

SRC APPROVED
Date June 15, 2012
SLM

State Records Committee Meeting

Division of Archives, Courtyard Meeting Room

May 10, 2012

Salt Lake City, Utah

Members Present: Lex Hemphill, Media Representative
Scott Daniels, Citizen Representative
Doug Misner, History Representative
Betsy Ross, Auditor's Office Representative
Ernest Rowley, Elected Public Official
Patricia Smith-Mansfield, Governor's Designee
Scott Whittaker, Private Records Manager

Legal Counsel: Paul Tonks, Attorney General's Office
Amanda Jex, Attorney General's Office
Ed Lombard, Attorney Generals Office

Executive Secretary: Susan Mumford, Utah State Archives

Participating via

Telephone: Kurt Danysh, petitioner

Others Attending: Tina Avelar, Unified Police Department
Mike Barker, Unified Police Department
Joshua Bullough, Archives staff
Rosemary Cundiff, Archives staff
Rick Fletcher, Unified Police Department
Todd Park, Unified Police Department
Nubia Pena, Victims' Advocate, Unified Police
Mindy Spring, Archives staff

Ms. Betsy Ross called the meeting to order at 9:30 a.m. Mr. Danysh was contacted by phone at the Frackville Correctional Facility in Pennsylvania. Ms. Ross had the other parties introduce themselves. Mr. Mike Barker, chief legal counsel for the Unified Police Department introduced himself. Mr. Rick Fletcher, supervisor for the records division of the Unified Police Department, introduced himself. Ms. Ross outlined the procedures for the hearing.

Opening statement – petitioner

Mr. Danysh said he represented the S.A.F.E. project. The project's mission is to expose the harmful effects of anti-depressants and their ability to cause suicidal and homicidal behavior in some patients. He asked the Committee to overrule the Unified Police Department in its denial of the GRAMA request for crime scene photographs from the case of Leonard Gall, who in 2001 killed his mother while being treated

with the antidepressants Paxil and Zyprexa. The records were requested to help in the publication of a book about the cases of anti-depressant induced homicide. He said the records in question were not private pursuant to GRAMA and, even if they are private, were disclosable pursuant to UCA 63G-2-201 (5)(b)(ii). He asserted that the privacy rights did not extend to the family members of a murder victim.

Opening statement – respondent

Mr. Barker said the surviving family members had a right of privacy with respect to death scene images of their close relatives. Someone the family members do not know has requested photos of the victim lying semi nude in a pool of blood. The photos have never been seen in public. The graphic depictions could open old wounds years after the murder. The department contends that releasing the photos would be a clearly unwarranted invasion of personal privacy. Law enforcement records open to the public include financial statements, policies, contracts, employee salaries, and employee benefits. Information collected about and from people is often personal and sensitive. Susan Gall, a mother of two boys, Leonard and Michael, was a victim of a horrible crime. On December 14, 2001, Leonard hacked his mother to death with a roofing hammer and slit her throat with a carving knife. She lay dead in her own blood until her son, Michael, arrived at her home, noticed her car was gone, and the bloodied roofing hammer and knife were in a bathroom sink. Michael alerted police who arrived and discovered Susan's body, her face hacked and her throat slit. Michael Gall's life was permanently changed. Photos of his mother, if released, could be sent across country to a total stranger. He has never seen the photos. The request opened deep wounds and release of the records would be a clearly unwarranted invasion of personal privacy.

Testimony – petitioner

Mr. Danysh said the records were denied by the police department based on the clearly unwarranted invasion of personal privacy. The invasion of privacy is claimed to extend beyond the victim of the crime, Susan Gall, to include her family. Neither Utah case law nor GRAMA statute supports the argument that the privacy extends to a victim's family. Instead the Federal Freedom of Information Act is cited. S.A.F.E. project disagreed with the argument. GRAMA, he said, does not extend privacy rights to those on which the records did not contain data. In order to be classified as a private record, the record has to contain data on individuals for whom the disclosure would constitute a clearly unwarranted invasion of personal privacy. The photos requested do not contain data on Mrs. Gall's family. The only exceptions were the photos of Leonard Gall. The only privacy rights that should be weighed against public disclosure are the photos of the deceased, Mrs. Gall. The question was what level of privacy a person retains after death. UPD had broken the 545 photographs into four groups:

1. Crime scene photographs of the exterior and interior of the victim's home: these photos, he said, fell short of constituting a clearly unwarranted invasion of personal privacy and should be disclosed.
2. Photos of the victim at the crime scene: pursuant to GRAMA, the personal privacy at stake is that of Mrs. Gall. Since the photos contain data on the victim

exclusively, they do not constitute a clearly unwarranted invasion of personal privacy based on the fact she is deceased. Interests favoring access outweigh the interests favoring restriction pursuant to UCA 63G-2-201(5)(b)(ii).

The records would serve the purposes of public safety and consumer protection for purposes of the book.

3. Photos taken by the University of Nevada, Reno, Police Department of Leonard Gall: the group of photos contained images of Mr. Gall fully nude and no evidentiary value existed in their release. The remaining photos of Mr. Gall did not qualify as private because of Mr. Gall's criminal behavior.
4. Photos taken during autopsy: no evidentiary value existed in these photos and they were excluded from the request.

The purpose of the projected book is to save lives. The Gall family's experience could help save lives. Public disclosure in the case outweighs encroachment on the family's desire for privacy. Inclusion of the experience in the book without reviewing photographs made it insufficient to describe the facts surrounding Leonard Gall's anti-depressant induced violence. Unified Police Department's argument against disclosure seemed to be the violence of the crime, but the violence indicated the danger of the drugs. A 2011 data brief from the national center for health statistics reported approximately 1 in 10 or 11% of Americans age 12 and older took anti-depressant medication. The risk of anti-depressant induced violence is recognized by the FDA and medical professionals. Currently the FDA mandates each anti-depressant carry a warning on the drugs potential to cause thoughts about suicide or dying; attempts to commit suicide; acting aggressive, angry, or violent; or other changes in mood and behavior. The risk is real but largely unknown. Mr. Danysh asked the Committee to consider whether any of the testimony had caused the members to contemplate the safety of anti-depressants. If so, he said, a book on the subject would be much more impactful and impressive. He asked that the Committee to grant access to the requested photographs. Mr. Danysh was asked about the confession by Leonard Gall he had requested. He said he had spoken with Mr. Barker about audio recordings that may be available. He said he did want the recordings.

Testimony – respondent

Mr. Fletcher was sworn as a witness. He said the recorded confessions were not listed in the property evidence list along with the police report. He did not see a problem with duplicating them and providing them to Mr. Danysh when they were found. Detective Park from the Reno, Nevada, Police Department was present at the hearing. He had said to Mr. Fletcher that the quality of the records was so poor they could not be transcribed. Mr. Barker said he had the records available in case the Committee wanted to do an in camera review. He said Mr. Danysh was correct in saying that no case law in the state of Utah spoke to the issue of privacy for surviving family members of a homicide victim. Case law from the United States Supreme Court and from the Tenth Circuit Court had been provided to the Committee to support the denial. Other courts around the country have found that the right of privacy extends to close family members of a homicide victim. Mr. Barker said Unified Police had contacted Michael Gall and Ted Jenkins, Susan Gall's brother, about the request, Mr. Barker asked that Nubia Pena, victims advocate, to be sworn as a witness. Ms. Ross

swore Ms. Pena as a witness. She said her job is to ensure that victims and survivors of abuse and victims of all crimes receive the services and resources they need to move forward, seek therapy, connect with community partners, and get on with their lives. She said she had spoken with Michael Gall. He refused to attend the hearing because the murder had been so difficult for himself and his family. He asked not to have to relive the experience. He also said he did not think it appropriate for anyone to use the photographs of the tragedy of his family. He asked that the photographs not be released to anyone. He has had no involvement with the media nor has he spoken about the case with anyone. He left two messages for Mr. Barker saying he did not want the photographs released. Ms. Pena said she had worked with Vicky Walker, whose husband was shot at the Trolley Square shooting incident. Ms. Walker told Ms. Pena about the day she received news of her husband's murder. She immediately prayed that whoever had contact with her husband's body would treat it with respect. Ms. Walker works with crime victims and speaks to groups. She emphasized that victims want the memories of loved ones left intact. Detective Todd Park was sworn as a witness. He testified that he had investigated over one hundred homicides in the course of his career. Michael Gall did not see his mother on the day she was discovered. Upon seeing the roofing hatchet and knife with blood in the bathroom sink, he went outside and called 9-1-1. At no time did Michael go into the bedroom. Detective Park described the murder scene and said it was one of the worst he had seen in his career. It was the only time a roofing hatchet had been used as the murder weapon. Susan Gall had been hacked in the head many times. There was blood on the ceiling, walls, and down the hallway. It was a very brutal scene. Mr. Park said he had spoken once to Michael Gall and knew that Michael did not want the photos released. Mr. Barker said the investigative report told the story fully and described the wounds to Mrs. Gall's body in detail.

Closing – petitioner

Mr. Danysh said the Freedom of Information Act was not similar to GRAMA. GRAMA has no citation that extended the right of privacy beyond the person whose data was in the record. He said the photographs would not be published but used to research the facts of the case. In 1996, when he was 18 years old, he had killed his father while having a violent reaction to Prozac. His family went through what the Gall family had gone through and had also wanted its privacy. The only thing the family wanted more, he said, was to prevent future tragedies. He said that while he respected the Gall family, he had respect for future victims who could be saved if the book were published. The records request was not intended to cause more pain to the Gall family or to sensationalize the case. The fact that anti-depressant cases are violent is the reason for the book.

Closing –respondent

Mr. Barker said he understood Mr. Danysh's thesis to be that anti-depressants could cause violent behavior in certain individuals. Either over prescribing or over use had a detrimental effect on society. The photos do not provide empirical evidence of the connection. The thesis is being debated in the medical and pharmaceutical communities. The reports clearly indicate that the murder was very violent. Any

differences or discrepancies the photos could provide would not prove or disprove Mr. Danysh's thesis. The records provided to him were not prepared to support a thesis, but to document a crime. If there were a public benefit to releasing the photos, why should the Gall family bear all the cost? One way for Mr. Danysh to obtain information is to contact the fourteen families he had documented and ask for their support in providing records. While there is no GRAMA statute that explicitly states the position of the Unified Police Department with regard to privacy for the victim's family, a broader interpretation can be read into the law for the privacy rights of those impacted or affected by the subject of the record. Release of the records would have a devastating effect on Michael Gall and his family. Anything that could be gleaned by Mr. Danysh in his research clearly would be outweighed by the damage to the family that release of the photos would cause. It would be a clearly unwarranted invasion of their privacy. Mr. Barker clarified that the only photos that should not be released were the crime scene photos of the inside of the home and the nude photos of Leonard Gall.

Deliberation

Ms. Ross opened the discussion. The audio recordings of the confession were not produced for the petitioner. Unified Police had told Mr. Danysh and confirmed to the Committee they were part of the physical evidence gathered by the Unified Police. A search was being conducted for the tapes. Unified Police would provide them when they were located. Mr. Rowley said the recordings had not been created by the Unified Police. The Nevada law enforcement agency had jurisdiction over them and they should not be ordered released by the Committee. Mr. Barker said the tapes were part of the physical evidence collected in the investigation of the murder and a search would be made for them. Mr. Barker said he found no harm in releasing the tapes to Mr. Danysh. Ms. Ross said to employ the weighing provision the Committee would have to review the photographs. Mr. Rowley related a time when he had had to review and document a murder scene over twenty years ago. The Sharon Sant murder case was a particularly brutal one as well. Photographs of a dismembered body haunted him for years. He had to review photographs in order to survey the area where the murder had been committed. The nightmares engendered by the photographs caused him to not want to experience a review of the Susan Gall photographs. As an outsider he had been deeply affected. He could not imagine the impact the release of the photographs of Susan Gall would have on Michael Gall. Mr. Daniels said the Committee should first decide if the crime scene photographs were be private. The weighing provision would then be used if the Committee decided to overturn that decision and release them. Mr. Hemphill said if there were a public interest in release of the records, it could be served by the 67-page report the petitioner had been given. Mr. Rowley said he supported the need for public awareness of the dangers of some of the anti-depressant drugs, but no medical conclusions had resulted. He made a motion dividing the photographs into groups. Group 1: photographs of the exterior of the home were public. Photographs of the interior of the home were private.

Group 2: photographs of the crime scene were entirely private.

Group 3: photographs of Leonard Gall taken by the University of Nevada Police Department were public with the exclusion of the nude photos of Leonard Gall. Group 4: photographs of the autopsy were excluded under other statutory provisions. Ms. Smith-Mansfield seconded the motion. Mr. Danysh had withdrawn the request for photographs of the autopsy. The motion applied to the other three groups of photographs. A vote was taken. Mr. Daniels, Mr. Hemphill, Mr. Misner, Ms. Ross, Mr. Rowley, Ms. Smith-Mansfield, and Mr. Whittaker voted in favor of the motion. The motion passed unanimously. Ms. Ross thanked the parties. She said the order would be sent within seven business days. Mr. Barker said to Mr. Danysh that a list of the many photographs available would be sent to him so that he could choose which ones he wanted according to what he was willing to pay for the copies.

Approval of the minutes

Ms. Smith-Mansfield said there should be reference in the minutes to the discussion of the ombudsman position. Only the proposed outline of duties was attached. Mr. Hemphill made two corrections. With the inclusion of the suggested changes he made a motion that the minutes be approved. Mr. Whittaker seconded the motion. A vote was taken. Mr. Daniels, Mr. Hemphill, Mr. Misner, Ms. Ross, Mr. Rowley, Ms. Smith-Mansfield, and Mr. Whittaker voted in favor of the motion. The motion passed unanimously.

Ombudsman report

Rosemary Cundiff, the newly appointed ombudsman, reported that she had received congratulations from acquaintances and friends. She said she had received a number of questions as well. Some of the questions she had forwarded to the research center. She said she was involved in several issues that possibly could be resolved before coming to the State Records Committee. She had held one mediation and another was scheduled. She said that to do the job appropriately would take much of her work time.

Enforcement of settlement agreements

Ms. Ross asked if the rule had been drafted. Mr. Lombard said it would be available for the next month's meeting.

Log of denied records

Mr. Tonks said the Committee members should have a copy of the draft. The Committee had not approved it yet.

SRC appeals received

Ms. Mumford said Gordon Thomas had questioned testimonies given in his hearing and had requested a transcript of the hearing. He was sent a draft of the minutes of the meeting. A copy of the other appeals is attached. She said the ombudsman is helping to resolve issues. The only ones to be scheduled for hearings were complete requests that Rosemary had screened. The addition of an ombudsman is extremely helpful. No hearings are scheduled yet for the next meeting.

Cases in District Court

Mr. Tonks gave a report. He said a case in Appellate Court involves Reginald Williams. He had made an appeal to the State Records Committee but it was incomplete. He appealed it as a denial with the district court without naming the State Records Committee as a party. The District Court dismissed it because the appeal came after 30 days and did not name the State Records Committee. The Court of Appeals took the case and made a decision. The case is number 2011 App 280 or 262 Pacific Third 12-11. The court affirmed the District Court's order of dismissal. Mr. Gallup in Gallup vs. Department of Corrections appealed to the district court but did not notify Corrections or the State Records Committee with a copy of the complaint. A show cause hearing was scheduled for May 23, 2012. Mr. Tonks will take a copy of the Reginald Williams decision and expected that the case would be thrown out. The other cases are documented on the attached report.

Other business

Mr. Daniels suggested that all the documents required for the hearings be posted in a single place for easier access. He said he always waited until the last day to make sure which hearings were on the agenda before reading them. Finding the documents through earlier emails had been a problem. Mr. Whittaker recommended the use of Google docs, Google drive, or Drop box. Ms. Smith-Mansfield said the state offered a secure portal where the documents could be shared. Ms. Mumford said nominations were needed for the positions of private records manager representative and private citizen representative. She would send the members a link to the application page on the Governor's website. Ms. Smith-Mansfield said the candidates for the positions are nominated by the Governor and approved by the senate. The Governor's office asks for recommendations from the Archives. Only two terms were traditional. The current members need to serve until they are replaced.

Adjournment

Mr. Hemphill made a motion to adjourn. The meeting was adjourned by acclamation at 11:22 p.m. The next meeting is scheduled for Friday, June 15, 2012.

STATE RECORDS COMMITTEE
May 10, 2012
State Archives Building, Courtyard Meeting Room
346 S. Rio Grande (450 West)
Salt Lake City

AGENDA
Call to Order 9:30 a.m.

Hearing: Kurt Danysh vs. Unified Police of Greater Salt Lake.
Mr. Danysh is appealing the partial denial of records from the Unified Police. He has been provided records of the investigation of a murder and is appealing the denial of 1. A transcription of a phone call confession and 2. Photographs pertaining to the case of Leonard Preston Gall.

1. **Approval of April 12, 2012 SRC Minutes, action item**
2. **Legislative changes and the role of SRC Ombudsman, discussion and action item**
3. **Enforcement of settlement agreements, action item**
4. **Log of denied records, action item**
5. **SRC appeals received**
6. **Cases in District Court**
7. **Other Business**

ADJOURNMENT

Next meeting scheduled for Friday, June 15, 2012, at 9:30 a.m.

**SRC Appeals Received
May 2012**

1. **Gordon Thomas vs. Public Safety.** Mr. Thomas requested copies of a decision 96-03 Whiteman vs. Corrections and a transcript of the April 12, 2012 SRC meeting. A draft of the minutes and the requested decision was sent to him.
2. **Bonnie Bourgeois vs. Davis School District.** Ms. Bourgeois requested and received some records regarding her reassignment. She believes more are available and have been withheld. Hearing scheduled prematurely for April 12, 2012. Multiple added requests. Appeal still pending.
3. **Michael Petullo vs. Cedar Mountain Fire Protection District Hearing scheduled for April 12, 2012.** Ombudsman issue, Resolved
4. **Kurt M. Danysh, S.A.V.E. (Stop Antidepressant Violence from Escalating) Project, vs. Unified Police Department SLC.** Mr. Danysh requested and received the complete incident report of Leonard Preston Gall's murder of his mother. Not released were crime scene photographs and certain documents mentioned in the report. Hearing scheduled for April 12, 2012, postponed. Hearing May 10, 2012.
5. **Paul Kimball vs. District Court.** Mr. Kimball wanted help obtaining a transcript of his trial. He is serving a life sentence and is indigent. A letter was sent. No jurisdiction
6. **Ken Cromar vs. City of Cedar Hills.** Ombudsman issue, not complete as an appeal.
7. **Brian Maffly, Tribune vs. University of Utah.** Mr. Maffly submitted an appeal to the SRC and to the Ombudsman. He is appealing the denial of information redacted from a Materials Manufacturing Agreement from a contract the university has with a Florida manufacturing firm that has submitted a business confidentiality claim.

May 2012 Records Committee Case Updates

District Court Cases

Gallup v. Dept. of Corrections, 3rd District, Salt Lake County, Case No. 110918330, Judge Maughan, filed October 11, 2011.

Current Disposition: Appeal filed by Jeffrey Gallup, but Department of Corrections and the State Records Committee were not served with a complaint. Court sua sponte scheduled a Show Cause hearing to be held on May 23, 2012.

Attorney General Office. v. Schroeder, 3rd District, Salt Lake County, Case No. 110917733, Judge Hansen, filed Sept. 21, 2011; Case No. 110917703, Judge Medley, filed Sept. 20, 2011.

Current Disposition: Oral argument is set for July 9, 2012, 9:00 AM for cross motions for summary judgment filed by the Attorney General Office and Schroeder.

Salt Lake City v. Jordan River Restoration Network, 3rd Judicial District, Salt Lake County, Case No. 100910873, Judge Himonas, Filed June 18, 2010.

Current Disposition: Only pleading filed during the past six months was a notice of appearance of new counsel on behalf of Jordan River.

Note: A notice of intent to appeal was filed with the State Records Committee on May 3, 2012 by the Department of Administrative Services against Alma Wilson. However, there is no record of an appeal being filed with district court as of May 9, 2012.