

## State Records Committee Meeting

Date: January 20, 2022

Time: 9:00 a.m. – 4:00 p.m.

### Committee Members Present via Zoom:

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  
Tom Haraldsen, Media Representative  
Nova Dubovik, Citizen Representative

### Legal Counsel:

Paul Tonks, Assistant Attorney General  
Michelle Adams, paralegal

### Executive Secretary:

Rebekkah Shaw, Utah State Archives

### Others Present via Zoom:

Burke Nazer, Assistant Attorney General, Corrections  
Matt Anderson, Attorney, Corrections  
Christina Sloan, Attorney, Grand County  
Wesley Magnum, Attorney, Sanpete County  
Nate Whitney, Grand County  
Nick Tatton  
Terra Rosslund, Attorney  
"Johnson, Patterson, & Yellowhorse", attorney  
Alison Adams  
Jbrooks  
Lonny Pehrson, Assistant Attorney General  
Amber Nielsen, Attorney, Corrections  
Rebekah Bradway, Attorney, University of Utah  
Robert Payne, Attorney, University of Utah  
Rebecca Walsh  
Shawn Wood  
Mallory Nassau  
Kevin Olsen, Assistant Attorney General, U of U and USHE  
Ian Cooperstein

Judith Zimmerman  
Brian Donegan  
Geoffrey Lanward, USHE  
Taylor Adams  
Kaylie C  
Stephen Pace  
Christopher Nelson

**Agenda:**

- o Four Hearings Scheduled
  - o Patrick Sullivan v. Sanpete County (2021-55, 2021-76, 2021-81, 2021-83) & Department of Corrections (2021-90)
  - o Nickolas Parker v. Price City Police Dept. (2021-110)
  - o Courtney Tanner (Salt Lake Tribune) v. University of Utah (2021-119) & Utah Higher System of Education (2021-118)
  - o Brain Donegan v. Grand County (2021-116)
- o Business:
  - o Oath of Office, action item
  - o Appointment of Chair, action item
  - o Appointment of Executive Secretary, action item
  - o Calendar for the year, action item
  - o Update Administrative Rule, Report
  - o Approval of December 2021 SRC Minutes, action item
  - o SRC appeals received and declined, notices of compliance, and related action items
  - o 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 and read a letter stating the meeting is held remotely due to the pandemic.

**Business 1 of 2**

The Oath of Office for Nova Dubovik was administered by Michelle Adams.

1. **Patrick Sullivan v. Sanpete County (2021-55, 2021-76, 2021-81 2021-83) & Department of Corrections (2021-90)**

**Petitioner statement**

Mr. Sullivan reviewed the different parts of his request. He stated he is seeking records that should have been provided to him in discovery. He stated that he knows some correspondence records he requested are missing. He stated he is concerned the respondent has not retained the records because a legal secretary no longer works there. He stated the policies and procedures he requested should exist.

He stated that he was charged with identity theft and he is seeking records specific to the offense Sanpete County charged him with. He stated the respondent will say he is trying to relitigate the case but it is irrelevant to GRAMA requests. He stated anything provided in discovery cannot be duplicative of a previous record request because discovery is not a record request under GRAMA. He stated the respondent gave no citation that the records are exempt from disclosure. Mr. Sullivan stated there should also be three search warrants and only one affidavit. He stated he only received one email after he asked the respondent to search google vault.

#### **Respondent statement**

Mr. Mangum provided background information related to the criminal case and discovery. He stated the petitioner has threatened him and the prosecutor if the severity of the charge was not reduced that he would file a bar complaint and harass them. He stated the petitioner is trying to relitigate the case and it is inappropriate. Mr. Mangum stated the petitioner was advised not to plead until discovery was done, but he did not wait.

Mr. Mangum stated GRAMA limits access to some records. He stated some records provided in discovery cannot be provided under GRAMA. He stated they have no policy related to screening criminal cases for charges. It depends on the case.

#### **Petitioner Closing**

Mr. Sullivan stated he is requesting records because the respondent did not provide them in discovery. He stated his motives are irrelevant. He stated he did not threaten the respondent, but asked them to address mistakes. He stated the default classification of records is public. He stated the respondent has an obligation to maintain records documenting what he was charged with.

#### **Respondent Closing**

Mr. Mangum stated the petitioner is using the Committee to relitigate his case. He stated when the petitioner pleaded guilty, the case was over and the duty to provide records ended. He stated Sanpete County does not have Google Vault. He stated the longest that emails are retained by the county is 30 days.

Mr. Mangum stated that the petitioner is asking the wrong entity for the records. He stated the county does not have the records and is not required to retain them.

### **Questions from the Committee**

Ms. Dean asked if the respondent informed the requester they did not have the records. Mr. Mangum stated that they did not respond to the initial request, which is a denial. He stated they stopped answering his requests because they were waiting to hear back from the appeals court. He stated the petitioner did get a copy of the brief they submitted to the Committee.

Ms. Dean asked what kind of searches the county did to answer the request. Mr. Mangum stated the secretary's emails cannot be searched because it was past the time the county retains email. He stated he personally searched using the search terms provided. He stated that he searched his email and other employees and mailed the records to the requester.

The Chair asked Corrections to present.

Mr. Nazer introduced Matt Anderson from Corrections. The chair swore him in as a witness.

### **Respondent statement**

Mr. Anderson stated there are three issues. He stated Corrections has no record of receiving any of the requests before the notice of the hearing before the Committee. He stated they processed the requests at that point.

Mr. Anderson reviewed the three parts of the appeal. He stated they searched Google Vault and initially denied the record as private and protected. He stated other records were provided when the Chief Administrative Officer answered the appeal. He stated the third part was not reasonably specific and the petitioner should resubmit the request. He stated the petitioner has now received 15 records requests and fee waivers which is beyond the 5 permitted under GRAMA.

### **Petitioner Statement**

Mr. Sullivan stated the request is complex, but it is reasonably specific because the record officer knows what is being requested. He stated the record officer needs to contact the investigator for the case to find the records. He stated he is seeking records to see what was withheld from discovery.

### **Questions from the Committee**

Ms. Dean asked for clarification from the respondent about the five request limit. Mr. Burke stated the law says inmates are limited to five requests for "a record". He stated a request

should only be for a single record. He stated this is consistent with the committee's order 18-22. Mr. Burke stated they received all three requests on the same day.

### **Deliberation**

The Committee discussed reasonable specificity. Ms. Dean stated she believed Sanpete County made an adequate search for records. Mr. Haraldsen asked Mr. Tonks if discovery was possible at the court of appeals. Mr. Tonks stated no new evidence is added at that point.

**Motion** by Ms. Dean to deny appeal 2021-90 in that the respondent has addressed part 1 and 2 and provided the records requested. Mr. Sullivan passed his limit of five requests per 63G-2-201(10)(b) for part 3. Seconded by Mr. Buchanan.

Vote: 7 Aye. 0 Nay. Ms. Dean, Mr. Buchanan, Dr. Cornwall, Ms. Dubovik, Mr. Haraldsen, Mr. Williams, Mr. Biehler voting in favor of the motion.

Ms. Dean stated the probable cause statement was provided under discovery, but the respondent still has an obligation to provide it under GRAMA. She stated the Committee cannot do anything about the policies and procedures if they do not exist.

**Motion** by Dr. Cornwall for appeal 2021-55 to deny the appeal for items 1, 2, and 4 because a reasonable search has been made. Item 3 is granted because the probable cause statement needs to be provided with redactions under GRAMA. 2nd by Ms. Dean.

Vote: 7 Aye. 0 Nay. Ms. Dean, Mr. Buchanan, Dr. Cornwall, Ms. Dubovik, Mr. Haraldsen, Mr. Williams, Mr. Biehler voting in favor of the motion.

Dr. Cornwall said the requester has made too many requests. Ms. Dubovik reviewed order 18-22. Mr. Williams stated the respondent has done a reasonable search and there are no records in request 2021-81.

**Motion** by Dr. Cornwall for appeal 2021-81 to deny the appeal because there are no records responsive to the request. Seconded by Ms. Dubovik.

Vote: 7 Aye. 0 Nay. Ms. Dean, Mr. Buchanan, Dr. Cornwall, Ms. Dubovik, Mr. Haraldsen, Mr. Williams, Mr. Biehler voting in favor of the motion.

The Committee reviewed 2021-76 and discussed how many requests it contains.

**Motion** by Dr. Cornwall for appeal 2021-76 to deny the appeal based on 63G-2-201(10)(b). These are multiple record requests and the requester is over his limit. Seconded by Mr. Biehler.

Vote: 7 Aye. 0 Nay. Ms. Dean, Mr. Buchanan, Dr. Cornwall, Ms. Dubovik, Mr. Haraldsen, Mr. Williams, Mr. Biehler voting in favor of the motion.

**Motion** by Mr. Williams for appeal 2021-83 to deny the appeal based on 63G-2-201(10)(b). These are multiple record requests and the requester is over his limit. Seconded by Ms. Dean.

Vote: 7 Aye. 0 Nay. Ms. Dean, Mr. Buchanan, Dr. Cornwall, Ms. Dubovik, Mr. Haraldsen, Mr. Williams, Mr. Biehler voting in favor of the motion.

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

**Motion** by Ms. Dean to go into closed session to review the records in camera. Seconded by Mr. Williams.

Vote: 7 Aye. 0 Nay. Ms. Dean, Mr. Buchanan, Dr. Cornwall, Ms. Dubovik, Mr. Haraldsen, Mr. Williams, Mr. Biehler voting in favor of the motion.

**Motion** by Ms. Dean to grant the appeal with redactions. Pages 1-12 are public records. Pages 13-26 were classified correctly, but should be redacted in order to protect sources within the record including names, pronouns, and titles per 63G-2-305(10). Pages 27-43 are public record. Pages 44-62 should be released as public records but with redactions to protect the names of individuals per 63G-2-305(10)(c). Pages 63-64 are public records. Pages 65-68 are not records subject to GRAMA per 63G-2-106 because they involve security measures. Pages 69-83 should be released as public but with redactions to protect the names of individuals per 63G-2-305(10)(c). Pages 84-85 should be released to Mr. Parker per 63G-2-202(1)(a)(i) because he is the subject of the record. Pages 86-92 are public records. The audio recording should be released to Mr. Parker per 63G-2-202(1)(a)(i) because he is the subject of the record. Seconded by Mr. Bieher.

Vote: 6 Aye. 0 Nay. Ms. Dean, Mr. Buchanan, Dr. Cornwall, Mr. Haraldsen, Mr. Williams, Mr. Biehler voting in favor of the motion. Ms. Dubovik recused.

## **3. Courtney Tanner (Salt Lake Tribune) v. University of Utah (2021-119) & Utah Higher System of Education (2021-118)**

**Petitioner statement**

Ms. Tanner stated she submitted the same request to both entities. She stated there is more public interest in seeing the records than in keeping them private. She stated 63G-2-101(3)(e) states with countervailing interests, favor goes to public access. She stated the public has a right to know what comments were received about the candidates for the University of Utah president.

Ms. Tanner stated that disclosure would not be an unwarranted invasion of privacy because these are candidates for public office. She stated application materials are not defined in the law, but these comments are not application materials. She stated there has been a complaint that the proper process was not followed and a review of these comments would give light to that complaint.

### **Respondent statement**

Mr. Landward stated he helped the board write and develop the policy for hiring new university presidents. He stated he coordinated the process of gathering comments from the public. He stated he reviews them all and in preparation to advise the board on the public's view of each candidate. He stated he asked the University of Utah marketing to help gather input by putting together a website for people to provide comments.

Mr. Landward explained the process of recruiting a university president and when the names of candidates become public. He described the chilling effect that releasing the records would have. He stated they recruit a lot of people who work in other organizations, including sitting presidents of other universities who may not want it known that they applied. He stated candidates are assured they can be candid and information will be confidential. He stated comments could be embarrassing for candidates and harm their current employment. He stated the comments could undermine the current president.

Mr. Landward stated they have not received any formal complaints about the process not being followed.

### **Respondent closing**

Ms. Tanner stated the idea of a chilling effect is an ambiguous idea. She stated there is no way to trace a comment to someone without their name. She stated the names could be redacted. She stated she cannot control how the records could impact the candidates careers, but said that does not address the designation of the records.

Ms. Tanner stated the integrity of the process is beyond the scope of GRAMA. She stated the public interest outweighs the privacy interests.

### **Respondent closing**

Mr. Olsen stated the records should not be released to protect the public trust. He stated that another statute applies to the records. He stated the legislature made the records confidential.

### **Questions from the Committee**

Ms. Dean asked how they define application materials. Mr. Landward stated they are materials required to provide when applying for the position. Dr. Cornwall asked if any institution releases this information after a decision has been made. Mr. Landward stated this would be the first time.

Mr. Haraldsen asked if candidates are aware that public comment is being solicited. Mr. Landward stated they are. Mr. Haraldsen asked how the public would know if their comments were confidential. Mr. Landward stated the language posted gives the idea that comments are confidential and given to the board, not to the public.

### **Deliberation**

Motion by Ms. Dubovik to deny the appeal because the records are classified correctly per 63G-2-305(66), 63G-2-305(28), and 53B-2-102(7). Seconded by Dr. Cornwall.

Vote: 7 Aye. 0 Nay. Ms. Dean, Mr. Buchanan, Dr. Cornwall, Ms. Dubovik, Mr. Haraldsen, Mr. Williams, Mr. Biehler voting in favor of the motion.

### **4. Brian Donegan v. Grand County (2021-116)**

#### **Petitioner Statement**

Mr. Donegan stated that he called the Salt Lake City FBI office and Grand County Sheriff Office (GCSO) and asked if they were pursuing an investigation of the double homicide in Grand County. He stated he has not heard back from either yet. He stated he cannot confirm that there is an investigation going on.

Mr. Donegan stated everyone in town knows the victims. He stated the case could go cold if more information is not provided to the public. He stated forensic work should be able to be done quickly and he does not understand why lab results have not been received yet.

#### **Respondent statement**

Ms. Sloan stated one of the investigators is in the meeting. She stated evidence has been sent to crime labs around the country. She stated most analysis has not returned yet. She said there are persons of interest, but not suspects.

Ms. Sloan stated that Mr. Donegan is a citizen in a community who desire more information. She stated they are working to assure the community that they are working on it. She stated the records are protected because there is an ongoing investigation and releasing the records would interfere with the investigation and a fair trial for the responsible party.

Mr. Whitney was sworn in as a witness.

Mr. Whitney stated he is a criminal investigator and described his background. He stated he has not been cleared to discuss the case any more than what is already in press releases. He reviewed their policy to protect evidence. He stated they are waiting on forensic reports from FBI crime labs, state crime labs, and other parties.

Mr. Whitney stated releasing the information would harm the investigation because the people draw their own conclusions and start putting out theories which can lead investigators down the wrong path.

Ms. Sloan stated they need to protect the investigation and asked the Committee to deny the appeal.

### **Petitioner closing**

Mr. Donegan stated the citations provided by the respondent are not relevant. He stated not releasing the records forces people to come up with their own answers. He stated they should answer their phone and trust the public to be adult about the information.

Mr. Donegan restated, this is a great example of withholding evidence and people in the community having to come up with their own answers. Give up the answer and trust us to be adults about it. Pick up the phone when someone calls.

### **Respondent closing**

Ms. Sloan stated most forensics are pending. She stated there is nothing adult about social media and assumptions are dangerous the case.

### **Deliberation**

Motion by Mr. Haraldsen to deny the appeal because there is an ongoing investigation per 63G-2-305(10). Seconded by Ms. Dean.

Vote: 7 Aye. 0 Nay. Ms. Dean, Mr. Buchanan, Dr. Cornwall, Ms. Dubovik, Mr. Haraldsen, Mr. Williams, Mr. Biehler voting in favor of the motion.

### **Business 2 of 2**

#### **Appoint Chair, action item**

**Motion** by Ms. Dean to appoint Mr. Williams as the Chair. Seconded by Dr. Cornwall.

Vote: 7 Aye. 0 Nay. Ms. Dean, Mr. Buchanan, Dr. Cornwall, Ms. Dubovik, Mr. Haraldsen, Mr. Williams, Mr. Biehler voting in favor of the motion.

#### **Appoint Executive Secretary, action item**

**Motion** by Ms. Dean to appoint Rebekkah Shaw as the Executive Secretary. Seconded by Ms. Dubovik.

Vote: 7 Aye. 0 Nay. Ms. Dean, Mr. Buchanan, Dr. Cornwall, Ms. Dubovik, Mr. Haraldsen, Mr. Williams, Mr. Biehler voting in favor of the motion.

**Calendar for the year, action item**

**Motion** by Mr. Williams to hold meetings on the third Thursday in 2022. Seconded by Ms. Dean.

Vote: 7 Aye. 0 Nay. Ms. Dean, Mr. Buchanan, Dr. Cornwall, Ms. Dubovik, Mr. Haraldsen, Mr. Williams, Mr. Biehler voting in favor of the motion.

**Approval of December 17, 2021, SRC Minutes, action item**

**Motion** by Ms. Dean to approve the minutes for December 17th, 2021. Seconded by Mr. Haraldsen.

Vote: 6 Aye. 0 Nay. 1 abstain. Ms. Dean, Mr. Buchanan, Dr. Cornwall, Mr. Haraldsen, Mr. Williams, Mr. Biehler voting in favor of the motion. Ms. Dubovik abstained.

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

Ms. Shaw reviewed appeals received, declined, and withdrawn.

Mr. Pace asked the committee to reconsider the denial of his appeal. No motion was made. Mr. Cooperstein asked the Committee to reconsider the denial of his appeal. The Committee reviewed R35-2-2(7) .

Motion by Mr. Williams to have the Chair and Ms. Dean review Mr. Cooperstein's appeal by Monday. Seconded by Mr. Haraldsen.

Vote: 7 Aye. 0 Nay. Ms. Dean, Mr. Buchanan, Dr. Cornwall, Ms. Dubovik, Mr. Haraldsen, Mr. Williams, Mr. Biehler voting 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 set the next meeting for January 20th, 2022.

**Motion to Adjourn**

The Chair adjourned the January 20, 2022, State Records Committee meeting.

**This is a true and correct copy of the January 20, 2022, SRC meeting minutes, which was approved on February 17, 2022. 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