

State Records Committee Meeting

Date: September 9, 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

Mark Buchanan, Private Sector Records Manager

Marie Cornwall, Citizen Representative

Tom Haraldsen, Media Representative

Patricia Smith-Mansfield, Citizen Representative

Committee Members Not Present:

Vacant, Electronic Records and Databases Representative

Legal Counsel:

Paul Tonks, Assistant Attorney General

Executive Secretary:

Rebekkah Shaw, Utah State Archives

Others Present via Zoom:

Patrick Sullivan

Wes Mangum, Sanpete County

Robert Sloman

Mark Guetlich, attorney

Lionel Trepanier

Michael Clara

Heather Schriever, Orem City

Others Present in person:

Keli Beard, attorney, SITLA

Mike Johnson, attorney, SITLA

O'Neill Chambers

Agenda:

- Four Hearings Scheduled
 - Patrick Sullivan v. Sanpete County (2021-55, 2021-76, 2021-81, 2021-83)

- o Rob Sloman v. University of Utah (Continuance 2021-29)
- o Lionel Trepanier v. SITLA (2021-58 & 2021-46)
- o O'Neill Chambers v. Orem City (Continuance 2021-13)
- o Business:
 - o Approval of August 12, 2021, SRC Minutes, action item
 - o SRC vacancy, report
 - o Set October and November meeting date, action item
Administrative rule update, report
 - o SRC appeals received and declined, notices of compliance, and related action items
Cases in district court, report
 - o Committee members' attendance polled for next meeting, format and quorum verification

Call to Order

The Chair called the meeting to order.

1. Patrick Sullivan v. Sanpete County (2021-55, 2021-76, 2021-81, 2021-83)

The Chair announced the hearing.

Petitioner's statement:

Mr. Sullivan stated he had not received the respondent's statement of facts. He asked if one was submitted and if not he may want to postpone the hearing so it can be filed and he can review it. He stated the law requires the respondent to file a statement of facts.

Respondent's statement:

Mr. Mangum stated he had not filed a response because he was out of the office with COVID-19. He stated he has worked with the petitioner in mediation and the petitioner is familiar with the county's position.

Petitioner's statement:

Mr. Sullivan asked that the hearing be continued.

Committee:

The Chair asked counsel for advice. Counsel reviewed the statute and stated the question is if the Committee feels they can move forward without it.

Ms. Smith-Mansfield asked the respondent if any of their arguments is based on 63G-2-201(10). Mr. Mangum stated it does come into play because the petitioner is well beyond his limit of five

requests. He stated the appeal has eighteen requests. Mr. Mangum stated he would like to resolve the issues.

The Committee discussed whether they felt they should proceed with the hearing.

Motion by Ms. Dean to continue the hearing to the next available meeting to provide time for the respondent to submit a statement of facts per 63G-2-403(5). Seconded by Mr. Buchanan.

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

Committee Business part 1 of 2

Approval of August 12, 2021, SRC Minutes, action item

Motion by Ms. Dean to approve the August 12 meeting minutes. Seconded by Dr. Cornwall.

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

SRC vacancy, report

Ms. Shaw provided the status of the candidate submission. She explained the Senate is expected to meet on October 20th and suggested the October meeting date be moved.

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

The Chair polled the Committee for the next meeting.

Motion by Mr. Williams to move the October meeting date to the 28th. Seconded by Ms. Dean.

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

Motion by Mr. Williams to move November's meeting to the 18th due to the holiday. Seconded by Mr. Haraldsen.

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

The Committee sauntered for 2 minutes.

2. Rob Sloman v. University of Utah (Continuance 2021-29)

The Chair introduced the hearing. Ms. Smith-Mansfield recused herself. The Chair stated the Committee would normally go straight to deliberation but provided both parties 5 minutes to present.

Petitioner's statement:

Mr. Sloman requested more time. He stated that he rejects the respondent's conclusion in their submitted statement of facts. He thanked the Committee for hearing the appeal in June. He stated he received many unresponsive records. He turned the remainder of his time to his counsel.

Mr. Guetlich stated GRAMA does not require the requester to disclose the reasons for the request. He stated the requester is not seeking proprietary information. Mr. Guetlich reviewed the case. He stated email attachments have been withheld.

Mr. Guetlich asked the Committee to compel and oversee an immediate audit by an impartial party of the two requests, the records produced, the redactions, and what has been withheld to ensure the relevant records are produced.

Respondent's statement:

Mr. Payne stated this is a continuance and the purpose for presentations was to provide a status update. He stated the respondent was able to provide the responsive records four months earlier than anticipated and cost \$1,500 less than expected. He stated the petitioner is trying to turn the status update into an appeal on the substance of the records provided. He stated that is not ripe for the Committee. He stated the appeal was about the cost and time.

Mr. Payne stated the work was done by the lowest paid person capable of doing the work.

Questions from the Committee:

Mr. Williams asked if the respondent believes the request numbered 2575 is resolved. Mr. Payne stated it is as of August 23rd. Mr. Williams asked if request 2574 was still in progress. Mr. Payne said it was fulfilled in March, but the petitioner's appeal was regarding the cost.

Ms. Dean asked if the petitioner needs a new appeal to challenge the substance of the records. Mr. Payne stated they told the petitioner he can appeal if he wants to challenge the substance.

Mr. Guetlich stated they cannot comment on substance before they see the substance. He stated appeals take a long time. He stated the respondent declaring the request completed is biased.

Deliberation:

The Committee discussed the appeals process with counsel. Mr. Tonks also reviewed the content in the order of Continuance. The Committee discussed their role in this appeal.

Motion by Ms. Dean to deny the appeal because a reasonable effort to find responsive records has been done and all records have been provided. Seconded by Dr. Cornwall.

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

The Committee sauntered for five minutes.

3. Lionel Trepanier v. SITLA (2021-58 & 2021-46)

The Chair introduced the hearing.

Petitioner's statement:

Mr. Trepanier thanked the committee for their time. He stated SITLA denied the fee waiver. He stated he paid for the records under protest and filed the appeal. He stated he is seeking the determination that the fee waiver denial was not reasonable and to get a refund. He stated if the fee waiver denial is upheld, the fee is excessive.

Mr. Trepanier reviewed the application of GRAMA and OPMA to SITLA. He stated there is an exemption that protects certain records. He stated there are no other exemptions. He stated they cannot reject all fee waiver requests. He stated that it violates 63G-2-203(4). He reviewed the Committee's decision 11-09, and SITLA's related administrative rule.

Mr. Trepanier stated he is the director of a local nonprofit and publishes his requests. He stated emails produced by the respondent indicate SITLA is structured to avoid public discussion regarding a tar sand strip mine. He reviewed why he believes SITLA should be subject to the fee waiver provisions in GRAMA.

Mr. Trepanier stated \$71 is too high for five emails totalling 25 pages. He stated they were all from the same email address.

Respondent's statement:

Ms. Beard stated the respondent is a unique entity because it is a trust. She stated there are named beneficiaries and they are required to act in their best financial interest. She stated fee waivers usually come from public funds, but for SITLA it comes from trust funds. Granting fee waivers is against the trust's interest.

Ms. Beard stated SITLA is subject to GRAMA. She stated in exercising discretion, they have to do so in the context of statutory obligations. She stated they are encouraged to waive a fee if the release is in public benefit, but it also needs to be in the interest of the beneficiaries. She stated if it is not in the interest of the beneficiaries they cannot grant the fee waiver. She stated they are not disputing that the records may benefit the public, but there is no benefit to the beneficiaries and the public is not a beneficiary.

Ms. Beard stated it takes time to search for the responsive records. The request covered four months. She stated they did not charge for the time to determine if the records were responsive or the time spent to determine the classification of the records.

Questions from the Committee:

Ms. Smith-Mansfield asked if SITLA revenue were state funds. Ms. Beard stated their budget is approved by the legislature. Mr. Johnson stated it is state money, but it is generated from the land instead of taxes. He stated SITLA is self-funded. Mr. Johnson stated if \$100 from the trust fund is solely spent for the benefit of the public and not the beneficiaries, then they do not grant the fee waiver.

Ms. Smith-Mansfield stated the benefit to the beneficiaries would be to provide transparency. She asked if they only see it as economic. Mr. Johnson stated they have to draw a line. He stated the legislature requires funds not be used on the basis of public benefit if it does not also benefit the beneficiaries. He stated they grant fee waivers less than other entities, but they do not deny all fee waiver requests.

Ms. Smith-Mansfield asked why GRAMA fees are not listed as dedicated credits. Mr. Johnson stated he does not know how they are listed.

Petitioner closing statement:

Mr. Trepanier stated the request is for information not already publicly available involving a strip mine that has not had public discussion. He stated the respondent spends money to comply with GRAMA.

Respondent closing statement:

Ms. Beard stated the respondent takes GRAMA requests seriously. She stated they have operated under their statute and cannot elevate public interest above the beneficiaries. She stated they could have charged more but were conservative in fees charged for time to search and compile. She asked the committee to uphold the denial.

Deliberation:

The Committee discussed the argument that the fee waiver is in the public benefit.

Motion by Dr. Cornwall to deny the appeal because it was not an unreasonable denial of a fee waiver. Seconded by Ms. Smith-Mansfield.

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

4. O'Neill Chambers v. Orem City (Continuance 2021-13)

The Chair announced the hearing. Mr. Buchanan recused himself because he was not present for the presentations.

Deliberation:

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

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

The Committee went into closed session.

Questions from the Committee:

Ms. Smith-Mansfield asked the respondent for clarification on what has been provided. Ms. Schriever stated an investigative report that the petitioner has a copy of. The other report was given to the city as part of a criminal investigation. She stated she did not know how the police got the copy, but it was part of the investigative record. She stated the investigation is private. She stated these are Alpine School District records.

The Committee asked if the record was shared per GRAMA with the respondent. Ms. Schriever stated it was not provided by Alpine School District so sharing provisions do not come into play.

The Committee reviewed with the parties which pages had been provided to the petitioner.

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

The Committee discussed whether the records can be classified as private.

Motion by Ms. Dean to deny the appeal. After reviewing the records in camera, the records should be private under 63G-2-302(2)(d). Seconded by Dr. Cornwall.

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

The Committee sauntered for five minutes.

Business part 2 of 2

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

Ms. Shaw reviewed appeals with the Committee.

Ms. Smith-Mansfield asked if material provided in 2021-94 was redacted. Ms. Shaw stated she contacted the parties to learn what was at issue because the Chief Administrative Officer (CAO) granted the appeal. She stated her understanding was that all records at issue had been provided. Ms. Smith-Mansfield stated the respondent cannot say everything has been produced if there are redactions.

The Chair asked Mr. Clara if all records were provided. Mr. Clara stated they do want the unredacted records. He stated the CAO stated the records could be provided through discovery. He stated they were and under discovery they are not required to provide justification for the redactions as they are under GRAMA.

Motion by Ms. Smith-Mansfield for the Committee to hear appeal 2021-94. Seconded by Mr. Haraldsen.

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

Cases in District Court, report

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

Motion by Mr. Buchanan to amend the July 2021 minutes to list his name as absent instead of present. Seconded by Ms. Dean.

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

Motion to Adjourn

The Chair adjourned the September 9, 2021, State Records Committee meeting.

This is a true and correct copy of the September 9, 2021, SRC meeting minutes, which was approved on October 28, 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

APPROVED