

State Records Committee Meeting

Date: November 18, 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

Ed Biehler, Electronic Records and Databases Representative

Committee Members Present via Zoom:

Marie Cornwall, Citizen Representative

Tom Haraldsen, Media Representative

Mark Buchanan, Private Sector Records Manager

Legal Counsel:

Paul Tonks, Assistant Attorney General

Michelle Adams, paralegal

Executive Secretary:

Rebekkah Shaw, Utah State Archives

Others Present via Zoom:

Rosemary Cundiff

Nova Dubovik

TJ Quinn

Rayna Banks

Heather Sturzenegger, University of Utah

Others Present in person:

Jeffrey Bennion

Mike O'Brien, Utah Housing Corporation

David Damschen, Utah Housing Corporation

Claudia O'Grady, Utah Housing Corporation

Anna Sullivan, Utah Housing Corporation

Matt Durham, Cowboy Partners

Jeff Hunt

Jeremy Brodis, ESPN

Nicole Noren, ESPN

Robert Payne, University of Utah

Rebekah Bradway, University of Utah
Laurie McDonald, University of Utah
Laura Prtell

Agenda:

- Three Hearings Scheduled
 - TEA Group v. UTah Department of Transportation (Continuance 2020-105)
 - Jeffrey Bennion v. Utah Housing Authority (2021-91)
 - ESPN v. University of Utah (2021-103)
- Business:
 - SRC vacancy, report
 - Update Administrative Rule, Action Item
 - Administrative Rule to define “short statement of facts”, action item
 - Approval of October 28, 2021, SRC Minutes, 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 at 9:07.

1. TEA Group v. Department of Transportation (Continuance 2020-105)

Motion by Ms. Dean to go in camera. Seconded by Mr. Buchanan.

Deliberation

Ms. Dean complimented the entity on the organization of the records provided to the Committee.

The Committee asked a question about the audit team. Mr. Burns explained the purpose of the internal audit group. The Committee asked if the drafts were used for any final determinations regarding TEA Group. Mr. Burns explained what was provided and withheld. He stated final copies were provided to the requester. The Committee determined to make motions based on the color coding provided the respondent.

Motion by Ms. Dean to deny the appeal for the pink set identified as confidential source material because they are correctly classified per 63G-2-305(10)(a) and (d) and 63G-2-305(18). 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. Mr. Biehler abstained.

Motion by Dr. Cornwall to deny the appeal for the blue copies because they are properly classified as drafts per 63G-2-305(10)(b) and 63G-2-305(22). 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. Mr. Biehler abstained.

Motion by Dr. Cornwall to deny the appeal for the records designated in green for open investigations as properly classified per 63G-2-305(10)(a) and 63G-2-305(22). Seconded by Mr. Williams.

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

Motion by Ms. Dean to deny the appeal for the records designated in white as correctly classified protected under 63G-2-305(18). Bates stamp 00636 is both 63G-2-305(17) and (18). 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. Mr. Biehler abstained.

The Committee sauntered for 3 minutes.

2. Jeffrey Bennion v. Utah Housing Authority (2021-91)

Petitioner's statement:

Mr. Bennion stated he came to the Committee because his 14th amendment rights had been violated. He stated he sent the Committee a letter supporting his appeal with 36 reasons why his appeal should be granted. He explained that he had counsel but his attorney left town and he appealed on his own.

Mr. Bennion stated he is the subject of the records he requested. He stated he has a right to them and GRAMA requires an entity to disclose private records to the subject of the record. Mr. Bennion reviewed the correspondence he had with the respondent. He stated the respondent has an obligation to let private individuals know what is being done with their assets.

Respondent statement:

Mr. O'Brien stated he represents Utah Housing Corporation. He stated Claudia and Anna tried to find records that mention Mr. Bennion. He stated they checked the entities Mr. Bennion listed. Most did not reference him. He stated the redactions made did not have information about him. Mr. O'Brien stated the respondent feels they have done all they can to provide records to the petitioner. He requested the Committee dismiss the appeal.

Questions from the Committee:

The Committee asked if any fees were assessed. Mr. O'Brien stated there were fees for redactions. The fee was over \$800 and about \$600 was used and the rest refunded. The Committee asked if Ms. Sullivan and Ms. O'Grady were record officers. Mr. O'Brien stated they are not, but work with the records in question and handled the response.

Interested Third Party Statement:

Mr. Durham stated he represents Cowboy Partners. Mr. Bennion worked for them for a few years. He stated he is no longer involved with the company and this request could be a backdoor way to access information. He stated they are concerned he is fishing and may access financial, tax, project, negotiation, or loan information. He stated they do not know what Mr. Bennion is looking for and wanted the Committee to know they are concerned.

Petitioner Closing:

Mr. Bennion stated he is not in the real estate business anymore. He expressed appreciation to hear how the respondent reviewed their records. He stated he appreciated hearing that there are no additional records.

Mr. Bennion stated the communication he received was unsatisfactory. He stated he wants to understand if there is information in the file that discuss information from other parties.

Respondent Closing:

Mr. O'Brien stated Mr. Bennion did ask about Cowboy Partners and they did check those records. He stated the respondent has done all they can and they do not have the records the petitioner is searching for.

Questions from the Committee:

The Committee asked if Mr. Bennion is satisfied that a search has been made. Mr. Bennion stated he is not satisfied with their communication.

Deliberation:

The Committee discussed whether they felt the entity had done a thorough search. The Committee stated their role is access to records under GRAMA.

Motion by Mr. Buchanan to deny the appeal because the respondent provided all relevant records. Seconded by Mr. Biehler.

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

Mr. Buchanan left the meeting.

3. ESPN v. University of Utah (2021-103)

Petitioner's statement:

Mr. Brodis stated this appeal is regarding Lauren McClusky's case. He stated there is a lot of public interest and public concern. He stated they provided a supplemental submission with an index. He stated the first section involves audio and visual manipulation. The second section is for records that were withheld entirely. The third is for missing recordings. He stated one of the missing recordings has been provided but there are still two missing.

Mr. Brodis stated the respondent overly manipulated the audio and visual. He stated some video has officers pixelated and the audio is changed. He played clips for the Committee. He stated the recordings they requested involve people who willingly came forward to the police. He stated they knew they were being recorded. He stated he was not aware of anything supporting the manipulation done to the provided recordings.

Witness Statement:

Ms. Noren was sworn in as a witness.

Ms. Noren stated she has been working on this case for two years. She stated she previously received recordings that did not have the voice manipulated. She stated she was surprised with the level of manipulation done. She stated when she got internal affairs recordings from Logan City Police, no one's voice was altered.

Petitioner statement:

Mr. Brodis stated ESPN is hoping to use the recordings for a docuseries. He stated the audience will not rewind to understand the audio. He stated the respondent admits the audio isn't good which is more reason to release it without manipulations.

He played samples of what was received and explained why the audio manipulation or visual pixelation was not acceptable.

Mr. Brodis stated they have a police report that states a phone call was recorded. He stated the respondent admits it is either lost or misplaced. He stated the Committee has authority to order the respondent to conduct a thorough search and identify what they searched in a statement if they still cannot produce the record.

Question from the Committee:

The Committee asked for a summary of what has been received and what is pending based on the index. Mr. Brodis explained which parts of the request are manipulated recordings, which ones are withheld, and which ones are missing.

The Committee asked why full body manipulation is not acceptable. Mr. Brodis stated everything taken from the record needs to be justified. Ms. Noren stated she has never received a recording with the full body pixelated before.

Respondent statement:

Mr. Payne stated the petitioner never appealed the issue of pixelation to the Chief Administrative Officer. He stated it is not at issue for the Committee. He stated the audio manipulation is not before the Committee because it was not considered by the Chief Administrative Officer. He stated it takes three times as long to pixelate a face instead of the full body. He stated viewers can still see body gestures.

Mr. Payne stated there are two recordings missing and he would provide them if he could.

Witness Statement:

Ms. Sturzenegger was sworn in.

Ms. Sturzenegger stated she spent hours searching for the missing recordings. The sergeant responsible for collecting those records passed away. She stated she found one of the recordings while organizing his records. She stated she looked everywhere she can think for the missing recordings.

Respondent statement:

Mr. Payne stated the audio distortion is before the Committee. He stated the respondent wants to protect the identity of the individuals who gave information to the police so they are not retraumatized.

Witness statement:

Ms. McDonald was sworn in.

Ms. McDonald stated she is the vice president of student affairs. She stated that she called the students to let them know about the request so they would not be surprised if they heard about it. She stated one student was concerned about their identity being released because their friends and family do not know about their involvement. She stated voices can reveal identifiers about a person, such as gender or ethnicity. She stated that she informed the students that their voices were distorted and there was some comfort at that.

Respondent Statement:

Mr. Payne stated if the petitioner spoke with a witness who would give them permission to have their identity released then the University will provide the unredacted record. He stated the voices could identify people to those who know them. He stated the documentary can add captions to clarify what is said.

Questions from the Committee:

The Committee asked what program they were using to redact the records. The Committee asked what body camera system was used. Ms. Sturzenegger responded. The Committee suggested the respondent may have the ability already to provide redactions in the manner requested by the petitioner.

The Committee asked if any of the recordings were body cams or just audio. Mr. Payne explained what the recordings are.

The Committee asked the petitioner if their concern is the quality of the record. Ms. Noren stated any manipulation to the record should be justified.

The Committee asked the petitioner if they know who any of the students are so they could check with them to see if they are ok with the record being released. Mr. Brodis stated that moves the burden from the respondent to the petitioner. Ms. Noren stated they are doing all the fact checking that they can and trying to get all the information they can.

Petitioner closing:

Mr. Brodis stated the respondent produced the second batch just pixelating the faces. He stated they thought the first batch would be re-sent with just the face pixelated. He stated the people who could identify the student by their voice is a narrow group. He stated it is not an unwarranted invasion of privacy to have the voices provided.

Respondent closing:

Mr. Payne stated the pixelation was not appealed to the Chief Administrative Officer. He stated they are not required to redo the work of redacting the first set of videos because that would require significant time and cost. He stated they only redacted what was necessary. He stated the witnesses do not want their voices to be released. He stated the petitioner can still fact check with what has been provided.

Deliberation:

Mr. Haraldsen stated how something is said is important. He stated he is not comfortable with voice manipulation. Dr. Cornwall stated people say different things in private than in front of a camera. She stated GRAMA requires individual protection. Ms. Dean stated she does not distort voices when she provides police video. The Committee discussed the balance between those who may be traumatized and the public audience.

Mr. Biehler expressed appreciation for the care the respondent had for the students. Dr. Cornwall expressed appreciation for the respondent contacting the students and getting their response.

The Committee discussed whether the respondent needs to do another search for the missing recordings.

Motion by Dr. Cornwall to deny the appeal. Reasonable efforts have been made to find records. The respondent is encouraged to look further for the two audio recordings. 2nd by Ms. Dean.

Discussion to the motion:

Mr. Biehler stated he does not believe they have the recordings. Ms. Dean is convinced the records are missing and further search would be fruitless.

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

Motion by Dr. Cornwall to deny the appeal based on 63G-2-302(2)(d). Seconded by Mr. Biehler.

Discussion to the motion:

Ms. Dean expressed the difficulty in balancing the different interests.

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

Business

Update Administrative Rule, action item

Ms. Shaw reviewed R35-1-1(3) needed to be changed because the Committee is meeting at the Taylorsville State Office Building.

Motion by Mr. Haraldsen to change the rule to "At least 24 hours prior to the Committee meeting or appeal hearing, the Executive Secretary shall post a notice of the meeting, indicating the agenda, time, and place of the meeting at the building where the meeting is to be held." Seconded by Mr. Williams.

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

Administrative Rule to define "short statement of facts", action item

The Committee discussed how to define a short statement of facts.

