

## State Records Committee Meeting

Date: July 8, 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  
Marie Cornwall, Citizen Representative  
Tom Haraldsen, Media Representative

### Committee Members Not Present:

Vacant, Electronic Records and Databases Representative  
Mark Buchanan, Private Sector Records Manager

### Legal Counsel:

Paul Tonks, Assistant Attorney General  
Anne Nelson, paralegal

### Executive Secretary:

Rebekkah Shaw, Utah State Archives

### Others Present via Zoom:

Gary Eatchel  
"Unknown"  
CWebb  
Mark Burns  
Jann Farris  
Moni  
Rosemary Cundiff  
Kelley Holdaway  
Jacob Holdaway  
Deborah Wood (Assistant Attorney General for DHS)  
Brandon Bradley  
Kera Birkeland  
Heather Schriever  
Mark Burns, Assistant Attorney General  
Rosemary Cundiff

Moni Schwaerzler  
Brandon Bradley  
Kera Birkeland

**Others Present in person:**

Amanda Montague, Assistant Attorney General  
Kara Downer, Dept. Corrections  
Kendra Yates  
Nate Carlisle, Fox 13 News  
Leo Kanell, Beaver County  
Sheriff Noel, Beaver County  
Michael Clara  
Nimo Leunae & family  
Patrick Tanner, Alpine School District

**Agenda:**

- Five Hearings Scheduled
  - Gary Eatchel v. Dpt. of Corrections (2021-39)
  - Nate Carlisle (Fox 13 News) v. Beaver County (2021-56)
  - Nimo Leunae v. Alpine School District (2021-20 & 2021-78)
  - Kelley Holdaway v. Dpt. of Human Services (2021-10)
  - O'Neill Chambers v. Orem City Police (2021-13)
  
- Business:
  - Approval of June 10, 2021, SRC Minutes, action item
  - Administrative Rule updates, action item
  - SRC appeals 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.

**1. Gary Eatchel v. Dpt. of Corrections (2021-39)**

The Chair announced the hearing.

**Petitioner's statement:**

Mr. Eatchel stated he received a response of about 30-40 pages. He stated he paid for the records, but the respondent leaves out a subcategory for the subject of the records.

**Respondent's statement:**

Ms. Montague stated it sounds like the case is moot because Mr. Eatchel decided to pay the fee and received the records. She stated they would make the motion that the case is moot. She stated the Department checked and found that the petitioner was not indigent so he needed to pay the fee.

**Witness statement:**

Ms. Downer was sworn in by the Chair.

Ms. Downer stated the request is for a 10 page report. She explained the process of producing records to offenders. She stated an inmate needs to have \$8.99 on the books for 45 days.

**Questions from Committee:**

Ms. Smith-Mansfield asked if there is a form allowing the requester to claim they are the subject of the records. She asked what the process is to determine if a fee waiver is allowed in those cases. Ms. Downer stated the offenders only have one form. She stated they cannot provide fee waivers based on being the subject of the records because offenders can only request their own records. She stated it is not considered.

**Witness statement:**

Ms. Downer stated they check the cost even if the requester is indigent because it is public money. She stated every offender would be the subject of the records based on GRAMA because they are only allowed to access their own records. She stated they require an additional reason because the public is already paying the cost associated with the inmate so they should pay for the records when they can. She stated they look at their source of income. If the offender has a job or family providing a steady income that usually means they are not indigent.

**Respondent's statement:**

Ms. Montague stated GRAMA allows fees for the actual cost of producing records. She stated offenders are always the subject of the records. She stated if someone is indigent they can be provided 100 pages per year. If the requester is not indigent they need an additional reason to provide the records with a fee waiver. She stated if the requester asked for medical records, the analysis would have been different. She stated they have struck an appropriate balance.

**Questions from Committee:**

Ms. Smith-Mansfield stated the Committee's job is to determine if there has been an unreasonable denial of a fee waiver. She stated the law allows the petitioner to ask for a fee waiver because they are the subject of the records, and each entity must consider it. She stated Corrections has a long history of not considering it. She asked why they have not integrated it into their policy. Ms. Montague stated they generally do not provide records when the offender is not the subject of the records but that does not mean they never do. She stated those cases do

not make it to the Committee. She stated the respondent analyzed the request and he did not meet the requirement for a fee waiver because he is not indigent.

Dr. Cornwall stated there is no policy that can be clearly understood by the inmate as to when they get a fee waiver and when they don't because the form only provides the option of being indigent. She stated Corrections can set its own policy but it needs to be communicated to the inmate. Ms. Smith-Mansfield stated being the subject of the records has to be considered. Ms. Dean stated a sufficient response could state the respondent considered that the requester was the subject of the records and weighed it with the policy. She stated it was not addressed in the denial.

Ms. Montague stated they could do that going forward, but even if it was not articulated well, it was not an unreasonable denial of a fee waiver. She stated they do balance it. She stated the respondent answered appropriately. She stated they can take the Committee's recommendation back to Corrections.

**Petitioner closing statement:**

Mr. Eatchel stated he was forced to pay the fee. He stated he would welcome a refund, but he was told he had to pay the fee.

**Respondent closing statement:**

Ms. Montague stated they will take the suggestions back to Corrections. She stated the petitioner chose to accept the cost and receive the records.

**Deliberation:**

Dr. Cornwall stated she would like Corrections to make their policy clear to requesters. Ms. Smith-Mansfield reviewed order 20-17, where the Committee upheld the fee waiver because Corrections would not consider the requester was the subject of the records. She stated they still do not consider it. She stated the fee waiver denial is unreasonable because they did not consider the requester was the subject of the records. She stated a policy requiring offenders always pay fees is an unreasonable denial.

Mr. Williams stated the petitioner clearly crossed out what was on the form and wrote he is the subject of the records. He stated the form is confusing to requesters. Mr. Haraldsen stated considering the requester is the subject of the record should be part of the process.

**Motion** by Dr. Cornwall to grant the fee waiver. It is an unreasonable denial of a fee waiver because the respondent failed to address fee waivers for reasons other than being impecunious. Seconded by Ms. Smith Mansfield.

**Discussion to the motion:**

Dr. Cornwall asked case 20-17 be referenced in the order along with 63G-2-203(4)(a-c).

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

## **2. Nate Carlisle (Fox 13 News) v. Beaver County (2021-56)**

### **Petitioner's statement:**

Mr. Carlisle stated prosecution has information about police officers that they are supposed to provide to the defense. He stated the respondent has not done anything to segregate the private information. He stated the Committee would not be on new ground by granting access to the Brady List because other states classify the records as public. He discussed related district court cases.

Mr. Carlisle stated the records are important. He stated it not only provides what prosecutors have been telling criminal defendants over the years, but can give insight into which cases get dismissed and which defendants get plea agreements. He stated this is not just about the peace officers in Beaver County.

### **Questions from the Committee:**

Mr. Williams asked if POST has something similar to a Brady List that is public. Mr. Carlisle stated when POST sustains misconduct, it is a public record. He stated they issue findings and those are adjudicated in open meetings. Mr. Carlisle stated he made similar requests to other counties and got a different answer from each respondent, but all a version of "no".

Mr. Haraldsen asked if the records are forwarded to POST. Mr. Carlisle stated the respondent would know better.

### **Respondent's statement:**

Mr. Kanell stated he has been a prosecutor since 1987. He stated his job is to see justice done. He stated he did not go to the Sheriff's office to ask for a Brady List because the request was to the attorney's office. He stated the Brady List case is not really about misconduct but his obligation to provide exculpatory materials to the defense so they can provide a proper defense. He stated it should be called a Carlisle List.

Mr. Kanell shared an example of a Brady List from Washington State that was provided by the petitioner. He stated the list has no due process and is not based on any findings. He stated Beaver County does not have a list like this but keeps information about the officers in their minds. Mr. Kanell stated if they did create a record it would be an attorney work product.

### **Questions from the Committee:**

Ms. Smith-Mansfield asked if an inventory of materials is created when evidence is provided to the other side. Mr. Kanell stated he has an open file policy and the defense attorney can come look through his files and see everything he has. He stated Brady requires he provide that but it is different in every case. He stated if an officer was involved in something in the past, they

would tell them. He stated if they had a list not based on an administrative hearing or court order, it would be his opinion and therefore attorney work product.

Mr. Haraldsen asked if POST is notified when he begins an investigation into an officer. Mr. Kanell stated he is not aware of the county attorney's office doing an investigation. He stated it would be referred to another county.

**Witness statement:**

Sheriff Noel was sworn in by the Chair.

Mr. Noel stated any officer who had allegations like the examples listed in the Washington Brady List, he would fire them. He stated there is a council that meets quarterly and goes over allegations. He stated if there is an issue of dishonesty, they are fired and decertified. He stated all the information is released upfront. He stated he is a member of the POST council. Mr. Noel stated police officers have rights like citizens and when they are found guilty and terminated or decertified, there is due process. He stated the Brady List is not due process.

**Questions from the Committee:**

Ms. Dean asked if the defense attorney is informed if an officer is fired. Mr. Kanell stated they are. Dr. Cornwall asked if a prosecutor trying to get evidence for the defense needs to go to POST to find any background information about the officer. Mr. Kanell stated defense attorneys will file discovery and GRAMA requests.

Dr. Cornwall asked if the records they seek would be with the Sheriff, POST, or the Highway Patrol. Mr. Noel stated there are a lot of standards and training to meet to be a peace officer. He stated POST visits neighbors and asks questions. He stated his office would do an investigation into a new peace officer and POST would do their own after. The Committee asked if he has the records or if POST does. Mr. Noel stated he may have some internal affair records but those would be private. Mr. Kanell stated they are a small county and would tell defense attorneys what they need to request from the agencies.

**Petitioner closing statement:**

Mr. Carlisle stated the application process is irrelevant. He stated he is interested in problems or issues in the course of the officer's career. He stated POST may not have records of internal discipline that entities are going to take against peace officers.

Mr. Carlisle stated a Brady List is a term used that can mean something broader than a list on paper. He stated it could include exculpatory materials that prosecutors provided. He stated the public cannot take the word of the respondent that they would not keep officers accused of dishonesty.

Mr. Carlisle stated the respondent's denial said there were no responsive records. He stated the respondent is contradictory in whether it has any records. He asked the Committee to determine something should exist if there is no Brady List.

**Questions from the Committee:**

Ms. Smith-Mansfield asked what other counties he asked for a Brady List. Mr. Carlisle stated he asked Uintah, Grand, Salt Lake, Davis, and Weber. He stated none have provided a list. He stated he is waiting to see the Committee's ruling here before he proceeds on those. Ms. Smith-Mansfield asked if he requested the foundational records from the Sheriff's office. Mr. Carlisle stated he had not because the prosecutor should have something broader than what the Sheriff would have. Ms. Smith-Mansfield asked if he really wanted a list or an inventory of evidence. Mr. Carlisle stated if it exists, yes.

Mr. Haraldsen asked if the example from Washington was created by a county prosecutor. Mr. Carlisle stated it was prepared by a county prosecutor. Dr. Cornwall asked him to verify that he is asking someone to create a list. Mr. Carlisle stated the respondent did not say no list existed until he appealed to the Committee. Mr. Kanell stated GRAMA states the records are private because if he were to create such a list it would fall under attorney work product. He stated they do not create a record detailing concerns about officers. He stated it is their mind and they talk to the officer. He stated he is not aware of any county attorneys who create a list like this.

**Deliberation:**

**Motion** by Dr. Cornwall to deny the appeal because according to the testimony presented, the record does not exist. Seconded by Ms. Dean.

**Discussion to the motion:**

Ms. Smith-Mansfield stated the respondent did not state the record does not exist in their denial. Dr. Cornwall asked what the respondent was referring to when the denial classified the responsive records as private and protected. Mr. Kanall stated he was referring to what exists. Ms. Dean stated there is a lot of contradiction in the respondent's information.

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

The Committee sauntered for 5 minutes

**3. Nimo Leunae v. Alpine School District (2021-20 & 2021-78)**

**Petitioner's statement:**

Mr. Clara stated this appeal involves a volleyball game between Timpview and Mountain View. He explained what happened at the game. He stated the request was for the investigation done by the principal. He stated the denial did not specify the reason. He stated the records are normally public. Mr. Clara stated there are two issues before the Committee. One is the disciplinary records. The other is a list of what was withheld.

**Respondent's statement:**

Mr. Tanner stated the statute does not require a privilege log be provided. He stated the denial had a description of what was denied. He stated the request was for a specific record so no additional description was necessary. Mr. Tanner stated the report is private as an employee record. He stated there was not a formal proceeding. He stated there was an informal investigation and informal action.

**Questions from the Committee:**

Ms. Smith-Mansfield asked if there was an investigation. Mr. Tanner stated there was an investigation done by the athletic director. Ms. Smith-Mansfield asked if it was in the personnel file. Mr. Tanner stated it was not. He stated the record concerns an employee but GRAMA does not require the record be in the personnel file to be private.

**Petitioner's closing:**

Mr. Clara stated the records are public. He stated formal versus informal is not a valid argument. He stated the petitioner knows disciplinary action was taken because the district told UPPAC. He stated the Committee should require the records be provided.

**Respondent's closing:**

Mr. Tanner stated the request is specific to an investigative report conducted by the principal. He stated the request and denial was clear. He stated the record is private because employees have due process and privacy rights.

**Questions from the Committee:**

Ms. Dean asked if the respondent weighed public interest. Mr. Tanner stated that they did not because the employee has a right to privacy.

**Deliberation:**

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

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

**Discussion to the motion:**

Ms. Smith-Mansfield stated there is no evaluation in the records. She stated she thinks the record is public. Dr. Cornwall stated it is a record regarding a public event. Mr. Williams stated it is one side's perspective of what happened.

**Motion** by Ms. Smith-Mansfield to grant the appeal. After reviewing the records in camera, the Committee determined the records should be released to the petitioner. Seconded by Dr. Cornwall.

Vote: 5 Aye. 4 Nay. Mr. Williams, Ms. Smith-Mansfield, Mr. Haraldsen, Ms. Dean, and Dr. Cornwall voted in favor of the motion.

The Chair asked the parties to present regarding the fee waiver.

**Petitioner's closing:**

Mr. Clara stated the GRAMA request was for emails with the Title 9 Coordinator and they asked for a fee waiver. He stated the records were provided with a \$168.75 fee. He stated only 10 documents were records the requester did not already have. Mr. Clara stated a fee waiver should be provided due to public interest. He stated the requester was not told the cost and asked if she would pay the fee before records were provided.

**Respondent's closing:**

Mr. Tanner stated the fee was reasonable. He stated duplicates do not affect the charge because it would have taken more time and cost more to remove them. He stated the charge was for time, not pages. He stated this request is for a private interest, not public interest.

**Deliberation:**

**Motion** by Ms. Dean that there was not an unreasonable denial of a fee waiver. Seconded by Ms. Smith-Mansfield.

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

**Discussion to the motion:**

Ms. Smith-Mansfield stated the request was for the petitioner and her daughter. Ms. Dean stated the entity followed the statute.

The Committee sauntered for 30 minutes.

**4. Kelley Holdaway v. Dpt. of Human Services (2021-10)**

**Petitioner's statement:**

Mr. Holdaway stated he is requesting a report regarding child abuse or neglect. He stated he was only interviewed once. He stated he is challenging the findings of the report.

**Questions from the Committee:**

Mr. Williams asked if he received a redacted investigation report. Mr. Holdaway held up a page with redaction stating it was all he received.

**Respondent's statement:**

Ms. Wood stated the records were initially denied because the investigation was open. She stated the investigation has since closed and the records were provided on June 8th. She stated the redactions are about other individuals.

**Questions from the Committee:**

Ms. Smith-Mansfield asked how many records were provided. Ms. Woods stated one investigation was provided and described the included records.

**Petitioner's closing:**

Mr. Holdaway stated he has a right to face his accuser.

**Respondent's closing:**

Ms. Wood stated there is another appeal process Mr. Holdaway should be using to contest the findings of the investigation.

**Deliberation:**

**Motion** by Dr. Cornwall to deny the appeal because the records were provided. Seconded by Ms. Dean.

**Discussion to the motion:**

Ms. Smith-Mansfield stated this is not really about the records, but procedures. Mr. Haraldsen stated the relief the petitioner seeks is not in the Committee's jurisdiction.

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

**5. O'Neill Chambers v. Orem City Police (2021-13)**

**Petitioner's statement:**

Mr. Clara stated he is helping Mr. Chambers with his appeal. He stated Mr. Chambers filed a police report and an investigation followed. He stated the respondent is withholding two records. The first is Alpine School District's Title 6 discrimination harrasment investigation. He stated the petitioner provided a copy to police and it has not been provided back to him. The second are redacted names and witness statements. He stated the suspect gave the police two sets of records and they should be released.

**Questions from the Committee:**

Mr. Williams asked if the petitioner is ok with redactions. Mr. Clara stated he is. Ms. Smith-Mansfield asked if he's appealing for the written response from the school. Mr. Clara stated the suspect in the case gave the police a written response that was used in a school investigation.

**Respondent's statement:**

Ms. Schriever stated the records are classified as private. She stated the written responses are addressing allegations against a school district employee. She stated the records were given to Orem Police during an investigation of assault against Mr. Chambers. She stated Alpine School

District classified the record as private. She stated the record was created by Alpine School District and it is their record.

**Questions from the Committee:**

Ms. Dean asked if Alpine School District shared the record with them. Ms. Schriever stated it was shared with them by the employee who was the subject of the investigation. Ms. Smith-Mansfield asked if it was just one response from one employee. Ms. Schriever stated it is.

**Witness statement:**

Mr. Tanner was sworn in by the Chair.

Mr. Tanner stated the respondent contacted the school district about the request to ask for their classification of the record. He confirmed the District would have classified the record as private. stated he did not bring the record because the request was not made to Alpine School District.

**Petitioner's closing:**

Mr. Clara stated it is not a shared document. He stated it belonged to the suspect who gave a copy to police. He stated the man is not employed by the district anymore.

**Respondent's closing:**

Ms. Schriever stated the record was prepared by a district employee involved in a Title 6 investigation. She stated the record does not lose its classification because it was provided as part of a criminal investigation. She stated the petitioner can ask Alpine School District for the record.

**Deliberation:**

**Motion** by Mr. Haraldsen to review the records in camera and continue the hearing to September 9th. Seconded by Ms. Smith-Mansfield.

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

**Business**

**Motion** by Ms. Dean to approve the June 10th, 2021 minutes. Seconded by Mr. Haraldsen.

Vote: 4 Aye. 0 Nay. 1 Abstain. Mr. Williams, Mr. Haraldsen, Ms. Dean, and Dr. Cornwall voted in favor of the motion. Ms. Smith-Mansfield abstained.

Ms. Shaw stated the Committee approved the April 29th minutes twice and the May 13th minutes have not been approved. It will be added to the August agenda.

The Committee asked Ms. Yates for the status of Administrative Rule changes.

The committee discussed the committee vacancy role. The Chair asked the secretary to add this agenda to the every month.

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

Ms. Shaw reviewed appeals received and provided the Committee feedback from the State Auditor's Office regarding the Statewide Association of Public Attorneys (SWAP).

**Motion** by Ms. Dean to notify Brady Eames appeal 2021-65, 2021-64, and 2021-61 will not be heard by the Committee because the Committee determined they do not have jurisdiction as the State Auditor's Office has found SWAP is not a governmental entity.

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

Cases in District Court, report  
Mr. Tonks reviewed the status of cases in district court.

**Committee members' attendance polled for next meeting, format and quorum verification**  
The Committee confirmed a quorum would be present for the August 12th meeting.

**Motion to Adjourn**

The Chair adjourned the July 8, 2021, State Records Committee meeting at 4:20 p.m.

**This is a true and correct copy of the July 8, 2021, SRC meeting minutes, which was approved on August 12, 2021. Amended minutes approved on September 9, 2021. An audio recording of this meeting is available on the Utah Public Notice Website at <https://archives.utah.gov>.**

X /e/ Rebekkah Shaw  
Executive Secretary