

May 13, 2021

State Records Committee Meeting

Date: May 13, 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, Attorney
Mark Burns, Attorney, UDOT
Carl Fisher, Save Our Canyons
Jayme Blakesley, Attorney, Save Our Canyons
James Palmer, Attorney, UDOT
Kendra Yates
Susan Mumford
Rob Andreasen, Attorney, DWS
Donald Anderson
Stephen Pace
Paul Nielson, Attorney, Salt Lake City

Agenda:

- Four Hearings Scheduled
 - Thatcher v. Department of Transportation (2020-106 Continuance - report)
 - Carl Fisher (Save Our Canyons) v. Department of Transportation (2021-08 Continuance)
 - Don Anderson v. Workforce Services (2021-14)
 - Stephen Pace v. Salt Lake City (2021-07 & 2021-17)

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- Business:
 - Approval of April 29, 2021, SRC Minutes, action item
 - Updating administrative rules, action item
 - OPMA training
 - SRC appeal received and declined, notices of compliance, and related action items
 - Cases in district court, report
 - Committee members' attendance polled for next meeting, format and quorum verification

Call to Order

The Chair called the meeting to order at 9:02 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. Thatcher v. Department of Transportation (2020-106. Continuance- report)

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

Respondent Statement

Mr. Burns stated they produced records on April 28th and May 12th. He stated he hopes to complete responses by May 19th. He stated as they get to the final stages they may be working with the ombudsman to resolve questions regarding records that are not public.

Petitioner Statement

Mr. Hamilton stated they had received about 6,000 files and they are still reviewing those. He stated there is another production coming, and they may have a more comprehensive report for the Committee next month.

Deliberation

Motion by Ms. Dean to continue the hearing to June 10th. Seconded by Mr. Buchanan.

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

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2. Carl Fisher (Save Our Canyons) v. Department of Transportation (2021-08 Continuance)

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

Questions from the Committee

The Committee asked Mr. Palmer if the gaps in the inventory were public records that have been provided to the petitioner. Mr. Palmer stated that he rechecked the redacted records and they were redacted in error and provided to the petitioner. The Committee asked the petitioner if he has reviewed those yet. Mr. Fisher stated he has not.

Deliberation

Motion by Ms. Smith-Mansfield to go into closed session. Seconded by Ms. Dean.

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

Questions from the Committee

The Committee asked if the final version of the drafts were provided to the petitioner. Mr. Palmer stated not all of them were. He stated the STIP report is always a draft because it is always changing. He stated he is not sure about the others. The Committee asked what the purpose of the STIP is. Mr. Palmer stated it is used to track all projects and project funds in the state.

The Committee asked if anything in the STIP has protected information. Mr. Palmer stated it is always in draft form so it should be protected. He stated he is not certain it is responsive to the request. The Committee asked if the draft minutes were provided. Mr. Palmer stated they are available online. He stated he is not certain about some of them.

The Committee asked if any drafts were distributed for comment. Mr. Palmer stated he did not know.

Mr. Fisher asked Mr. Blakesley to comment. The Chair asked for verification that it would clarify the question. Mr. Fisher stated it would. Mr. Blakesley stated that the STIP, Statewide Transportation Improvement Program, cannot be a draft because it is a condition to receive

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federal funding. He stated it speaks directly to their request. The Committee asked Mr. Blakesley and Mr. Fisher if they had access to any draft reports distributed for public comment. They said they had not.

The Committee asked Mr. Palmer for clarification about the STIP report draft. Mr. Palmer stated he does not understand what the reports are but they are marked "draft" on the front page.

The Committee discussed project information publicly available on UDOT's website.

Deliberation

Ms. Smith-Mansfield stated changing information does not make a record a draft. She stated a draft is a version being worked on to produce a final copy. Dr. Cornwall and Ms. Dean agreed. Dr. Cornwall stated she is not sure they have enough information if the drafts are final versions. Ms. Smith-Mansfield and Mr. Williams agreed.

Dr. Cornwall stated the attorney-client records are appropriately classified. Only reports that are clearly drafts remain protected. They would have to go back and check, and the STIP report is not a draft. She asked if that could be a motion so everything has a solution and the respondent reviews the drafts. Then they don't need to be continued. Counsel stated the respondent's review would be out of the Committee's hands and would have to appeal. Dr. Cornwall stated this would provide the STIP report. She stated her understanding is the classification of the 3rd category of reports may not be as crucial as the STIP report.

Ms. Dean stated they need oversight of the draft issue and there needs to be clarification to help the Committee understand why they are still drafts and which version they are using to make decisions. At what point will they release one the public can be involved in.

Motion by Dr. Cornwall moved to continue the hearing to June 10th so the respondent can provide the Committee clarification on the status of the drafts. One being why the STIP report is considered a draft, if any final copies were provided, and if any were distributed outside of government. Seconded by Ms. Smith-Mansfield.

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

Mr. Fisher expressed his concerns about a continued appeal. He asked if an interim decision could be issued.

The Committee encouraged the respondent to release what they can as they review the records, and help the petitioner get the information they need. The Committee encouraged the parties to contact the Ombudsman.

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The Committee sauntered.

3. Donald Anderson v. Workforce Services (2021-14)

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. Anderson stated he is the subject of the requested records. He stated GRAMA is clear that he should have access to records he is the subject of. He stated the respondent asked him to get written permission to release the records, but that does not make sense to him.

Question from Committee

The Committee asked if he had a response for the records being controlled. Mr. Anderson stated the subject of the record still has a right to access of the records if it is private, protected, or controlled.

Respondent Statement

Mr. Andreasen stated the only thing withheld is a mental health form classified controlled. He stated it can only be released to a physician or health care worker. He stated the other requested records were provided.

Questions from the Committee

The Committee asked the respondent if anything prohibits the record from being disclosed to the subject of the record. Mr. Andreasen stated the statute limits release of records to certain conditions. The Committee asked if releasing this is detrimental to the subject of the record or against professional standards. Mr. Andreasen stated the respondent has found releasing it to the subject of the record would be detrimental to their mental health.

The Committee asked if the person completing the form understands how the form will be used. Mr. Andreasen stated they are asked to complete an objective evaluation to determine the subject's eligibility for public benefits. The Committee asked if they understand the form cannot be released to the subject of the record. Mr. Andreasen stated the form states not to release it to the subject and return it to the department.

Petitioner Closing Statement

Mr. Anderson stated he would like to know who determined access to the record would be detrimental to his health. He stated he believed it was withheld because it was considered protected, not because it would be detrimental to his health. He stated it does not make sense to him that he could release the record to someone else but he cannot release it to himself.

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Respondent closing statement

Mr. Andreasen stated the respondent classified this properly as controlled and it cannot be released to the subject of the record.

Question from the Committee

The Committee asked if the petitioner's mental health professional accessed it, could they provide it to the petitioner. Mr. Andreasen stated he believes they could. He stated the intent is to have the mental health professional determine if the subject of the record can view the record.

Deliberation

Motion by Dr. Cornwall the record is properly classified. Seconded by Ms. Dean.

Discussion to the motion

Dr. Cornwall stated the law suggests Mr. Anderson can get a copy by working with his therapist. Ms. Dean stated the Committee could not determine if release of the record would be detrimental to the petitioner.

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

4. Stephen Pace v. Salt Lake City (2021-07 & 2021-17)

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. Pace stated he filed GRAMA requests regarding the loss of his development rights. He stated the rules and procedures for minutes of the Landmark Commission were not followed. He stated the draft minutes he has are not dated. He stated the authorship of the minutes has not been provided.

Mr. Pace stated his second appeal is regarding a preservation ordinance from 1979. He stated he was in the process of restoring the property but the city changed its mind.

Respondent Statement

Mr. Nelson stated the petitioner is using this process to air land use grievances. He stated he is not clear what responsive records Mr. Pace believes have not been provided.

Questions from the Committee

The Committee asked if he was provided draft minutes. Mr. Nelson stated those were provided. He explained the process of drafting minutes. He stated the email providing the draft minutes to the city planner indicates who drafted the minutes.

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The Committee asked if the city was required to post pending minutes to the Public Notice Website. Mr. Nelson stated if the city is not doing that correctly they will correct it, but the question is if Mr. Pace received the requested records, and he did.

The Committee asked for clarification regarding Petition 840 from 1978. Mr. Nelson stated the respondent contacted Mr. Pace for clarification because there was some ambiguity. He stated they worked with him and provided responsive records. He stated some records no longer exist per their retention schedule.

Petitioner closing statement

Mr. Pace stated all draft minutes are public. He stated without dates, the version of the draft cannot be determined. He stated that his proposal for the commission did not change, but it was not supported the second time. He stated he never received records regarding Petition 840.

Questions from the Committee

The Committee asked Mr. Pace if he had received any records. Mr. Pace stated he did, but they are not what he asked for. The Committee asked if he is unhappy with the minutes because they are not good minutes. Mr. Pace stated he does not have a complete copy of the minutes from last July and he cannot tell what was produced because they are not dated.

The Committee asked if the appeal is about the denial from the city to build the carriage house. He stated it is. He stated an ordinance from 1979 states the property should be “fostered, enhanced, and preserved”. He stated that has not been revoked and he is trying to understand why he does not have development rights to the property.

The Committee asked what records he did not get. Mr. Pace stated he did not get records explaining what happened to his development rights. He stated there has never been an explanation.

Respondent closing statement

Mr. Nelson stated the respondent did their best to respond to the request. He stated minutes were provided and it is unclear to him what Mr. Pace believes has not been provided. He stated the responsive records were provided to Mr. Pace and he can verify the petitioner received them.

Deliberation

Motion for 2021-07 by Ms. Dean to deny the appeal because the entity has done a reasonable search and provided responsive records. Seconded by Dr. Cornwall.

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

Motion for 2021-17 by Ms. Dean to deny the appeal because the entity has done a reasonable search and provided responsive records. Seconded by Dr. Cornwall.

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

The Committee sauntered for two minutes.

Business part 2 of 2

OPMA training was provided to the Committee by Mr. Tonks.

Approval for April 29, 2021 minutes

Motion by Mr. Buchanan to approve the April 29th minutes. Seconded by Ms. Dean.

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

Mr. Buchanan left the meeting.

Updating administrative rules, action item

The Secretary reviewed the recommended rule change suggestions and motions from April 8th's meeting. The Chair suggested counsel meet with Ms. Yates, Ms. Shaw, and the Chair to craft language for those suggested changes. They will be presented to the Committee in June.

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

Ms. Shaw reviewed notices of compliance received, withdrawn appeals, and denied appeals.

Cases in district court, report

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

Format and quorum verification

Ms. Smith-Mansfield stated she would not make the next meeting.

Motion to Adjourn

The Chair adjourned the May 13, 2021, State Records Committee meeting at 12:39pm.

This is a true and correct copy of the May 13, 2021, SRC meeting minutes, which was approved on August 12, 2021. An audio recording of this meeting is available on the Utah Public Notice Website at <https://archives.utah.gov>.

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X /e/ Rebekkah Shaw
Executive Secretary

APPROVED