

State Records Committee Meeting

Date: October 13, 2022

Time: 9:00 a.m. – 4:00 p.m.

Committee Members Present:

Kenneth Williams, Chair, State Archivist

Marie Cornwall, Citizen Representative

Nova Dubovik, Citizen Representative

Nancy Dean, Chair pro tem, Political Subdivision Representative

Mark Buchanan, Private Sector Records Manager

Committee Members Not Present:

Ed Biehler, Electronic Records and Databases Representative

Vacant, Media Representative

Legal Counsel:

Brian Swann, Assistant Attorney General

Executive Secretary:

Rebekkah Shaw, Utah State Archives

Others Present:

Patrick Sullivan

Bridget Romano, Salt Lake County

Nate Carlisle, Fox 13

Raphael Cordray

Christian Bryner, Carbon County

Ian Cooperstein

Rebecca Bradway, University of Utah

Kendra Yates, Archives

Blaine Hansen, Assistant Attorney General

Jaime Brooks

Matthew Shaw

Jann Farris

Linda Petersen

Ryan Lambert

Judith Zimmerman

Rosemary Cundiff

Agenda:

- o Four Hearings Scheduled
 - o Patrick Sullivan v. Sanpete County (2022-125)
 - o Nate Carlisle (Fox 13) v. Salt Lake County (2022-170)
 - o Raphael Cordray v. Carbon County (2022-135)

- o Ian Cooperstein v. University of Utah (2022-147)
- o Business
 - o Approval of September 15, 2022, SRC Minutes, action item
 - o SRC appeals received and declined, notices of compliance, and related action items
 - o Committee vacancy, report
 - 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.

Business part 1 of 2

Motion by Ms. Dubovik to approve the September meeting minutes. Seconded by Mr. Buchanan.

Vote: No 0. Yea 5. Mr. Buchanan, Dr. Cornwall, Mr. Williams, Ms. Dean, and Ms. Dubovik voted for the motion.

Committee Vacancy, report

Ms. Shaw reviewed the Senate Government Operations Confirmation Committee agenda for October 17th and stated the Senate meets on October 19th so the new member should be present at the November meeting.

1. Nate Carlisle (Fox 13) v. Salt Lake County (2022-170)

Petitioner Statement

Mr. Carlisle stated he sought some records related to a witness interviewed in a criminal investigation. He stated the request was denied because there is a judge order which prevents the release of the records. He stated the attorney office also cited privacy concerns under Utah Code 63G-2-302. He stated after his appeal he did not see the privacy citation again. He stated if the respondent or Committee discusses privacy concerns, he'd like to respond to that. Mr. Carlisle stated that he does not dispute the judge's order.

Respondent statement:

Ms. Romano stated that the petitioner stated their argument. She stated that there are two different cases and two orders which were sent to the Committee. She stated the judge has determined the records are not public so the county does not need to make any further classification.

Ms. Romano stated that if the judge changed the order Mr. Carlisle could make the request again and they would review the records under GRAMA. She stated that the order guides what the county and the Committee needs to do.

Petitioner Closing:

Mr. Carlisle stated he had nothing to add.

Questions from the Committee:

Dr. Cornwall asked Mr. Carlisle to clarify why he wanted the Committee to order the records be released. Mr. Carlisle stated he appealed to the Committee to demonstrate to the judge that the Tribune tried to obtain the records through conventional means but were unable to do so to the order. He stated he felt compelled to file an appeal when the county included privacy concerns under Utah Code 63G-2-302 which are not addressed in the court order. He stated that he intends to ask the judge to release the records.

Respondent Closing:

Ms. Romano stated that the weighing done by the judge is essentially a privacy analysis under Utah Code 63G-2-302. She stated that the judge made the privacy ruling.

Petitioner statement:

Mr. Carlisle stated that he does not have anything from the county stating why the judge sealed the records. He stated that there is no documentation that the judge's analysis was based on Utah Code 63G-2-302 and Ms. Romano may be assuming the reasons for the order. He stated that the Committee does not need to assume or infer why the records were sealed.

Deliberation:

Motion by Ms. Dean to deny the appeal under Utah Code 63G-2-201(3)(b). Seconded by Mr. Buchanan.

Vote: No 0. Yea 5. Mr. Buchanan, Dr. Cornwall, Mr. Williams, Ms. Dean, and Ms. Dubovik voted for the motion.

2. Patrick Sullivan v. Sanpete County (2022-125)

The respondent was not present.

Petitioner Statement:

Mr. Sullivan stated that the respondent did not provide a statement of facts so he was going to ask for a continuance. He stated that Utah Code 63G-2-403(5)(a) is clear that the respondent needs to provide a statement of their position to him and the Committee. He stated it is not permissive and the Committee does not have jurisdiction to move forward until the statement of facts is submitted.

Questions from the Committee:

Ms. Dean asked if he received the records. Mr. Sullivan stated that he received 5 individual emails because the county is interpreting 5 individual records. He stated that there are two requests to separate entities. The clerk and attorney offices are separate entities and the

respondent is misinterpreting the statute. He reviewed the definition of governmental entity in GRAMA.

Mr. Sullivan stated that the county has not explained its reasoning which makes it difficult for him to make his arguments to the Committee.

Deliberation:

Mr. Williams stated he is not comfortable moving forward without argument from the respondent. Ms. Dubovik stated they need a statement of facts from the respondent.

Motion by Mr. Williams to continue the hearing to November 17, 2022. The respondent needs to submit a statement of facts. Seconded by Ms. Dean.

Vote: No 0. Yea 5. Mr. Buchanan, Dr. Cornwall, Mr. Williams, Ms. Dean, and Ms. Dubovik voted for the motion.

3. Raphael Cordray v. Carbon County (2022-135)

Petitioner Statement

Ms. Cordray stated that she submitted her request on March 24, 2022 and appealed after she did not receive an answer. She stated the appeal was not answered so she appealed to the Committee. She stated she did not get the records after mediation. She stated the county said they'd provide the records and a fee waiver before the hearing in August 2022. She stated that she has been polite and patient but has not received anything.

Respondent statement:

Mr. Bryner stated that the county does not object to providing the records. He stated they agreed to waive the fee due to the delay. He stated the process was not put in motion in I.T. to search for the records.

Mr. Bryner stated that they do not dispute the requester is entitled to the records. He stated it would take four to six hours to review the records for classification. He stated that he expects most would be public but some might have attorney-client privilege.

Mr. Bryner stated that he had been in jury trials and he needs time to fulfill the request. He stated that the request is extensive and there are a lot of records to review, but he could probably get the records to the requester in the next two to three weeks due to the lack of manpower and time. He stated that the requester has been kind and courteous.

Petitioner Closing:

Ms. Cordray stated that the respondent made the same statements in July and September 2022. She stated that this is the first time she has heard that there are a lot of responsive records. She asked that the records be provided sooner than four weeks.

Respondent Closing:

Mr. Bryner stated that he can get the Commissioner records to the requester in two weeks. He stated that he had been trying to get a deputy attorney for six months.

Questions from the Committee:

Ms. Dubovik asked if there is anyone else who can help him fulfill the request. Mr. Bryner stated that there might be, but the records should be reviewed by an attorney.

Deliberation:

Dr. Cornwall stated that the commissioner records should be provided as soon as possible. Ms. Dubovik stated that others can help Mr. Bryner fulfill the request. She stated it is unfair that the requester does not have the records due to a lack of manpower and training.

Motion by Mr. Williams to continue the hearing to provide time for the requester to review the redactions and the respondent to provide a statement of facts for any redactions made. Seconded by Ms. Dean.

Vote: No 0. Yea 5. Mr. Buchanan, Dr. Cornwall, Mr. Williams, Ms. Dean, and Ms. Dubovik voted for the motion.

4. Ian Cooperstein v. University of Utah (2022-147)**Petitioner Statement**

Mr. Cooperstein stated that his appeal is for three requests. The first is for records surrounding a former employee. He stated the records are not subject to FERPA because tuition assistance after termination is not normal business practice.

He stated the second for records regarding the employee's resignation. He stated human resource records leading to the decision should be released. He stated the person was only there for a year and the position was never filled after he left.

Mr. Cooperstein stated the third is related to the same employee's promotion. He stated the respondent's argument is semantical. He stated if no records exist in 2018 then maybe they exist in 2017 and those should be provided. He stated there must be responsive records. He stated the job reclassification is on the Utah transparency website so there should be records.

Respondent statement:

Ms. Bradway stated that Mr. Cooperstein has over 200 requests pending with the University. She stated they are working through them in the order that he asked.

Ms. Bradway stated the University provides tuition reduction to eligible employees and their dependents. She stated that begins with an application while enrolling for classes. She stated it is an educational record and falls under FERPA.

Ms. Bradway stated employment records are classified private under Utah Code 63G-2-302(1)(g). She stated there is no public interest in the records. She stated the employee was terminated in early 2020 and based on the wording of the request, there are no records of an involuntary termination. She stated the requester is changing the scope of the request to the Committee which is not appropriate at this stage.

Ms. Bradway stated the other request was denied because based on the precise language of the request, there are no responsive records. She stated there was no promotion in 2018.

Questions from the Committee:

Dr. Cornwall asked if they denied access to the records because the requester is not the subject of the records. Ms. Bradway stated that was correct. The only way to reclassify it would be to make it public.

Petitioner Closing:

Mr. Cooperstein stated the subject of the records was a respondent in a Title IX investigation and he was not told the person was terminated. He stated that someone who is no longer employed by the University should not be getting tuition reimbursement. He stated gross compensation is a public record, not an educational record.

Respondent Closing:

Ms. Bradway stated that the petitioner's assumptions are not based in fact. She stated they responded to the requests as written.

Questions from the Committee:

Ms. Dean asked if employees who resign receive a severance package. Ms. Bradway stated she did not know. She said that was not evaluated for the request.

Deliberation:

Motion by Ms. Dubovik to deny the appeal for tuition because the records fall under FERPA and are not subject to GRAMA. Seconded by Ms. Dean.

Vote: No 0. Yea 5. Mr. Buchanan, Dr. Cornwall, Mr. Williams, Ms. Dean, and Ms. Dubovik voted for the motion.

Motion by Ms. Dean to deny the appeal because there are no records responsive to the request. Seconded by Mr. Williams.

Discussion to the motion:

Ms. Dubovik suggested the request may need to be broader to include the resignation and updated date range.

Vote: No 0. Yea 5. Mr. Buchanan, Dr. Cornwall, Mr. Williams, Ms. Dean, and Ms. Dubovik voted for the motion

Motion by Ms. Dubovik to deny the appeal because there are no records responsive to the request. Seconded by Mr. Williams.

Discussion to the motion:

Ms. Dean stated not every petitioner knows what to ask for and the respondent should assist them to understand what they are seeking.

Vote: No 0. Yea 5. Mr. Buchanan, Dr. Cornwall, Mr. Williams, Ms. Dean, and Ms. Dubovik voted for the motion

Business part 2 of 2

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 September 2022:

2022-196	Kent Singleton v. Morgan County	Requesting access to record related to a survey and correspondence. Denied because access to the record was not denied.
2022-194	Daniel Herrera v. Box Elder County	Requesting access to records related to a case file. The appeal is missing the initial request and initial denial. The respondent will provide these to me. The respondent states they did not receive an appeal to the CAO. The CAO appeal is dated July 5th. This appeal was denied because it is untimely to the Committee.
2022-193	Marlon Smith v. Department of Public Safety	Requesting access to "records from 2016 and period for UHP Troopers interdiction team training by Desert Snow on criminal interdiction methods and the use of the "Black Asphalt" shared database..." Denied per R35-2-2(2) because sufficient evidence was not provided that responsive records exist.

Cases in district court, report

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

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

A quorum was confirmed for November 17th.

This is a true and correct copy of the October 13, 2022, SRC meeting minutes, which was approved on November 17, 2022. An audio recording of this meeting is available on the Utah Public Notice Website.

X /e/ Rebekkah Shaw

APPROVED