

## State Records Committee Meeting

Date: December 17, 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  
Marie Cornwall, Citizen Representative  
Mark Buchanan, Private Sector Records Manager

### Committee Members Present via Zoom:

Tom Haraldsen, Media Representative

### Legal Counsel:

Paul Tonks, Assistant Attorney General  
Michelle Adams, paralegal

### Executive Secretary:

Rebekkah Shaw, Utah State Archives

### Others Present via Zoom:

Nick Tatton, Price City Police  
Chief Brandon Sicilia, Price City Police  
Joel Young, Attorney, Price City Police  
Dana Young  
Tom  
Rosemary Cundiff, Archives  
Jamie  
Cindy St. Clair, KSL  
Susan Mumford, Archives  
Steven Scott, Washington County  
Will  
Garrett Smith, Morgan County  
Kendra Yates, Archives

### Others Present in person:

Nickolas Parker, petitioner

### Agenda:

- Three Hearings Scheduled
  - Scott Gollaher v. Morgan County (2021-101)
  - Nickolas Parker v. Price City Police Dept. (2021-110)
  - Trevor Casperson (for Mark Putnam) v. Washington County Attorney's Office (2021-100)
- Business:
  - SRC vacancy, report
  - Update Administrative Rule, Action Item
  - Approval of November 18, 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 9:08.

### **1. Scott Gollaher v. Morgan County (2021-101)**

#### **Respondent**

Mr. Smith stated he is a new attorney and asked the hearing be continued to allow for mediation.

#### **Petitioner**

Mr. Gollaher stated he believes the appeal will be easy to resolve. He stated he would reach out to the Government Records Ombudsman.

**Motion** by Ms. Dean to continue the hearing. Seconded by Mr. Haraldsen.

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

### **Business 1 of 2**

#### **SRC Vacancy Report**

Ms. Shaw updated the Committee.

#### **Update Administrative Rule, Action Item**

The Committee discussed updating Administrative Rule R35-1-1(3) to state “The Executive Secretary shall post a notice of the meeting, indicating the agenda, date, time, and place of the meeting at the anchor location.”

**Motion** by Ms. Dean to approve the suggested language. Seconded by Mr. Williams. language for R35-2-2(4).

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

**Motion** by Ms. Dean to add a definition for a statement of facts to R35-2-2(4). Seconded by Mr. Buchanan.

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

**Approval of November 18, 2021, SRC Minutes, action item**

**Motion** by Ms. Dean to approve the minutes for November 18th, 2021. Seconded by Mr. Buchanan.

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

**Cases in district court, report**

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

**2. Nickolas Parker v. Price City Police Dept. (2021-110)**

**Petitioner’s statement:**

Mr. Parker explained the background of his employment and interaction with the respondent. He explained why he needs the requested records. Mr. Parker stated that he no longer works for the respondent. He stated the respondent is withholding the records because they are trying to protect the source, but he knows who the source is because the respondent already told him.

Mr. Parker stated he was denied access to the record. He explained the efforts he made to learn about the situation and resolve it. He stated he has already had a conversation with the source of the complaint. He stated his employer wants the investigation record, including what was asked and what the results were. He stated it was never provided and he lost that employment opportunity. Mr. Parker stated this issue will come up again and he would like to have the records so he can understand the details and provide them to an employer.

Mr. Parker stated he does not understand why the record is being withheld or why he had to pay over \$200 for the records. He stated he believes there is something in the records intended to tarnish his reputation.

**Questions from the Committee:**

The Committee asked if he paid the fee. Mr. Parker stated it was waived. He stated they said that they would release the records. He stated they have released everything except the Internal Affairs records. He stated nothing provided states what was substantiated and what was not.

The Committee asked if the investigation was done before he left employment. Mr. Parker stated it was done a year before he left.

The Committee asked for clarification on what was not provided. Mr. Parker stated the employment file was not provided. The Committee asked what records were provided during the internal investigation. Mr. Parker stated he received a memo that he was going on leave. He stated there were two statements and two allegations. He stated when he returned there was a letter from the Chief that stated the investigation was concluded.

The Committee asked if he did not get records documenting the resolution because he resigned. Mr. Parker stated he asked for the records six times. The Committee asked if he received a letter of what the findings were. Mr. Parker stated he was told the letter of reprimand was the findings.

**Respondent statement:**

Mr. Young stated that records had been denied under 63G-2-305(10)(d) because they would disclose a source not generally known outside of government. He stated the records in combination with other records point to the complainant. He explained it would not be difficult to do because Price, Utah is a small town.

**Questions from the Committee:**

The Committee asked if the allegations were sustained. Mr. Young stated that they were. The Committee asked if the records could be redacted to protect the source. Mr. Young stated the content makes it clear who is speaking.

**Petitioner Closing:**

Mr. Parker stated he does not work for the entity anymore. He stated he is the subject of the record.

**Respondent Closing:**

Mr. Young stated the case goes beyond the individual. He stated sources need anonymity.

**Deliberation:**

Ms. Dean referenced 63G-2-301(3)(o). She stated if the charges are substantiated then records become public. She stated the Committee needs to review the records to see if the internal affairs record can be redacted to protect the source.

**Questions from the Committee:**

Mr. Biehler asked Mr. Parker if he had a hearing with the Chief about the allegations. Mr. Parker said no. Mr. Biehler asked Mr. Parker for information documenting the allegations. Mr. Parker stated he had partial information.

**Deliberation:**

**Motion** by Ms. Dean to review the records in camera.

Ms. Shaw stated she did not have recordings for the Committee to review. Only a PDF was provided. Mr. Williams asked the respondent to provide those to the Committee.

The Committee clarified they cannot do anything about employment disputes, only records access. Dr. Cornwall stated that GRAMA does not have a small town rule.

Mr. Tonks clarified that if the Committee finds the records are private, then the subject of the record could have access to them. He stated that if the Committee finds the records protected under 63G-2-305 then the requester may not have access to it.

Mr. Haraldsen stated they need to continue the hearing because not all of the records have been provided to the Committee.

**Motion** by Ms. Dean to review the records in camera, including the audio files. Seconded by Mr. Buchanan.

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

**Motion** by Ms. Dean to continue the hearing to the next available meeting to give the committee time to review the records. Seconded by Mr. Haraldsen.

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

### **3. Trevor Casperson (for Mark Putnam) v. Washington County Attorney's Office (2021-100)**

The petitioner was not in attendance.

#### **Respondent statement:**

Mr. Scott stated Mr. Casperson represented the requester in a criminal case. He stated the request is for email, phone, and texts between a prosecutor and the requester. He explained what the responsive records were.

Mr. Scott stated the records were denied under 63G-2-305(18) because they were prepared by an attorney in anticipation of litigation. He stated the prosecutor worked for Washington County. He stated the records are also protected under the work product doctrine. He stated they were not created in the ordinary course of business.

Mr. Scott stated that some records were also protected under 63G-2-305(23) because they suggest strategy or other ways to proceed with prosecution. He stated releasing the record would violate normal practices. He also explained the relevance of Utah Code 77-37-1 for the victims. He stated records containing information about the victim would also be a clearly unwarranted invasion of privacy under 63G-2-302(2)(d).

#### **Deliberation:**

**Motion** by Dr. Cornwall to deny the appeal as the records are appropriately classified under 63G-2-305(18), (23), and 63G-2-302(2)(d), and 63G-2-304. 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.

#### **Business 2 of 2**

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

Ms. Shaw reviewed appeals with the Committee. A notice of compliance had not been received from the Utah Department of Transportation for order 21-55. The Chair asked counsel to review the committee's options. Ms. Shaw stated the respondent informed her a notice of compliance would be sent by the 22nd of December.

The Committee discussed how to respond.

**Motion** by Dr. Cornwall to send a letter to the Governor on December 23rd if a notice of compliance is not received by December 22nd. Seconded by Mr. Williams.

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

**Committee members' attendance polled for next meeting, format and quorum verification**  
The Committee set the next meeting for January 20th, 2022.

**Motion to Adjourn**

The Chair adjourned the December 17, 2021, State Records Committee meeting.

**This is a true and correct copy of the December 17, 2021, SRC meeting minutes, which was approved on January 20, 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