

State Records Committee Meeting

Date: September 15, 2022

Time: 9:00 a.m. – 4:00 p.m.

Committee Members Present:

Kenneth Williams, Chair, State Archivist
Marie Cornwall, Citizen Representative
Tom Haraldsen, Media Representative
Nova Dubovik, Citizen Representative
Ed Biehler, Electronic Records and Databases Representative
Nancy Dean, Chair pro tem, Political Subdivision Representative
Mark Buchanan, Private Sector Records Manager

Legal Counsel:

Jacob Franklin, Assistant Attorney General
Michelle Adams, paralegal

Executive Secretary:

Rebekkah Shaw, Utah State Archives

Others Present:

Ann Werch
Blaine Hansen
Jamie Brooks
Judith Zimmerman
Nick Parker
Stephen Regruto
Mohammed Abdullah, Logan City
Lohnny Pehrson, Assistant Attorney General
Ian Cooperstein
Dean Collinwood
Jann Farris
Ashley Biehl, Board of Education
Ben Rasmussen, Board of Education
Michael Clara
Christian Bryner, Carbon County
Brady Eames

Agenda:

- o Five Hearings Scheduled
 - o Ian Cooperstein v. Attorney General Office (2022-128)
 - o Michael Clara v. Utah State Board of Education (2022-152)
 - o Steve Regruto v. Carbon County (2022-122) and Nick Parker v. Carbon County (2022-126)

- o Brady Eames v. Logan City (2022-124)
- o Jeff Wetsel v. Price City Police (2022-60)
- o Business
 - o Petition for administrative rule change, action item
 - o Approval of August 18, 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

Call to Order

The Chair called the meeting to order at 9:48.

1. Ian Cooperstein v. Attorney General Office (2022-128)

Petitioner Statement

Mr. Cooperstein provided context for his request including his whistleblower complaint. He stated he had hired an attorney and received questionable legal counsel. He stated that he terminated the relationship.

Mr. Cooperstein stated that he received records, but there could be more. He stated he wants the unredacted emails because he is the subject of the record. He stated confidentiality is waived because it was his attorney corresponding with the respondent. He stated that the respondent should not have his attorney correspondence and the relevancy of the information should be up to him.

Respondent statement:

Mr. Pehrson stated there are three minor redactions in the 51 provided records. He stated the background information provided by the petitioner is not relevant. He stated the redacted information is someone else's medical information and not relevant to what the requester is seeking. Mr. Pehrson stated that one of the four principles in GRAMA is to protect the privacy of individuals, but the requester could use discovery to receive the redacted information because the court has discretion the Committee does not.

Petitioner Closing:

Mr. Cooperstein stated that redactions of anything written by his attorney should be provided. He stated that the records are the work of his former attorney who did not ask for the redactions. He stated he would support an in camera review of the records.

Respondent Closing:

Mr. Pehrson stated that there are three redactions. Two are from the other attorney. He stated GRAMA requires medical information be private which outweighs the requester's interest.

Deliberation:

Motion by Ms. Dean to go in camera to review the records. Seconded by Dr. Cornwall.

Vote: No 0. Yea 7. Mr. Buchanan, Dr. Cornwall, Mr. Williams, Mr. Haraldsen, Mr. Biehler, Ms. Dean, and Ms. Dubovik voted for the motion.

Motion by Ms. Dubovik to deny the appeal. The records are properly classified under Utah Code 63G-2-302(1)(B) and Utah Code 63G-2-302(2)(d). Seconded by Dr. Cornwall.

Dr. Cornwall stated there was no discussion during deliberation because it was obvious from the in camera review that the redactions are appropriate.

Vote: No 0. Yea 7. Mr. Buchanan, Dr. Cornwall, Mr. Williams, Mr. Haraldsen, Mr. Biehler, Ms. Dean, and Ms. Dubovik voted for the motion.

2. Michael Clara v. Utah State Board of Education (2022-152)

Petitioner Statement

Mr. Clara stated this appeal is not about a fee waiver, but an email withheld under attorney-client privilege. He stated he filed a complaint to Utah Professional Practices Advisory Commission (UPPAC) regarding a newly hired executive at Salt Lake City School District. He stated that the new hire did not have a doctorate and the district did not verify if they did.

Mr. Clara stated there is one withheld email record. He stated Mr. Rasmussen is the secretary for UPPAC so the record should be provided. He stated that the purpose of GRAMA is for the public to have access to information. He stated the record should explain why the school board never acted. He stated that the attorney-client privilege relationship does not exist between Mr. Rasmussen and the board because he is the secretary and the record officer. He stated even if it exists, the interest in disclosure outweighs the interest in keeping the record protected.

Respondent statement:

Ms. Biehl stated that the UPPAC actions are irrelevant to the case. She stated there is only one record in dispute and it meets the three prong test of attorney-client privilege. She stated there is an attorney-client relationship. Mr. Rasmussen is the record officer, but he is the director of law at the Utah State Board of Education. The correspondence provides legal advice. She stated Utah Code 53E-3-401(11) allowed the Board to hire an attorney to coordinate legal affairs. Ms. Biehl stated the correspondence is two attorneys providing legal advice to the Board after the Superintendent asked for legal advice. She stated all other responsive records were provided.

Petitioner Closing:

Mr. Clara stated that whether Mr. Rasmussen was appointed to be an attorney is a separate issue. He stated there is no attorney-client relationship between Mr. Rasmussen and the Superintendent.

Respondent Closing:

Ms. Biehl stated the records pass the three prong test and the records are properly classified.

Deliberation:

Motion by Mr. Buchanan to review the records in camera. Seconded by Mr. Williams.

Vote: No 0. Yea 7. Mr. Buchanan, Dr. Cornwall, Mr. Williams, Mr. Haraldsen, Mr. Biehler, Ms. Dean, and Ms. Dubovik voted for the motion.

Ms. Dean stated the three prong test was met and the public interest does not outweigh the classification.

Motion by Ms. Dean to deny the appeal because the records are properly classified under 63G-2-305(17). Seconded by Dr. Cornwall.

Vote: No 0. Yea 7. Mr. Buchanan, Dr. Cornwall, Mr. Williams, Mr. Haraldsen, Mr. Biehler, Ms. Dean, and Ms. Dubovik voted for the motion.

Business part 1 of 2

Motion by Ms. Dubovik to approve the August meeting minutes. Seconded by Mr. Biehler.

Vote: No 0. Yea 7. Mr. Buchanan, Dr. Cornwall, Mr. Williams, Mr. Haraldsen, Mr. Biehler, Ms. Dean, and Ms. Dubovik voted for the motion.

3. Steve Regruto v. Carbon County (2022-122) and Nick Parker v. Carbon County (2022-126)

Petitioner Statement

Mr. Regruto stated they just received a responsive record and still needed to review them. He stated there are some redactions under attorney-client privilege. He stated that he and Mr. Parker are seeking an internal investigation record. Mr. Parker stated that the county attorney was doing an investigation and they are wondering how that came about.

Respondent statement:

Mr. Bryner stated that the correspondence was to provide legal advice. He stated that the records were provided to the investigator for the investigation. He stated there are no grounds to release the record. He stated the county has nothing further that is responsive to the request in response to the request asking for the formulation of questions.

Petitioner Closing:

Mr. Parker stated the investigator was the sheriff and the attorney-client privilege was breached when he sent the email to someone else. He stated the privilege does not apply when the person is no longer an employee of the county.

Respondent Closing:

Mr. Bryner stated that not being an employee does not waive the privacy of the record. He stated the record was sent as part of the investigation so there was no breach of privacy.

Petitioner Closing:

Mr. Regruto stated that the attorney's office does not have an enforcement role. He stated that Mr. Parker started the email chain. He said the investigation is closed so there the records do not need to be protected anymore.

Questions from the Committee:

The Committee asked if the record classification was identified when the record was shared. Mr. Bryner stated that it was not because everyone knows who the city attorney is. He stated that there was nothing to flag the records as attorney-client privilege. The Committee asked when the record classification was determined. Mr. Bryner stated they were classified when they were sent to him.

Deliberation:

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

Vote: No 0. Yea 7. Mr. Buchanan, Dr. Cornwall, Mr. Williams, Mr. Haraldsen, Mr. Biehler, Ms. Dean, and Ms. Dubovik voted for the motion.

Motion by Ms. Dean to deny appeal 2022-122. After reviewing the records in camera, the Committee finds the records are properly classified under Utah Code 63G-2-305(17). The weighing provision considered does not outweigh the classification. Based on testimony, there are no responsive records to the formulation of questions. Seconded by Mr. Biehler.

Vote: No 0. Yea 7. Mr. Buchanan, Dr. Cornwall, Mr. Williams, Mr. Haraldsen, Mr. Biehler, Ms. Dean, and Ms. Dubovik voted for the motion.

Motion by Ms. Dean to deny appeal 2022-126. After reviewing the records in camera, the Committee finds the records are properly classified under Utah Code 63G-2-305(17). The weighing provision considered does not outweigh the classification. Based on testimony, there are no responsive records to the formulation of questions. Seconded by Dr Cornwall.

Vote: No 0. Yea 7. Mr. Buchanan, Dr. Cornwall, Mr. Williams, Mr. Haraldsen, Mr. Biehler, Ms. Dean, and Ms. Dubovik voted for the motion.

4. Brady Eames v. Logan City (2022-124)

Mr. Eames informed the secretary he did not intend to participate.

Respondent statement:

Mr. Abdullahi stated the city estimates it will take eight hours to gather the requested contracts. He stated this is not a charge for inspection of the records. He stated the appeal may not be timely before the Committee.

Questions from the Committee:

The Committee asked if \$15 per hour is the lowest paid employee who could do the work. Mr. Abdullahi stated they lowered it. The Committee asked how many contracts may be included. Mr. Housley stated that it varies by day because there are daily purchase orders. Mr. Abdullahi stated that the estimate was over \$50 so they asked the requester to pay it before they did all the work to provide the records.

Deliberation:

The Committee reviewed the timeliness of the appeal.

Motion by Mr. Haraldsen to deny the appeal because it is not an unreasonable denial of a fee waiver per Utah Code 63G-2-203(2). Seconded by Mr. Buchanan.

Vote: No 0. Yea 7. Mr. Buchanan, Dr. Cornwall, Mr. Williams, Mr. Haraldsen, Mr. Biehler, Ms. Dean, and Ms. Dubovik voted for the motion.

5. Jeff Wetsel v. Price City Police (2022-60)

The parties were not present.

Motion by Mr. William to reschedule the appeal. Seconded by Ms. Dean.

Vote: No 0. Yea 7. Mr. Buchanan, Dr. Cornwall, Mr. Williams, Mr. Haraldsen, Mr. Biehler, Ms. Dean, and Ms. Dubovik voted for the motion.

Business part 2 of 2

Petition for administrative rule change, action item

The Committee discussed the request for a change to R35-2-2 that to decline a request for a hearing where the secretary, Chair, and one other member meet in an open and public meeting.

The Committee recommended each denial be added to the meeting minutes.

Motion by Mr. Buchanan to deny the petitioner. The change would cause an undue burden on the Committee to meet within the mandated deadlines. There is already a process in place. The Committee sees the importance of tracking denials to make sure appeals are denied appropriately so the process can be updated.

Vote: No 0. Yea 7. Mr. Buchanan, Dr. Cornwall, Mr. Williams, Mr. Haraldsen, Mr. Biehler, Ms. Dean, and Ms. Dubovik voted for the motion.

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

Ms. Shaw reviewed appeals with the Committee. Three appeals were denied since the

Committee met in August:

2022-174	Brady Eames v. Attorney General Office	Requesting access to certificates of admission and law licenses of named attorneys. Denied because the respondent does not maintain the records.
2022-173	Brady Eames v. Dept. Government Operations	Requesting access to public meeting records regarding a previous appeal that was denied. Denied because sufficient evidence was not provided that the records exist.
2022-172	Brady Eames v. Dept. Government Operations	Requesting access to public meeting records regarding a previous appeal that was denied. Denied because sufficient evidence was not provided that the records exist.

Cases in district court, report

Ms. Adams reviewed the status of cases in district court.

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

A quorum is not available for October 20, 2022. The October meeting would be rescheduled for October 13, 2022.

This is a true and correct copy of the September 15, 2022, SRC meeting minutes, which was approved on October 13, 2022. An audio recording of this meeting is available on the Utah Public Notice Website.

X /e/ Rebekkah Shaw