

## State Records Committee Meeting

Date: April 21, 2022

Time: 9:00 a.m. – 4:00 p.m.

### Committee Members Present:

Kenneth Williams, Chair, State Archivist

Marie Cornwall, Citizen Representative

Mark Buchanan, Private Sector Records Manager

Tom Haraldsen, Media Representative

Nova Dubovik, Citizen Representative

Nancy Dean, Chair pro tem, Political Subdivision Representative

Ed Biehler, Electronic Records and Databases Representative

### Legal Counsel:

Paul Tonks, Assistant Attorney General

Michelle Adams, Paralegal

### Executive Secretary:

Rebekkah Shaw, Utah State Archives

### Others present in person:

Steven Onysko

Josh Egan

Andrew Hale, Assistant Attorney General

Lieutenant Jacob Cox, Highway Patrol

Melanie Marlowe, Highway Patrol

### Others Present via Zoom:

Lonny Pehrson, Assistant Attorney General

Ian Cooperstein

Julie Thomas, University of Utah

Tonya Jensen, University of Utah

Candee

Rosemary Cundiff

“C”

### Agenda:

- o Three Hearings Scheduled:
  - o Steven Onysko v. Attorney General Office (2021-135)

- o Chad Lambourne v. Utah Highway Patrol Section 4 (2022-14)
- o Thomas Swett v. University of Utah (2021-130)
- o Business:
  - o Approval of March 2022, 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
  - o Committee members' attendance polled for possible second meeting, format and quorum verification, action item

### **Call to Order**

The Chair called the meeting to order.

### **1. Steven Onysko v. Attorney General Office (2021-135)**

Mr. Onysko stated he submitted a motion to dismiss Mr. Tonks. The Chair stated the court had already ruled on the issue.

#### **Petitioner Statement:**

Mr. Onysko stated he is appealing the redactions of records provided. He stated his request for billing records was insufficiently fulfilled. He stated the hours and services rendered should not have been redacted and he would like a refund.

Mr. Onysko stated that the billing records are not attorney work product because they are created in the normal course of business. He stated they are not for litigation. He stated he asked the Division of Risk Management (Risk) for the same records. He stated the respondent sends the records to Risk unredacted which removes attorney-client privilege.

Mr. Onysko stated that no one is deprived of the right to a fair trial if the records are released. He stated that if Risk is a third party and not the client, he wants the same right to view the unredacted records.

#### **Respondent Statement:**

Mr. Pehrson stated this appeal is the same as order 21-10, which was previously heard by the Committee. He stated the redactions are the same and the Committee ruled that the redactions were proper.

Mr. Pehrson stated that Risk is the insurer and requires the unredacted bill to pay it. He stated the amounts paid are public and procurement is already public.

#### **Questions from the Committee:**

The Committee asked how order 21-10 applies because that was more about a fee waiver. Mr. Pehrson stated that the order does not have the details of the appeal, but the arguments were the same.

**Petitioner Closing:**

Mr. Onysko stated this is not a repeat case. He stated bill payers are not entitled to privileged information unless it is through record sharing which would require a written agreement. He stated there is a possibility of corruption because there was no competitive bidding.

**Respondent Closing:**

Mr. Pehrson stated that the middle column of redacted information has the attorney-client privilege details.

**Questions from the Committee:**

The Committee asked Mr. Onysko how the redactions are different between the records he received from Risk and the respondent. Mr. Onysko described the difference and stated he should get a refund for what the respondent redacted that was provided by Risk.

**Deliberation:**

**Motion** by Dr. Cornwall to deny the appeal. The redactions are properly protected under 63G-2-305(17)(18). 63G-2-206 does not apply because the Division of Risk Management and the Attorney General's Office are not independent agencies under 63H. The order should also reference the Committee's previous decision and order 13-02. Seconded by Ms. Dean.

Vote: 6 Aye. 1 Nay. Mr. Buchanan, Ms. Dean, Dr. Cornwall, Ms. Dubovik, Mr. Biehler, Mr. Williams voted in favor of the motion. Mr. Haraldsen voted against the motion.

**2. Chad Lambourne v. Utah Highway Patrol Section 4 (2022-14)**

**Petitioner Statement:**

Mr. Egan stated the body camera footage is important in civil actions triggered by DUI arrests. He stated the Drivers License Division holds hearings to determine if the driver can still drive. He stated that UHP is responsible for 33% of all DUI arrests in Utah and the arrested driver is deprived of due process because they are not getting the footage in a timely manner.

Mr. Egan stated GRAMA requires records to be provided as soon as reasonably possible, and a backlog of 120 days is not reasonable. He stated GRAMA provides timetables for editing footage.

**Questions from the Committee:**

The Committee asked if the body camera video is shown at the hearing. Mr. Egan stated it is used to cite problems with timestamps. The Committee asked why discovery is not used. Mr. Egan stated prosecutors are also having a hard time getting these records in a timely manner because of delays.

**Respondent Statement:**

Mr. Hale stated this hearing is moot because the request was granted. He stated that he brought the video with him.

**Witness Statement:**

Lieutenant Cox was sworn in by the Chair.

Mr. Cox stated that every trooper has a body camera. A traffic stop can be 30-45 minutes of footage, and two-hour arrests are not uncommon. He stated that they hired two more techs to help with the backlog of requests for footage. He stated it is about three hours of work for every hour of video, but he's hoping new software will help speed that up. He stated the goal is to provide footage within 30 days.

**Questions from the Committee:**

The Committee asked if the administrative hearing with the Drivers License Division can be delayed so the footage can be provided. Mr. Egan stated it can be, but in the meantime, the driver loses their license. He stated they can get two extensions, but the driver is already being penalized.

The Committee asked Mr. Egan if his firm specializes in DUI cases. He said they do. The Committee asked if discovery is inefficient. He stated even with a case pending they still do not get the footage quickly.

**Petitioner Closing:**

Mr. Egan stated the delay in providing the footage is not justified.

**Respondent Closing:**

Mr. Hale stated the redacted video has been provided to the petitioner so the case is moot. He stated the 120 day window is reasonable.

**Question from the Committee:**

The Committee asked Mr. Egan if he wants to view the record to determine if he objects to any of the redactions. Mr. Egan stated he has never had issues before.

**Deliberation:**

**Motion** by Ms. Dean to continue the hearing to give the petitioner a chance to review the record and contact the executive secretary if he is satisfied with the redactions. Seconded by Ms. Dubovik.

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

### **Thomas Swett v. University of Utah (2021-130)**

#### **Petitioner Statement:**

Mr. Swett stated that this request is regarding the identification of an employee. He reviewed the transcript of a phone conversation he had with a member of staff. He stated the policy for patients to arrange for a ride home after procedures were referenced in the phone call, but not identified. He stated that he needed to know about the employee he was speaking with so he could file a complaint.

#### **Respondent Statement:**

Ms. Thomas stated if the legislature intended for employee shift information to be public it would have been included in 63G-2-301(2)(b). She stated that the requester could have contacted the managers or customer care instead of submitting a record request. She stated that they did not want someone to confront the employee themselves. Ms. Thomas stated the requester is seeking information, not records.

#### **Question from the Committee:**

The Committee asked what options are available for patients who do not have a ride home. Ms. Thomas stated they could discuss a procedure that does not require sedation. She stated their policy does not allow an unknown person to drive patients home.

#### **Witness statement:**

Ms. Jensen was sworn in by the Chair.

Ms. Jensen stated the policy is communicated in advance of the procedure.

#### **Question from the Committee:**

The Committee asked if the request was denied in full. Ms. Thomas stated that it was. Part one and two of the request were denied to protect the employee, and the third part has no responsive records because it is asking for information instead of records. The Committee asked if the responsive records name the employees. Ms. Thomas stated a list of employees would be fine, but they will not provide the start and end times of each shift. She stated that they responded to the request as it was written without assuming what information was sought.

#### **Petitioner Closing:**

Mr. Swett stated there are two requests. He stated one was sent the day after the phone call. He stated that he was not seeking a list of employees, just the one employee. He stated the second request was for who worked there and when.

### **Respondent Closing:**

Ms. Thomas stated there is no public interest in the record. She stated the requester's complaint can be sent to the manager or customer care but GRAMA is not the appropriate channel.

### **Deliberation:**

**Motion** by Ms. Dean to uphold the denial for part one and two of the request because the records were classified correctly under 63G-2-305(11). Part three is also denied because the respondent is not required to create a record under 63G-2-201()(a). Seconded by Mr. Williams.

Mr. Biehler stated that he believed the respondent has a record they could provide for the third part.

Vote: 4 Aye. 3 Nay. Ms. Dean, Dr. Cornwall, Ms. Dubovik, Mr. Williams voted in favor of the motion. Mr. Buchanan, Mr. Biehler, Mr. Haralsen voted against the motion.

### **Business**

#### **Approval of March 2022, SRC Minutes, action item**

**Motion** by Mr. Haraldsen to approve the meeting minutes for March. Seconded by Ms. Dubovik.

Vote: 5 Aye. 0 Nay. 2 Abstain. Mr. Buchanan, Mr. Haralsen, Dr. Cornwall, Ms. Dubovik, Mr. Williams voted in favor of the motion. Ms. Dean and Mr. Biehler abstained.

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

Ms. Shaw reviewed appeals.

#### **Cases in district court, report**

Mr. Tonks reviewed cases in court.

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

A quorum was confirmed for May 19th.

#### **Committee members' attendance polled for possible second meeting, format and quorum verification, action item**

The Committee agreed to schedule an additional meeting June 2nd. A quorum was confirmed.

#### **Motion to Adjourn**

The Chair adjourned the April 21, 2022, State Records Committee meeting.

**This is a true and correct copy of the April 21, 2022, SRC meeting minutes, which was approved on June 2, 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