salt Lake City
Jonathan Pappasideris, Attorney, Salt Lake City
Emily Fitton
Jeff Robinson
Jeremy Robertson
Jessica Miller, Salt Lake Tribune
Kendra Yates
LTitenson
Michelle Larsen
Rosemary Cundiff
Tauni
Melanie Marlow
Shawn Stoker

April 29, 2021

Kevin Thurman
Rick Jorgensen
G.L. Critchfield
Briant Farnsworth
Cindy Lou Trishman
Candee
"C"
Jonathan Ditto
Kirsti Kjome
Steven Onysko
Sherrie Maxwell, Washington County
Lonny Pehrson
C. Miller
Susan Mumford
Ryan Loose
JBrooks
Chase Andrizzi
Tingey Tim
ZAdams
"MOB"
Nate Mutter
Lt. Nick Street
Chief Russo
Heather Sundquist
Korban Lee
Katie Ellis
Dan Bartlett
Tangee Sloan
Tammy
Barry Parslow
John Park
Christine Fernandez
Shane Tomham
Paula Melgar
Lynda Viti

APPROVED

Agenda:

- Five Hearings Scheduled
 - Sam Stecklow (Tribune) v. West Jordan (2021-53)
 - Sam Stecklow (Tribune) v. Cottonwood Heights Police (2021-26)
 - Sam Stecklow (Tribune) v. Clinton City Police (2021-27)
 - Sam Stecklow (Tribune) v. Washington County Sheriff (2021-11)
 - Sam Stecklow (Tribune) v. Salt Lake City Police (2021-05, 2020-129)
- Business:

April 29, 2021

- Approval of April 8, 2021, SRC Minutes, 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 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. Sam Stecklow (Tribune) v. West Jordan City (2021-53)

The Chair announced the hearing and requested both parties to acknowledge they cannot share anything discussed in mediation with the Committee. Both parties agreed.

Petitioner Statement

Mr. Stecklow thanked the Committee for having a unique hearing today. He stated the issues are of great public importance. He stated that officers discharging a firearm is a serious matter. He listed the names of local and national cases which he stated demonstrate the public interest.

Mr. Stecklow stated sometimes officer-involved shootings are found to be justified. He explained the Salt Lake Tribune is tracking shootings since 2004 and explained what the data has shown so far. He stated there is an extremely high bar to bring charges against an officer.

Mr. Stecklow stated he is interested in another investigation that sometimes happens, but is not required by law. He stated instead of determining if the officer committed a crime, it investigates whether the officer acted within the use of force policy. He stated without access to the internal review, the public cannot know if the officers are skilled at determining when to use force, if the investigation lacks quality, or if the policies are lacking. He stated if the investigations are thorough, it is in the entity's best interest to release the records because it would enhance credibility of the work done and increase public trust. He stated if the investigation is lacking, the public has a right to know.

Mr. Stecklow stated that in his experience of reviewing these types of records, the majority rely on criminal investigations. He stated that some officers use their 5th Amendment right and this is where Garrity comes into play. He stated Garrity is from a 1967 Supreme Court case which provides the police the ability to legally compel officers to make a statement that cannot be used against them in a criminal case.

April 29, 2021

Mr. Stecklow stated as far as he is aware, this statement is the only record West Jordan has because no findings letter or report was created and no disciplinary action was taken against the officer. He stated 63G-2-301(3)(o) does not prohibit the release of records. He stated there is no administrative proceeding or enforcement occurring so 63G-2-305(18) and 305(10)(b) also do not apply.

Mr. Stecklow stated 63G-2-302(2)(a) does not apply because it relates to performance evaluations, which are monthly or annual reviews. He stated the legislature did not contemplate use of force records falling under this citation of records concerning current or former employees.

Mr. Stecklow stated records about a decision to take a life are not the same as records containing personal information. He stated Garrity has nothing to do with privacy. He stated even if they were private records, the invasion of privacy is warranted because the officer made a decision to take a life. He stated he understands officers may feel judged if the record is released, but if it exonerates them, it is in their interest to release it. Mr. Stecklow stated the protection of Garrity statements really only apply to investigations that have not concluded.

Mr. Stecklow stated that West Bountiful, Box Elder County Sheriff, and POST have all released Garrity statements. He stated only Cottonwood Heights and West Jordan have denied them. He stated he believes this demonstrates that most entities do not compel Garrity statements.

Question from Committee

The Committee asked Mr. Stecklow to speak more about why he feels the Committee should use the weighing provision to make the records public. Mr. Stecklow stated the decision generally comes down to the balancing test. He stated the policy arguments made are why this case is in the public interest. He stated the officers did not provide a public statement. He stated the public does not know what the justification was for use of force.

The Committee asked if this incident has been investigated and there are no plans to pursue it. Mr. Stecklow stated the SL Co DA closed the case without issuing charges or issuing findings.

Respondent Statement

Mr. Quealy stated there are two Garrity statements that officers were compelled to give two days after the officer-involved shooting, despite their 5th Amendment right. He stated they have the right to decline to talk to a criminal investigator and district attorney. He stated they declined to talk to the city but were forced to under Garrity.

April 29, 2021

Mr. Quealy stated Garrity applies to all public employees. He stated this is a public employee issue, not a police issue. He stated employers can compel an employee to talk to them or get fired. He stated it cannot be used in a criminal proceeding. He stated these statements would not exist otherwise.

Mr. Quealy stated West Jordan Police is not trying to hide anything from the public and the city is not trying to undermine transparency. He stated it was thoroughly investigated by an outside agency. He stated the Salt Lake County district attorney investigated and issued a 14 page letter. He stated the body camera footage is public, the dashcam footage is public. He stated the police reports, and the names of the officers have already been released.

Mr. Quealy stated the records are private under 63G-2-301(3)(o), 302(2)(a) and (2)(d). He stated they are also protected under 63G-2-305(18) and 305(10)(b). He stated under 301(3)(o) the statements are clear that there were charges and disciplinary action pending. Ultimately discipline was not sustained.

Questions from the Committee

The Committee asked him to explain the Third District Court decision in Lawrence v. Department of Public Safety, which said internal affair investigations are not personnel records under 301(3)(o). Mr. Quealy stated that case was wrongly decided. He stated the decision referenced should be Deseret News Publishing v. Salt Lake County. He stated Lawrence was about internal affair records generally, and this case is not. The Committee asked if the statements are part of the internal affairs investigation. Mr. Quealy stated they are a separate record series.

Respondent Statement

Mr. Quealy stated these records fall under 302(2)(a). He stated these records concern employees and includes performance evaluation information. He stated these records exist to assess performance in the circumstances. He stated these records apply even if they are not performance evaluations because the code states "including" meaning the items listed are exemplary. He stated the legislature intended the protection to include records not mentioned as examples.

Mr. Quealy stated the records are private under 302(2)(d) because the implications of Garrity is an unwarranted invasion of personal privacy because it deprives the officer's ability to be silent on the issue.

Mr. Quealy stated Lawrence isn't the binding ruling for this case because it was specific to that case. He stated Deseret News v. Salt Lake County is binding. He stated releasing the records

April 29, 2021

would impact the mental health of the officers and their families. He stated it would impact their ability to be effective police officers.

Mr. Quealy stated 63G-2-305(18) applies because the records were created in anticipation of administrative proceedings, specifically disciplinary proceedings. He stated the officers anticipated administrative discipline which includes appeal rights.

Mr. Quealy stated 63G-2-305(10)(b) applies. He stated the District Attorney's letter states it is based on the facts he has and if the facts change, then his conclusions will change. He stated the case is left open until no new facts are discovered. He stated that does not end until the statute of limitations runs, which is 4 years for a felony, and there is no statute of limitations for murder and manslaughter.

Mr. Quealy stated if anyone knows the content of the statement, prosecutors would have to disprove taint from the Garrity statement for every piece of evidence and every witness they have. He stated the petitioner has not met the burden of proving the public interest is greater than the interest in protecting the records because transparency has been achieved.

Questions from the Committee

The Committee asked what records exist from the internal investigation that show charges were unsustainable and how it is a separate record series. Mr. Quealy stated the city relies on criminal investigation conducted per the OICI protocol. He stated they gather evidence, talk to witnesses, and go into more detail than the city does with an internal affairs investigation. He stated the criminal investigation materials are transferred to the city and then reviewed. He stated the criminal investigation file is what is used for the internal investigation and it includes more than one record series.

The Committee asked if anything new was created besides the Garrity statement. Mr. Quealy stated there was not.

Petitioner closing statement

Mr. Stecklow stated he was told there were no findings that reflect why the charges were unsustainable. He stated he was provided a letter stating there were no findings and it was represented to him that only the Garrity statement exists.

Mr. Stecklow stated if there was no discipline, then 63G-2-301(3)(o) does not apply. He stated under the balancing test, the records should be released. He stated records are public unless expressly provided in statute. He stated respondents should not start classifying records by assuming the record is not public. He stated the records being withheld because of the statute of limitations for murder is not reasonable. He stated none of the released records get to what

April 29, 2021

the officer was experiencing when they decided to fire a firearm. He stated the released records do not get to the core of the issue.

Respondent closing statement

Mr. Quealy stated the Committee only needs to address if these statements are public. He stated the petitioner did not address the other four basis for which the records are private or protected.

Deliberation

Ms. Smith-Mansfield stated she feels this is not a clearly unwarranted invasion of personal privacy because this happened in the course of official business. She stated she thinks Lawrence is relevant, as it specifically addresses 301(3)(o). Ms. Smith-Mansfield asked Mr. Tonks if the Lawrence case said anything about Garrity statements. He stated it did not.

Mr. Williams asked what she thought about the officer being compelled to give the statement. Ms. Smith-Mansfield stated Garrity protects their 5th and 14th Amendment rights, and they will not be charged. She stated it does not address the privacy issue. Mr. Williams stated the standards are higher for public officials.

Ms. Dean stated the records are part of an investigation. She stated 301(3)(o) requires charges to be sustained. She stated she is not convinced the Garrity statement can be released.

Ms. Smith-Mansfield stated the Third District Court ruled internal investigation records are not personnel records under 301(3)(o) even though they were not substantiated they were released. She stated the Committee has referenced Lawrence in previous orders.

Dr. Cornwall stated none of those cases addressed Garrity statements. She stated she is concerned because they are compelled. She stated Utah Code provides no guidance showing Garrity statements are private. Ms. Smith-Mansfield stated it depends if these are employee records. Ms. Smith-Mansfield stated the officer is not losing their 5th Amendment rights even if the Committee orders the records be released. Dr. Cornwall read the 5th Amendment. She stated it is an interview and the officer has expectations of privacy. She stated often people are promised one way or another that the records will never be released and then they are. She stated she wants this to be heard in District Court.

Ms. Smith-Mansfield stated the petitioner made an argument for public interest so the Committee may want to review the records in camera. She stated shootings have a high impact public interest. Mr. Williams stated the petitioner's statement was that he is trying to get at how the decision was made to use legal force.

April 29, 2021

Dr. Cornwall stated these statements are compelled, so there is more to consider.

Motion by Dr. Cornwall to review the records in camera. Seconded by Ms. Dean.

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

Mr. Willie stated he was an attorney for Officer Chris McHugh for the Cottonwood Heights case. He asked if the Committee could take arguments under advisement and hear all arguments before making a decision. Mr. Quealy stated the Cottonwood Heights case also is just about Garrity. He is not opposed to having the Committee hearing the Cottonwood Heights case, but would like to have a decision before the cases unrelated to Garrity are heard. Mr. Brems requested the Committee hear Cottonwood Heights before making a decision.

The Committee went into closed session to review the records.

Motion by Ms. Dean to return to open session. Seconded by Dr. Cornwall.

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

Motion by Ms. Smith-Mansfield to hear the Cottonwood Heights case. Seconded by Ms. Dean.

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

2. Sam Stecklow (Tribune) v. Cottonwood Heights (2021-26)

3.

Petitioner Statement

Mr. Stecklow's complete argument included his presentation in the first hearing.

Mr. Stecklow stated Cottonwood Heights believes the Chief Administrative Officer and State Records Committee cannot analyze if Garrity can be released because neither are criminal or constitutional law experts. He stated both can determine this under GRAMA.

Mr. Stecklow stated a record is public unless expressly provided by statute. Two cases at issue in Cottonwood Heights. One in 2018. The officer did not give a statement to investigators. The other involved a juvenile. Officer McHugh gave a statement to investigators, but the case warrants more scrutiny.

Respondent Statement

April 29, 2021

Mr. Brems stated local government has an obligation to supervise police officers. He stated part of that involves investigations of complaints made. He stated a formal internal affairs investigation is conducted which includes formal written findings and statements.

Mr. Brems stated officers must respond or lose their job and POST certification under Garrity obligations. He stated there is a Garrity warning that is signed and part of the file. He stated the redacted Garrity statement was provided to the petitioner with the rest of the investigation file. He stated constitutional rights outweigh the public right to know.

He stated Cottonwood Heights was not party to the Lawrence district court case so it is not binding. He stated disclosing these statements is an unwarranted invasion of personal privacy. Mr. Brems stated 63G-2-301(3)(o) and 302(2)(a) supports their argument. He stated the Committee recognized the privacy of unsustained cases of discipline in order 08-10. Mr. Brems stated releasing Garrity statements would have a chilling effect on officers and witnesses.

Questions from Committee

The Committee asked Mr. Brems to clarify the court ruling under Lawrence that internal affair records are not personnel records. Mr. Brems stated the Lawrence case is not binding for Cottonwood Heights because they were not a party. He stated Garrity was not an issue in that case. He stated he is arguing release of the records would be a clear unwarranted invasion of personal privacy under 63G-2-302(2)(d).

Respondent Statement

Mr. Brems stated these should not be considered public records. He asked the Committee to evaluate them.

Questions from Committee

The Committee asked if the petitioner got everything in the investigation file except the Garrity statement. Mr. Brems stated he did. He stated even the unsubstantiated materials were provided, but they did not provide these statements.

The Committee asked how these could be used in a criminal proceeding. Mr. Brems stated once the statements are released it might not maintain its Garrity protection.

Third party statement

Mr. Willie stated he represents Officer McHugh. He stated the 5th amendment right applies to everybody. He stated government employees do not have a watered down version of constitutional rights.

April 29, 2021

Mr. Willie stated Garrity allows the employer to violate the 5th Amendment but creates a confidentiality that limits what can be done with the statement. He stated they cannot leave internal affairs. Mr. Willie stated the possibility of prosecution must be absolute and the statement cannot be released outside a statement of immunity from the District Attorney. He stated false witnesses can have an air of credibility if they know the content of the statement.

Questions from Committee

The Committee asked if his argument is that there could be criminal prosecution because someone read it and lied to the police. Mr. Willie stated people give false reports all the time. He stated the treat the thoughts of your mind are private. He stated being compelled to make a statement under threat of termination is legally equivalent to waterboarding or other forms of torture made to compel statements. Mr. Willie stated the statements are violations against a person's right or will to not testify against themselves.

The Committee asked if he is saying the Garrity statement is a statement of self-incrimination akin to torture. Mr. Willie stated a violation of the 5th amendment can happen in many ways which is why there is privilege.

Petitioner for Closing statement

Mr. Stecklow stated there are no examples of a chilling effect in these cases and constitutional rights still stand. He stated if an officer perjured himself in a Garrity statement, it should be public. He stated the information currently available does not answer why the officer made the decision he did.

Respondent Closing statement

Mr. Brems stated the 5th amendment right is equivalent to the freedom of speech and must be protected. He stated the best course of action is not to disclose it and the petitioner can take the case to district court.

Third Party statement

Mr. Willie stated POST has a mechanism to make statements public if an officer lies or is not forthcoming in a Garrity interview. He stated POST aggressively investigates and will decertify officers. He stated these cases have not gone to POST because there has been no allegation of dishonesty.

Deliberation

Ms. Smith-Mansfield and Mr. Williams discussed actions and records created in an official capacity is not an unwarranted invasion of personal privacy. Ms. Smith-Mansfield stated some

April 29, 2021

entities have released them so there is not a universal understanding that they are private. She stated it would be good for courts to decide this.

Dr. Cornwall stated the invasion of privacy is the most relevant, especially if charges are not sustained. Mr. Buchanan agrees they are investigation files. He stated he is concerned about releasing the records because the statements are compelled.

Mr. Williams stated if the officer is found innocent, the records show the process the entity went through to prove his innocence. Dr. Cornwall stated you don't need to release the records to show you went through the process.

Motion by Dr. Cornwall to deny the appeal because the records are properly classified under 63G-2-302(2)(d). Seconded by Mr. Buchanan.

Aye: 2 Nay: 3. Mr. Buchanan, Dr. Cornwall voted in favor of the motion. Ms. Dean, Mr. Williams, and Ms. Smith-Mansfield voted against the motion.

Motion by Ms. Smith-Mansfield that all records are public per 63G-2-201(2) unless otherwise restricted by statute. They are not properly classified private under 63G-2-301(3)(o) or 63G-2-302(2)(d). Seconded by Ms. Dean.

Discussion to the motion

Ms. Smith-Mansfield stated records under 63G-2-301(4) is not exhaustive and should not be used to limit access to records. She stated even though entities may classify records upon request, the fact that some entities are not universal in their treatment of these statements release these devalues part of the respondent's argument.

Ms. Dean stated the Lawrence case is compelling. She does feel like officers doing the public's work has a great deal of merit to her decision. Dr. Cornwall stated this has been a difficult decision because of the lack of specificity in the Code regarding 5th amendment rights.

Aye: 3 Nay: 2. Ms. Dean, Mr. Williams, and Ms. Smith-Mansfield voted in favor of the motion. Mr. Buchanan, Dr. Cornwall voted against the motion.

The Chair stated an order will be signed by the Chair and distributed. Either party may appeal within 30 days of the date of the order to district court.

Sam Stecklow (Tribune) v. West Jordan City (2021-53)

Deliberation

April 29, 2021

Dr. Cornwall stated she is not convinced of the protected classifications, but rather the privacy argument. Ms. Dean stated she is also not convinced the protected classifications were appropriate.

Motion by Ms. Dean to grant the appeal under Lawrence they don't fall under 302(2)(a) or 301(3)(o). Given the officer is in the public realm doing the public's business, they don't fall under 302(2)(b) or 305(10)(b) and (18). Seconded by Ms. Smith-Mansfield.

Discussion to the motion

Ms. Dean stated this is very difficult. She respects police officers. She stated this is a records issue and the Committee has to rule under GRAMA's direction.

Aye: 3 Nay: 2. Ms. Dean, Mr. Williams, and Ms. Smith-Mansfield voted in favor of the motion. Mr. Buchanan, Dr. Cornwall voted against the motion.

The Chair stated an order will be signed by the Chair and distributed. Either party may appeal within 30 days of the date of the order to district court. Mr. Williams and Ms. Smith-Mansfield commented that these were really hard hearings.

Mr. Tonks stated the Committee is not made of attorneys and these are tough legal issues. And the statute is set up to have the lay people, so to speak, to look at it in public interest and judges would look at it differently. He stated the Committee does the best they can.

4. Sam Stecklow (Tribune) v. Clinton City Police (2021-27)

Chair announced the hearing.

Respondent Statement

Mr. Stecklow's complete argument included his presentation in the first hearing.

Mr. Stecklow discussed why he believed there would be no chilling effect if these were made public. He stated they are regularly made public across the country. He stated the Tribune and Frontline are building a database to document details of officer involved shootings. He stated it is urgent necessary work to document and report the cases to the public. He stated these records have data points they cannot access anywhere else. He listed other governmental entities who have released these requested records.

Mr. Stecklow stated the legislature did not intend for these records to be private under 63G-2-302(2)(a). He stated any use of deadly force, whether there is a complaint or not, is an alleged violation of public trust.

April 29, 2021

Mr. Stecklow stated these are not performance evaluations. He stated nothing in 63G-2-301(3)(o) prevents the record from being released. He stated the records should be released under the weighing provision because the public interest is equal to or greater than the interest in withholding it.

Questions from Committee

The Committee asked if this is about the review board records, and not investigative records. Mr. Stecklow stated the process of review boards is not set up by law. He stated there is no difference between an internal affairs review and a review board review.

Respondent Statement

Mr. Houtz stated the cases are unsustainable. He stated these records are performance evaluations by the review board per 63G-2-302(2)(a). He stated these cases do not have an alleged violation of public trust and no allegations or complaints have been made.

Mr. Houtz reviewed the Lawrence district court case. He stated the Committee can review the records and see the internal investigation and review board records are the same. He stated these are evaluating the officer's performance in a situation. He reviewed the State Records Committee Carlisle and Marcello cases.

Mr. Houtz stated the petitioner's request was generalized. He stated there has not been public interest in any of their cases for 10 years. He stated officers have to live with the consequences of the decision to use deadly force. He stated the public interest has been satisfied. He reviewed the cases in question.

Questions from Committee

The Committee asked if they considered the request overly broad. Mr. Houtz stated the review board record is part of the internal investigation report. He stated they cannot separate them, but could redact the review board findings.

The Committee asked if the board released a public finding. Mr. Houtz stated he did not know.

The Committee asked if there are two separate processes. Mr. Houtz stated the criminal review is done by other county attorney offices and the internal review is done by the city. He stated the city board as an internal investigation that is made part of the presentation to the review board.

The Committee asked if the review board has any citizen members. Mr. Houtz stated it does not.

April 29, 2021

Petitioner Closing

Mr. Stecklow stated he does not believe the statute requires a specific complaint of wrongdoing for public interest to apply. He stated the public does not know why the shooting was considered justified. He stated the record should be released and redactions can be made. He stated the officer's name is already public. He stated there is no complaint so there is a greater incentive to show there is no violation at issue.

Respondent Closing

Mr. Houtz stated it does not make sense for there to be a higher level of scrutiny if there are no complaints. He stated it is a performance evaluation of the officer's adherence to city policy. He stated this situation is unique and not covered in previous cases.

Question from Committee

The Committee asked how the board determines what to review if there is no complaint. Mr. Houtz stated every use of force is reviewed by the board. The Committee asked if anything has been provided to the petitioner. Mr. Houtz stated they have provided records to the petitioner, but not the internal review board records.

The Committee asked if the names of the members on the review board are a concern because officers are being reviewed by their peers. Mr. Houtz stated yes, but it is a performance evaluation so he is not sure why the board members' names are needed.

The Committee asked if the internal investigation is in employee files. Mr. Houtz stated the employee portion cannot be separated from the review board portion so they have not provided the records. He stated if the Committee ordered the investigation portion be released, they would ask that the review board portion be redacted. The Committee asked if they are filed with the rest of the employee files. Mr. Houtz stated he did not know.

Deliberation

Mr. Houtz and Mr. Scott asked if Washington County could present before the Committee made a decision.

Motion by Ms. Smith-Mansfield to review the records in camera. Seconded by Mr. Buchanan.

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

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

April 29, 2021

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

Motion by Ms. Smith-Mansfield to go to the next hearing.

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

5. Sam Stecklow v. Washington County Sheriff (2021-11)

Petitioner Statement

Mr. Stecklow's complete argument includes information from presentations presented already.

Mr. Stecklow stated Washington County stated there is no potential breach of public trust therefore the Lawrence and Carlisle case are invalid. He stated the shooting itself is a breach of public trust. Mr. Stecklow reviewed the incidents of two shootings in 2012 and the journalistic questions involved. He stated the proper method to determine if the record should be released is the balancing test.

Respondent Statement

Mr. Scott stated there are two records created. He stated one is an internal record with the Sheriff's department to review policy and procedure, in essence a performance evaluation. The other is an OICI done by the chief investigator, which is a criminal investigation on the incident. He stated they directed the petitioner to the county attorney's office for the OICI reports.

Mr. Scott stated this appeal is just for the internal reports generated by the performance review evaluation. He stated something journalistically relevant is not the same thing as something in the public interest.

Mr. Scott stated using deadly force in the scope of your employment is not inherently wrong like stealing money. He stated performance evaluations are not only annual reviews. He stated it is easy for the public to be critical of an officer's decision in difficult situations. He stated deadly force is not an automatic constitutional violation when it is justified. He stated the public relies on the pulice to keep everyone safe.

Mr. Scott stated internal affair records are properly classified under 63G-2-302(2)(a). He stated these involve current or former employees. He stated these are reviews conducted after the use of force. He stated each record was created to review the performance of each deputy to determine if the actions taken were appropriate compared to the actions of the offender. He stated the records include a performance score.

April 29, 2021

Mr. Scott reviewed 63G-2-301(3)(o) and the Lawrence case. He stated the private interest of these records outweighs the public interest. He reviewed the Deseret News case. He stated the petitioner has not presented a public interest, but a personal interest. He reviewed the Marcello and Carlisle case.

Question from Committee

The Committee asked if the OICI report is public. Mr. Scott stated he represents the county and helped both offices in the request. He stated the attorney office has released the OICI records. The Committee asked how they are different from the records in question. Mr. Scott stated they are a criminal investigation. He stated the records in question are specific to the actions of the deputy involved compared to the actions of the offender. He stated they are intended to ensure the deputy's actions were appropriate according to the policy and procedure.

The Committee asked if the records should not be released because they are unique to the employee. Mr. Scott stated that is correct. The Committee asked if the OICI is reviewed during the internal review. Mr. Scott stated the reviews are independent.

Petitioner Closing

Mr. Stecklow stated the shootings constitute potential violations of the public trust. He stated they might not be, but it is in the public's right to know why they were not. He stated the public should be able to see the internal review process. He stated the act of reviewing an action is not the same as a performance evaluation. He stated not sustained does not mean there was no violation or that it did not happen.

Questions from Committee

The Committee asked if he had a copy of the OICI record. Mr. Stecklow stated he did. The Committee asked what he hopes to gain by getting these records. Mr. Stecklow stated the prosecutors look at whether there was a crime and the review board looks at whether there was a violation of policy. He stated how the board comes to these decisions are not reflected in what has been released.

The Committee asked if he has received internal investigation reports from other entities. He stated he listed 29 entities earlier. The Committee asked if a minority of entities he has requested records from have provided the records. Mr. Stecklow stated a minority has come to the State Records Committee.

Respondent Closing

Mr. Scott asked the Committee to consider if the records provide anything to benefit the public. He stated the records are performance evaluations. He asked the Committee to review each record and appeal independently. He stated other entities may choose to release similar records

April 29, 2021

but that should not be part of this appeal. Mr. Scott stated there are no complaints or allegations. He stated the records are private.

Deliberation

Motion by Ms. Dean to review the records in camera. Seconded by Dr. Cornwall.

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

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

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

Dr. Cornwall stated this looks like an employee record under 301(3)(o). She stated the public in this age needs to understand how seriously police departments take investigations. She stated some of the information would be very valuable to the public so the Committee could encourage redactions.

Mr. Williams stated the records show the careful attention the department takes in these incidents. He stated the public would benefit from that. Dr. Cornwall stated there are personnel records throughout the records that could be redacted.

Mr. Buchanan stated that this could be argued as an investigation record with personnel records throughout. Ms. Dean stated there are clear indications it is an investigation file. Dr. Cornwall agreed.

Motion by Dr. Cornwall that these are properly classified as internal investigations under 63G-2-301(3)(o), but using the weighing provision they should be released in public interest except to the extent information is controlled or private, and should be redacted. Per 63G-2-304 regarding officer ability (e.g. page 39 and 40), names of witnesses not widely known per 63G-2-305(10)(d), and personnel information per 63G-2-302(2)(a) (e.g. signature on page 22). Seconded by Ms. Dean.

Discussion to the motion

Ms. Smith Mansfield stated these are public to a great extent without the weighing provision.

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

Sam Stecklow (Tribune) v. Clinton City (2021-27)

Deliberation

April 29, 2021

Motion by Ms. Dean the records are properly classified under 63G-2-301(3)(o), but under the weighing provision, and the great public interest, they should be released with the exception of witnesses per 63G-2-305(10)(d) and the votes of individual members of the board under 63G-2-305(25). Seconded by Dr. Cornwall.

Discussion to the motion

Ms. Smith Mansfield stated these are public to a great extent without the weighing provision.

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

The Chair stated an order will be signed by the Chair and distributed. Either party may appeal within 30 days of the date of the order to district court.

The Committee sauntered for two minutes.

6. Sam Stecklow (Tribune) v. Salt Lake City (2020-129, 2021-05)

The Chair announced the hearing and requested both parties to acknowledge they cannot share anything discussed in mediation with the Committee. Both parties agreed.

Petitioner Statement

Mr. Stecklow stated other cities across the country have published internal affairs data regarding non-sustained cases. He stated there is no legitimate fear resulting from publishing the data. He described examples of cities who publish their databases which disclosed mismanagement and dishonestly.

Mr. Stecklow stated Salt Lake City's IAPro database is of interest because of the allegations of brutality in the summer protests and interactions with the homeless. He stated he agrees with the respondent that the database should fall under the balancing test. He reviewed the Lawrence case and 63G-2-301(3)(o). Mr. Stecklow stated he has already argued 63G-2-302(2)(a) before the Committee, and would apply that to this case.

Question from Committee

The Committee asked for clarification about the format he is requesting. Mr. Stecklow stated he received a printed report but would like a copy of the database. The Committee asked if he wants more fields and the ability to manipulate the data. Mr. Stecklow stated he wants more fields in an excel spreadsheet with redactions as provided by GRAMA.

Respondent Statement

April 29, 2021

Mr. Kittrell stated the question asking the Committee is whether non-sustained discipline are public records. He stated the city does not believe these are public. He stated the process to determine whether the records are in the public interest would create a new category of public record. He stated the city has provided a spreadsheet including some matters not sustained but are in the public interest.

Question from Committee

The Committee asked if they relate to use of force. Mr. Kittrell stated the city reviewed records withheld and provided some use of force records to the petitioner.

Respondent Statement

Mr. Kittrell stated the remaining categories are private under 63G-2-302(2)(a) concerning a current or former employee. He reviewed the Lawrence, Carlisle, and Marcello cases. He stated the weighing of the facts should be in favor of a private classification.

Question from the Committee

The Committee asked how large the database is. Mr. Kittrell stated there are hundreds of cases. He stated the petitioner is asking for the entire database, but information from the database. He stated there about 100 matters the Committee could review. The Committee asked if it includes officer names and summaries. Mr. Kittrell stated it does.

The Committee asked about the third party. Mr. Kittrell stated the database IAPro is purchased by the city and populated by the city's records. He stated there are fields that can be populated and then reports can be generated.

Petitioner closing

Mr. Stecklow stated the database is its own record and the individual lines do not need to be analyzed. He stated the record should be released with the balancing provision. He stated it is summary information. Mr. Stecklow stated the public interest in the database is high. He stated this is not every case file so the ability for journalists, researchers, and the public to identify trends is important.

Question from Committee

The Committee asked if he has received all use of force information. Mr. Stecklow stated he has received information on the fact of use of force happened, but whether it was justified was not included. He stated he does not have details of the incident.

The Committee asked what the difference is between use of force and discharge of firearms. Mr. Stecklow stated they are treated differently.

April 29, 2021

Respondent closing

Mr. Kittrell stated use of force is always tracked. He stated it doesn't investigate use of force every time to see if it followed policy. He stated all of that was provided to Mr. Stecklow. He stated individual matters, or line items, may need to be reviewed. He stated it could be anonymized to protect the privacy interest. He stated the city is trying to act in good faith and serve the public interest.

Question from the Committee

The Committee asked for clarification what the in camera records would contain. Mr. Kittrell stated the records that would be responsive records that were not sustained are included. The Committee asked for clarification of what category 1 and 2 are.

Deliberation

Motion by Ms. Dean to review the records in camera. Seconded by Dr. Cornwall.

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

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

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

Dr. Cornwall stated they are properly classified private as employee records. She stated the only way they could be useful to the public is if they could be analyzed, therefore, officer names need to be anonymized. Ms. Smith-Mansfield agreed and stated use of force is an easy weighing provision to apply, but use of force means a lot of things.

The Committee asked Mr. Kittrell what classifications the city is applying. Mr. Kittrell reviewed 63G-2-302(2)(a), 63G-2-302(2)(d), 63G-2-301(3)(o). The Committee asked if they would anonymize the data. Mr. Kittrell stated the city would prefer the record be withheld but could anonymize it.

The Committee discussed whether anonymizing the data is requiring the entity to tailor the data, or create a new record.

Motion by Ms. Dean that the records are properly classified under 63G-2-302(2)(a). Under the weighing provision, category 1 and category 2 should be provided with names redacted. The accident records should be kept private. Seconded by Ms. Smith-Mansfield.

April 29, 2021

Discussion to the motion

Ms. Smith-Mansfield stated trends can still be tracked with the redactions. Ms. Dean stated additional research could determine it. Dr. Cornwall clarified what would be redacted.

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

Petitioner statement

Mr. Stecklow stated the Committee heard this in case 06-05 and determined to release the records under the weighing provision. He stated many cases are not heard by the citizen review board so there is a higher degree of importance or allegation for the board to hear it. He stated the public cannot determine what accountability looks like.

Respondent statement

Mr. Pappasideris stated this is a different issue than all previous matters heard today. He explained the creation and composition of the Police Civilian Review Board (PCRB). He stated cases of excessive use of force must be reviewed, and not all excessive force cases involve a weapon.

Mr. Pappasideris reviewed the Deseret News case. He reviewed 63G-2-301(3)(o) and 63G-2-302(2)(d). He stated GRAMA is not exhaustive and some records do not fit neatly in a classification. He stated the record cannot be considered public simply because the PCRB reviewed it. He reviewed the Lawrence and Marcello case. He encouraged the Committee to review the records in camera. He requested that the names of officers be redacted if the Committee determine the records are public.

Question from the Committee

The Committee asked what happens if the PCRB determines the complaint was sustained. Mr. Pappasideris stated it is provided to the police chief who is required to consider it. He stated it is not a binding recommendation. He stated the PCRB is an advisory body.

Petitioner closing

Mr. Stecklow stated he understands excessive use of force is reviewed. He stated the decision of the PCRB falls under public interest. He stated there is discretion in cases that are not excessive force. He stated the balancing test should determine the records are public.

Respondent closing

April 29, 2021

Mr. Pappasideris stated the Committee is tasked with weighing the interest of individual privacy and public interest. He stated if the officer's name cannot be redacted, then the complainant should not be withheld either. He stated the city believes all the names should withheld.

Deliberation

Motion by Ms. Dean to review the records in camera. Seconded by Ms. Smith-Mansfield.

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

Motion by Ms. Dean to return to open session. Seconded by Dr. Cornwall.

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

Motion by Ms. Smith-Mansfield that pursuant to order 06-05 (Tribune v. SLC police review board) the records are properly classified as private per 63G-2-301(3)(o). Public interest is different in this instance so the names of witnesses and officers should be redacted. Seconded by Ms. Dean.

Discussion to the motion

Ms. Dean stated these are unsustainable and do not rise to the level of the previous cases heard today.

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

The Chair stated an order will be signed by the Chair and distributed. Either party may appeal within 30 days of the date of the order to district court.

Motion by Dr. Cornwall to reconsider the motion for the West Jordan and Cottonwood Heights cases. Seconded by Ms. Smith-Mansfield.

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

Dr. Cornwall asked if Ms. Smith-Mansfield wants to change the decision. Ms. Smith-Mansfield stated she wants to make sure the weighing provision is part of the order.

