

State Records Committee Meeting

Date: January 19, 2023

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
Mark Buchanan, Private Sector Records Manager
Ed Biehler, Electronic Records and Databases Representative
Linda Petersen, Media Representative
Nova Dubovik, Citizen Representative
Marie Cornwall, Citizen Representative

Legal Counsel:

Brian Swann, Assistant Attorney General
Michelle Adams, Paralegal

Executive Secretary:

Rebekkah Shaw, Utah State Archives

Others Present Online or In Person:

Amy Martz Esq, counsel
Jared Pela
Blaine Hansen, counsel, Department of Corrections
Deborah Wood, counsel, Division of Child and Family Services
Eric Stott, DHHS
Jaime Wiley, attorney
Jacob Allen
Jeremy Cook, counsel, Emigration Improvement District
Kristina Kindl, counsel, Salt Lake City School District
Sam Quantz, SLCSO
Jillian Norton, SLCSO
Kim Richardson
Rosemary Cundiff, Archives
Daniel Herrera
Jared Pela
Vivian Pela
Eric Hawkes, Emigration Improvement District
Mark Tracy
Benjamin Horsley, Granite School District
Joe Cramer, Granite School District
Bryan Baggaley
Anna Baggaley
Mary Baggaley

Agenda:

- o Five Hearings Scheduled
 - o Daniel Herrera v. Department of Corrections (2022-197)
 - o Bryan Baggaley v. Granite School District (2022-160)
 - o Jacob Allen v. Division of Child and Family Services (2022-192)
 - o Mark Tracy v. Emigration Improvement District (2022-162)
 - o Jared Pela v. Salt Lake City School District (2022-181)

- o Business
 - o Appoint Chair, action item
 - o Appoint Chair pro tem, action item
 - o Appoint Executive Secretary, action item
 - o Set calendar for 2023, action item
 - o Approval of December 15, 2022, SRC Minutes, action item
 - o Administrative Rules, 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 pro tem called the meeting to order at 9:02.

1. Daniel Herrera v. Department of Corrections (2022-197)

Mr. Herrera expressed his frustration and requested the hearing be postponed until he can hire an attorney. He stated he will be released from prison soon and will get an attorney at that point. Mr. Hansen had no objection to postponing the hearing.

Deliberation:

The Committee discussed whether dismissing the appeal would be better than a continuance because record access is different for incarcerated individuals.

Motion by Ms. Dean to continue the hearing to the next available meeting to allow Mr. Herrera to hire an attorney. Seconded by Ms. Petersen.

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

2. Bryan Baggaley v. Granite School District (2022-160)

Petitioner Statement:

Mr. Baggeley stated his request is for any records related to his daughter's attendance of a particular class. He stated it was denied because the records were part of an investigation. He stated that his appeal to the Chief Administrative Officer was not answered. Mr. Baggeley stated that he received a partial response later from Mr. Horsley. He provided a list of records he stated should have been provided.

Mr. Baggeley reviewed the incident that led to the record request. He stated after the incident they could not access the class curriculum or videos. He stated some text messages were provided long after the request, but they still do not have the requested video. He stated that all responsive records cannot be related to the investigation.

Questions from the Committee:

The Committee asked for clarification about what records have been received. Mrs. Baggeley reviewed what they received. Mr. Baggeley stated there must be more conversations and records that exist behind the scenes from the correspondence that was provided.

Respondent statement:

Mr. Horsley stated that this was the first time he had seen the list, or anything specific about what the requester is seeking. He stated there was an investigation requested by the family about the teacher regarding a violation of policy. He stated a lot was verbally communicated and the district's attorney asked for a written response about why the student would not be allowed back into the class.

Mr. Horsley stated that the district does not respond under GRAMA to FERPA records that are already available to the parent. He stated some responsive records are available from the school and the district is not required to provide records the requester already has access to. He stated there are thousands of students at the high school and not every behavior matter is documented.

Mr. Horsley reviewed what was provided and when the district responded to the request. He reviewed the list provided by the requester. He stated that when the investigation was closed they provided records and he believes they have been responsive to the request.

Questions from the Committee:

The Committee asked when the investigation was started and when it closed. Mr. Horsley stated it began before April 21, 2022, and was closed just after June 1, 2022, when the request was appealed and they understood that they would not be receiving evidence from the requester for the investigation.

The Committee asked if the Canvas system has the information they seek. Mr. Horsley stated that there is a lot of information there they already have access to. The Committee asked if they still have access to it. Mr. Horsley stated they should be able to access scores and assignments even if you aren't in the class anymore, but if they cannot then they can provide those.

The Committee asked if he'd be willing to go through the list and provide additional records to the requester. Mr. Horsley stated that a list like this clarifying what records are sought is what they had asked the requester for because the original request was too broad.

Petitioner Closing Statement:

Ms. Baggaley asked if the Committee is not the venue to learn why she was removed from the class, where should they go? Mr. Baggeley stated a record must be created for an investigation and they have not received any. He asked the Committee where they can go to correct the situation if the Committee cannot help.

Committee comment:

Dr. Cornwall clarified what the Committee's jurisdiction is for this appeal.

Respondent Closing Statement:

Mr. Horsley stated he believed the respondent had responded to the request appropriately.

Question from the Committee:

The Committee asked if there is a final report after the investigation. Mr. Horsley stated this investigation did not have one because there was no conclusion. It was not pursued due to lack of evidence. He stated whether there is merit to the claims is not in the Committee's jurisdiction.

The Committee asked if there is a record that states why Ms. Baggaley was removed from the class. Mr. Horsley stated a formal response was provided to the family. The Committee asked how the student was transferred from the class. Mr. Horsley explained how a permit to attend a school out of your boundary is provided and can be revoked. He stated that the district's civil rights administrator would be happy to review their recording of the incident and take corrective action as necessary.

The Committee asked if there's evidence of behavior issues. Mr. Horsley stated the crux of the allegation is the recording the family has.

Deliberation:

The Committee expressed appreciation that the respondent is willing to revise the request again with the list provided by the requester.

Motion by Mr. Buchanan to continue the hearing to the next meeting to allow the parties time to review the list together and provide the records that can be provided. Seconded by Ms. Dean.

Discussion to the motion:

Mr. Williams encouraged the parties to communicate. Ms. Petersen stated the requester may get more records, but it still might not be the remedy they want. Dr. Cornwall stated if there is anything in dispute after reviewing the list together, they can return to the Committee. Mr. Williams stated that anything outside the list needs to be a new record request.

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

3. Jacob Allen v. Division of Child and Family Services (DCFS) (2022-192)

Petitioner Statement:

Ms. Wiley, counsel for the requester, reviewed the reason the request was submitted. She stated the request was submitted July 29, 2022. August 11, 2022, the respondent sent a letter explaining the need for an extension and then a denial on August 16, 2022, that nothing would be provided. She stated the original denial referenced Utah Code 63G-2-305 with no subsection. She stated that when the appeal was denied, they were informed a criminal investigation was pending but no information on what the allegations were or a way to challenge the findings. She stated this has frustrated the requester's ability to defend himself. She stated the requester has a right to the records under the due process clause. She reviewed the 14th Amendment and the Utah Constitution Article 1 Section 7.

Ms. Wiley stated Mr. Allen needs to challenge the findings against him and can't do that without knowing what the allegations are. She reviewed Utah Code 62A-4-212, 63G-2-201(7) and 202(11)(a). She stated that Ms. Richardson contacted them and said she could release the records. She stated that the respondent cannot withhold records and then change their mind before the hearing.

Questions from the Committee:

The Committee asked if they have the records. Ms. Wiley stated she didn't, but they were asked to submit a new request.

Respondent statement:

Ms. Wood clarified that Utah Code 62A-4-212 is now governed by Utah Code 80-2-105. She stated that the section says the records are subject to GRAMA and the division may provide records to certain individuals. She stated it can be confusing because Utah Code 80-2-1005(3) also says that sensitive information shall be redacted. She also reviewed Utah Code 80-2-608, and 63G-2-305(10). She stated both subparts apply. She stated the entire record needed to be withheld. She stated criminal charges were filed and when an investigation ends the records can be provided with redactions.

Ms. Wood stated that their policy when a criminal defendant seeks protected records of a victim, they need a court order. The court looks at the competing interests and makes the weighing decision. She stated there is enough information for the requester to challenge the division's findings. She stated the respondent applied the statute appropriately and the Committee should uphold the denial and let the issue stay in the criminal proceedings and be handled by the court.

Questions from the Committee:

The Committee reviewed Utah Code 80-2-1002(4). The Committee asked for clarification if the investigation file is the same system as the system referenced in the statute. Ms. Wood stated it is. She stated they are both protected databases and one is a sub system of the other to help maintain confidentiality.

Petitioner Closing:

Ms. Wiley stated that Utah Code 63G-2-305(10) does not give the respondent the ability to deny everything. She stated Mr. Allen has a right to the allegations so he can challenge them in court.

Respondent Closing:

Ms. Wood stated Utah Code 63G-2-305(10) does not require the respondent to say why releasing the records would impede an investigation, just that it could. She stated some of the records were provided to DCFS using a shared record agreement under Utah Code 63G-2-206 and per 63G-2-204(2) they cannot reshare the records. She stated the request was denied appropriately and the requester can get access with a court order.

Questions from the Committee:

The Committee asked if their investigation is done. Ms. Wood stated it is but it was open at the time of the request. The Committee asked why they cannot release the records now. Ms. Wood stated the record was denied under Utah Code 80-2-1005 due to the sensitive nature of the records they find it appropriate to ask for a court order.

The Committee asked if they follow this policy for all requests. Ms. Wood stated that they do to protect the child involved. The Committee asked why they don't protect information about the child under 63G-2-302(2)(d). Ms. Wiley reviewed what the statute stated that can be withheld.

Deliberation:

Motion by Dr. Cornwall to deny the appeal because the records are properly classified under another statute, Utah Code 80-2-1005 and in best interest for victims of the cases the court should decide what should be released. Seconded by Ms. Dean.

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

4. Mark Tracy v. Emigration Improvement District (2022-162)

Petitioner Statement:

Mr. Tracy stated his original request was submitted in 2020. He reviewed the request and stated when a private entity is doing public business, it has public records. He reviewed the history of the request and related Committee and court decisions.

Mr. Tracy stated the respondent is stonewalling him with fees before processing the request. He stated that there is no reason to refuse access to the records. He requested sanctions against

the respondent and a motion for a continuance so the respondent will provide the records for the Committee to review in camera.

Respondent statement:

Mr. Cook reviewed the background to the request and previous court decisions. He stated the request is for billing records going back to 1998. He explained the work that would be involved to provide the records and the anticipated cost would be \$2,500. He stated they asked for a deposit to be paid and that they require previous fees to be paid. He stated attorney fees for previous court cases fall under Utah Code 63G-2-203(8) and those need to be paid before the request is processed.

Petitioner Closing Statement:

Mr. Tracy asked for sanctions on the respondent for not providing the records to be reviewed in camera and a continuance.

Respondent Closing Statement:

Mr. Cook stated there is protected information in the records because most invoices will include details about strategies for the lawsuit. He stated that the respondent will redact the record and provide them once the fee is paid. He stated there are over \$100,000 unpaid from previous lawsuits. He stated there are probably 150 pages that they would need to review line by line.

Questions from the Committee:

The Committee asked how the fee was calculated. Mr. Cook stated that the Emigration Improvement District has no employees, but contract managers. He stated the estimate is based on the district manager's hourly rate. The cost for redactions are based on the attorney's rate. The 10-15 hours is an estimate and if it's high they can refund part of the fee.

Deliberation:

The Committee discussed fees under Utah Code 63G-2-203. The Committee appreciated the respondent's willingness to provide the records for this request if the fee for this request is paid.

Motion by Dr. Cornwall to deny the appeal under Utah Code 63G-2-203(8)(a). Given the circumstances, the fee is reasonable and the requester needs to pay the \$2,500 deposit before work to provide the records is done.

Discussion to the motion:

Ms. Dean suggested an amendment to say the petitioner can challenge any redactions made. The Committee asked Mr. Cook how long the work would take. Mr. Cook estimated a week or two for the redactions after the records are gathered.

Dr. Cornwall suggested more time to appeal be provided.

Motion by Dr. Cornwall to deny the appeal per Utah Code 63G-2-203(8)(a). Given the circumstances, the fee is reasonable and the requester needs to pay the \$2,500 deposit before work to provide the records. The requester has 30 days from the date of receiving the redacted records to request a review by the Committee. Seconded by Ms. Dean.

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

The Committee took a break for lunch.
Mr. Williams left the meeting.

5. Jared Pela v. Salt lake City School District (2022-181)

Petitioner Statement:

Ms. Martz, counsel for Mr. Pela, reviewed the history of the request using a powerpoint presentation. The request was for records of changes to his access to the online parent portal. She reviewed the request, the records that have been received, and the appeal. She stated that if the records are not available there need to be consequences for the respondent. She stated they believe there are more records than what has been provided. Mr. Pela stated the respondent keeps the records indefinitely.

Respondent statement:

Ms. Kindl stated that they have a different process for requests for student records than GRAMA requests. She stated all of the responsive records in their possession were provided. She stated their Chief Information Officer contacted Powerschool twice and there is nothing else they can provide.

Questions from the Committee:

Mr. Quantz was sworn in by the Chair pro tem.

The Committee asked for clarification that a search was for changes to the petitioner's access to the system because the request was not for student records. Mr. Quantz discussed his efforts with PowerSchool.

Ms. Kindl stated the system audit function was activated during the date span of the request. The Committee asked how far back the audit function goes. Mr. Quantz explained the updates made to the system and how it impacts what records exist. Once the audit function was active, all the logs from that day forward have been provided. He explained PowerSchool does not host or have custody of the district's data per their contract.

Petitioner Closing Statement:

Ms. Martz explained they contacted PowerSchool and they were told they have access to the information sought. She asked that PowerSchool search for the records and if PowerSchool

states it does not exist, then the request is resolved. Mr. Pela stated the attendance log for his student is not accurate and he wants to know who keeps changing things.

Respondent Closing Statement:

Ms. Kindl stated that PowerSchool does not have access to their data. Mr. Quantz explained his calls with PowerSchool to determine if any of their data is in PowerSchool's data center. He explained another meeting with PowerSchool took place. He shared his screen and they talked about the system and where to look for the responsive records. PowerSchool verified that they do not have any of the district's data.

Questions from the Committee:

The Committee asked if some schools have a contract where PowerSchool has the data, but in this case the respondent has the data on their own servers. Ms. Kindl stated that is correct. A call with a general support line for PowerSchool likely would not have the details of the contract.

The Committee asked clarifying questions about how the system works to track changes made. Mr. Quantz stated changes are tied to the credentials of the person logged in.

Deliberation:

The Committee discussed whether the respondent had done a reasonable search.

Motion by Dr. Cornwall to deny the appeal. The respondent has done a reasonable search and a good faith effort to provide all the responsive records. There was an effort to work with PowerSchool to make sure a proper search was done. Seconded by Mr. Buchanan.

Vote: Yea 6: Nay 0. Mr. Biehler, Mr. Buchanan, Ms. Petersen, Dr. Cornwall, Ms. Dean, Ms. Dubovik voted in favor of the motion.

Business:

Appoint Chair, action item

Motion by Ms. Dubovik to appoint Mr. Williams as Chair. Seconded by Ms. Dean.

Vote: Yea 6: Nay 0. Mr. Biehler, Mr. Buchanan, Ms. Petersen, Dr. Cornwall, Ms. Dean, Ms. Dubovik voted in favor of the motion.

Appoint Chair pro tem, action item

Motion by Dr. Cornwall to appoint Ms. Dean as Chair pro tem. Seconded by Ms. Dubovik.

Vote: Yea 6: Nay 0. Mr. Biehler, Mr. Buchanan, Ms. Petersen, Dr. Cornwall, Ms. Dean, Ms. Dubovik voted in favor of the motion.

Appoint Executive Secretary, action item

Motion by Mr. Buchanan to appoint Ms. Shaw as Executive Secretary. Seconded by Mr. Biehler.

Vote: Yea 6: Nay 0. Mr. Biehler, Mr. Buchanan, Ms. Petersen, Dr. Cornwall, Ms. Dean, Ms. Dubovik voted in favor of the motion.

Set calendar for 2023, action item

Motion by Mr. Buchanan to schedule 2023 monthly meetings for the third Thursday. Seconded by Dr. Cornwall.

Vote: Yea 6: Nay 0. Mr. Biehler, Mr. Buchanan, Ms. Petersen, Dr. Cornwall, Ms. Dean, Ms. Dubovik voted in favor of the motion.

Administrative Rules, action item

The Committee discussed possible changes to administrative rules.

Approval of December 15, 2022, SRC Minutes, action item

Motion by Ms. Dubovik to approve the December meeting minutes. Seconded by Mr. Williams.

Vote: Yea 6: Nay 0. Mr. Biehler, Mr. Buchanan, Ms. Petersen, Dr. Cornwall, Ms. Dean, Ms. Dubovik voted in favor of the motion.

Cases in District Court, report

Mr. Swan provided an update on cases in district court.

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

A quorum was confirmed for February 16, 2023.

This is a true and correct copy of the January 2023, SRC meeting minutes, which was approved on February 16, 2023. An audio recording of this meeting is available on the Utah Public Notice Website.

X /e/ Rebekkah Shaw