

## State Records Committee Meeting

Date: February 17, 2022

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  
Tom Haraldsen, Media Representative

### Committee Members Present via Zoom:

Nova Dubovik, Citizen Representative

### Legal Counsel:

Paul Tonks, Assistant Attorney General  
Michelle Adams, Paralegal

### Executive Secretary:

Rebekkah Shaw, Utah State Archives

### Others present in person:

Amanda Montague, Assistant Attorney General, Utah Department of Corrections  
Matt Anderson, Attorney, Utah Department of Corrections  
Jennifer Orten, Petitioner  
Chad Shattuck, Attorney  
Rosemary Cundiff, Ombudsman

### Others Present via Zoom:

Jorgensen, Assistant Attorney General, Utah Department of Public Safety  
Ian Cooperstein  
Nadia Pflaum, KUTV  
Lonny Pehrson, Assistant Attorney General  
DeLania Tonks  
Judith Zimmerman  
Burke Nazer  
Jonathan Bejarano, Petitioner  
Lindsey Brandt  
Lucy R

Melanie Marlow, Assistant Attorney General, Utah Department of Public Safety  
Matt Shaw  
Rachel Dever  
Randi V von Bose  
Tanner Weaver  
J. Bryan Quesenberry, Assistant Attorney General, Board of Education  
Megan Hillyard, Salt Lake County  
Ryan Lambert, Deputy District Attorney, Salt Lake County  
Teena Horlacher

**Agenda:**

- o Four Hearings Scheduled:
  - o Patrick Sullivan v. Dept. of Corrections (2020-38)
  - o Jennifer Orten v. Salt Lake County (2022-02)
  - o Jonathan Bejarano v. Utah State Board of Education (2021-120)
  - o Paul Amann v. Dpt. Public Safety (2021-125)
- o Business:
  - o Appoint Chair pro tem, action item
  - o Approval of January 20, 2022, SRC Minutes, action item
  - o SRC appeals received and declined, notices of compliance, and related action items
  - o Committee members' attendance polled for possible extra meeting in Q2, action item
  - o Cases in district court, report
  - o Committee members' attendance polled for next meeting, format and quorum verification
  - o Legislative update report (time permitting)

**Call to Order**

The Chair called the meeting to order.

**1. Patrick Sullivan v. Dept. of Corrections (2020-38)**

**Respondent statement:**

Ms. Montague stated she was concerned about the petitioner not being in attendance but mentioned the appeal was first scheduled 18 months ago.

Ms. Montague reviewed each request. She stated the first request asked for five items. She stated it would be \$3,200 to fulfill, and the petitioner was asked for a down payment of \$100. She stated the record officer did not provide a cost estimate for the other four parts. Ms.

Montague stated that Corrections does not have to waive the fee even if it is in the public interest if the request is difficult to fulfill.

**Witness statement:**

The Chair swore in Mr. Anderson.

Mr. Anderson explained the process of collecting initial contact reports (ICR). He stated the ICR is the cover page with a date, location, and brief description. He stated they could have some personal information. He stated the incident report has a more thorough narrative with names and identification of confidential informants. He stated this would need redaction.

Ms. Montague stated the third and fourth requests were about statistics. She asked Mr. Anderson to discuss the issues involved in those requests.

Mr. Anderson stated the second and third requests were specific enough that they could identify what the requester was looking for but the fourth request was not reasonably specific. He stated the request covers an eight year time period and many hearings, projects, reports, and daily incidents could fall under the request.

**Respondent statement:**

Ms. Montague stated the second request has five subparts. She stated it is not reasonably specific. She stated the request does not have a time frame so it is also voluminous. She stated the respondent's response is clear.

**Witness statement:**

Ms. Montague asked Mr. Anderson about the second and third requests. Mr. Anderson stated the requester asked for a search in Google Vault and "take a life to save a life". He stated he did a cursory search in preparation for the hearing and got 252 hits. He stated the request is reasonably specific. He explained how they could retrieve the records and provide them to the petitioner. He stated he was not sure they would have all the petitioner was looking for.

**Respondent statement:**

Ms. Montague stated that the second request and third could be narrowed so they could respond. She stated materials would need to be redacted.

Questions from the Committee:

Dr. Cornwall asked if there would be a fee for the other requests. Ms. Montague stated there would be. Ms. Dean asked what their policy was for impecunious inmates. Ms. Montague stated

Mr. Sullivan was not an inmate when he made the request so they are not looking at his inmate account.

**Respondent statement:**

Ms. Montague stated the last request had five subparts and the record officer addressed them all. She stated they were protected because they were surveillance footage. She referenced the committee's previous order number 12-10 and Utah Code 63G-2-106. She stated the statute is clear on the classification of these records.

Questions from the Committee:

Ms. Dean asked if the statistical information is compiled and prepared for any annual reports that could be provided. Mr. Anderson stated statistics are pulled for various things such as legislative reports, but an eight year period would be burdensome. Ms. Montague stated that the request would require more than providing a report.

Mr. Biehler asked if they had an annual report of fights at the prison. Mr. Anderson stated the data is dynamic and used for various things, but this request had not been processed yet.

Ms. Dean asked how the \$3,200 fee was calculated. Ms. Montague stated the estimate included the cost for photocopies, an estimate of 60 incidents per month to review and two hours to retrieve and \$20/hour.

**Respondent closing:**

She stated the first request stopped because of a fee waiver issue, and asked the committee to uphold their decision. The second was not reasonably specific. She stated the third request was denied because the records are protected.

**Deliberation:**

The Committee discussed the public interest, the agency's burden to provide the records, and the fee.

**Motion** by Ms. Dean to deny the appeal for a fee waiver because the request is burdensome. 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.

**Motion** by Ms. Dean to deny the appeal for part 1 and 2 to uphold the fee waiver denial. The third request is denied per Utah Code 63G-2-106(5). The request is also not reasonably specific per Utah Code 63G-2-204(1)(a)(ii). Seconded by Dr. Cornwall.

**Discussion to the motion:**

Dr. Cornwall stated the first and second were classified correctly. Ms. Dean stated the respondent can charge a fee in request 1 and 2 for the actual cost of providing the record.

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 sauntered.

**2. Jennifer Orten v. Salt Lake County (2022-02)**

**Respondent on motion to dismiss:**

Mr. Lambert explained the appeal did not cite the final decision from the respondent. He stated the Committee does not have jurisdiction. He stated that the Chief Administrative Officer made a preliminary decision and remanded it back to the county clerk to reconsider the fees. He stated if the petitioner was not satisfied with the clerk's response she could re appeal to the Chief Administrative Office of Appeals (CAOA) who would reconsider the matter.

Mr. Lambert stated the requester needs to submit a new notice of appeal because a final decision was rendered on February 3, 2022.

**Petitioner on motion to dismiss:**

Mr. Shattuck stated the county is demanding exorbitant fees. He stated the statute for providing a response is in Utah Code 63G-2-204(4)(g). He stated the respondent claiming there was no denial is smoke. He stated no records were produced so the appeal was denied. He stated the motion to dismiss should be denied.

Mr. Shattuck stated the issue is that the appeal was not submitted by the petitioner in person as required by the county, which does not exist in any other county. He stated she emailed the appeal on time. He stated county ordinance cannot override state statute.

**Respondent on motion to dismiss:**

Mr. Lambert stated the county is empowered to have their own policies under Utah Code 63G-2-701. He stated that statute allows the county to require appeals to be submitted in person. He stated the requester chose not to do that.

**Petitioner on motion to dismiss:**

Mr. Shattuck stated the petitioner was not aware of the ordinance until 4 p.m. on the last day.

**Questions from the Committee:**

Mr. Haraldsen asked if any effort was made to inform the petitioner how to appeal. Mr. Lambert stated the appeal was untimely. He stated the county is not required to follow the state calendar for business days.

**Deliberation:**

The committee reviewed Utah Code 63G-2-701 and 63G-2-204. The committee stated they would like to have the hearing with everyone prepared to address the denial. The committee expressed frustration about hearing technical issues instead of the hearing.

**Motion** by Ms. Dean to deny the Motion to Dismiss and Continue the hearing to March 17, 2022, in order to give the parties time to submit an updated appeal and statement of facts for the denial dated February 3, 2022. Seconded by Ms. Dubovik.

**Discussion to the motion:**

Mr. Williams stated continuing the hearing allows the committee to hear the case and eliminate the jurisdiction and technicality questions.

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 sauntered.

**3. Jonathan Bejarano v. Utah State Board of Education (2021-120)**

**Petitioner Statement:**

Mr. Bejarano stated he wrote a letter asking where the board got their information for some comments made about critical race theory in a board meeting. He stated he was concerned about Natalie Cline's connection to Utah Parents United. He stated she is a board member and using a personal email account for education matters. He stated the public has a right to know about the education issues she is discussing.

Mr. Bejarano stated his request specified Ms. Cline's email account and had keywords to search to eliminate personal emails. He stated a personal email account does not mean the correspondence are not records especially if they are corresponding with legislators. Mr. Bejarano reviewed why he believed Utah Code 63G-2-305(19)(b)(ii) and 63G-2-305(10) do not apply.

**Respondent statement:**

Mr. Quesenberry reviewed Utah Code 63G-2-103(22)(a). He stated these records are not prepared, owned, received, or retained by the board of education because these are in Ms. Cline's personal email account. He reviewed two previous orders from the committee.

**Petitioner closing:**

Mr. Bejarano asked the committee to review the records. He stated a board member cannot be separated from the entity because she's always a board member. He stated elected officials should be held to high standards. He stated if the committee believed the emails were personal, he'd accept that.

**Respondent closing:**

Mr. Quesenberry stated these four emails are not records.

**Deliberation:**

The committee reviewed the definition of a record. Ms. Dean stated public officials doing public business on a personal account are creating government records. Mr. Haraldsen stated that an elected official does not stop being an elected official when they start using a different email account. The committee wondered if there could be more responsive records.

**Motion** by Mr. Haraldsen to review the records in camera. 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.

**Motion** by Mr. Haraldsen to continue the hearing to March 17, 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.

**4. Paul Amann v. Dept. of Public Safety (2021-125)**

**Petitioner statement:**

Mr. Amann stated GRAMA does not contemplate adversarial conduct over record requests. He stated he did not get a response to his request so he appealed. He stated the Chief Administrative Officer did not ask him to narrow the scope of his request. He said he would

have discussed that with them if they had asked. He stated he is trying to get records that the committee ordered he receive from the Attorney General's Office.

Mr. Amann stated he did not receive any information regarding the retention of the records before so he did not take the respondent at their word that the records were past retention. He stated the respondent failed to weigh the public interest in the records.

Mr. Amann stated he is seeking records of false claims which are crimes. He stated the respondent's search was insufficient. He stated he is happy to try to narrow the scope of the request, but the person he is searching has multiple names. He stated the public has a right to know if someone who charges criminals is themselves a criminal.

**Respondent statement:**

Ms. Marlow stated she represents the Utah Department of Public Safety, not the Attorney General's Office. She stated Utah Code 53-10-108 limits who can access criminal histories. She stated the records requested are held under expungement and Utah Code 77-10-109 prohibits their release unless authorized by another statute or court order. Ms. Marlow explained releasing expunged records violated any weighing provision. She stated the respondent is not party to his current lawsuit.

Ms. Marlow stated the petitioner did not request a fee waiver for the emails requested. She stated there are eleven divisions in the department and they searched them all for the eight names he requested. She stated they searched for one keyword for one year and got 5,612 results. A search for all eight names for one year yielded 72,500 results. She stated she asked the respondent's attorney if they'd narrow the scope but they never did. Ms. Marlow stated she is ethically prohibited from contacting the requester instead of his counsel.

Ms. Marlow reviewed the process to provide the responsive records. She stated the request was for "all communications" and the respondent cannot interpret that themselves without the requester narrowing the scope.

**Petitioner closing:**

Mr. Amann stated he is representing himself. He stated he provided the date of birth for the person he was searching for. He stated the respondent has not referenced a statute that states the committee cannot weigh public interest. He stated the committee is a good third party to review the records and find what he is seeking.

**Respondent closing:**

Mr. Jorgensen stated the retention for the records is based on an audit cycle. He referenced the citations for expunged records and the authority to release those records. He stated there is no weighing provision for the committee to take. He stated the email request produced voluminous records. He stated access was not denied but they did not hear back from the petitioner's attorney to narrow the request.

**Questions from the Committee:**

Ms. Dean asked for clarification on what the search produced. Mr. Jorgensen stated one year of archived email produced 5,000 emails. Eight names for one year produced 17,000.

**Deliberation:**

The committee discussed the respondent's effort to narrow the request and economical search terms.

**Motion** by Mr. Williams to deny the BCI records (Request 1), and expungement records (Request 2) per Utah Code 63G-2-201(3), 77-40-109, and 53-10-108. Requests 3 and 4 are denied because the request is not reasonably specific. 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**

**Appoint Chair pro tem, action item:**

**Motion** by Mr. Williams to appoint Ms. Dean chair pro tem. 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.

**Approval of January 20, 2022, SRC Minutes, action item:**

**Motion** by Ms. Dean to approve the January 20, 2022. 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.

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

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

**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 March 17, 2022.

**Motion to Adjourn**

The Chair adjourned the February 17, 2022, State Records Committee meeting.

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