

SRC APPROVED

Date December 13, 2012
SLM

State Records Committee Meeting

Division of Archives, Courtyard Meeting Room

November 15, 2012

Salt Lake City, Utah

Members Present: Lex Hemphill, Media Representative
Doug Misner, History Representative
Holly Richardson, Citizen Representative
Betsy Ross, Chair, Auditor's Designee
Patricia Smith-Mansfield, Governor's Designee

Legal Counsel: Paul Tonks, Attorney General's Office

Executive Secretary: Susan Mumford, Utah State Archives

Others Attending: Brooke Adams, *Salt Lake Tribune*
Matt Anderson, Utah Attorney General's Office
Lee Davidson, *Salt Lake Tribune*
Isaac Holyoak, Alliance for a Better Utah
Michelle Larson, Utah Transit Authority
Maryann Martindale, Alliance for a Better Utah
Donald Meyers, *Salt Lake Tribune*
Amanda Montague, Utah Attorney General's Office
David Mull, Attorney for UTA
Lisa Neilson, Utah Department of Corrections
Lorianne Ouder Kirk, Archives staff
Bill Oram, *Salt Lake Tribune*
Greg Peay, Utah Department of Corrections
Jason Petersen, Utah Transit Authority
Gina Proctor, Utah Department of Corrections
Michael Rabisch, Utah Highway Patrol
Sharel Reber, Utah Attorney General's Office
Tony Semerad, *Salt Lake Tribune*
Mindy Spring, Archives staff

Call to order: 9:30 a.m.

Hearing – Michael Luesse vs. the Utah Department of Corrections

Betsy Ross, Chair of the committee, welcomed the participants for the first hearing. Mr. Luesse was contacted by telephone at the prison. Ms. Ross welcomed Ms. Holly Richardson as a new member of the committee. Matt Anderson represented the Department of Corrections.

Opening statement – petitioner

Mr. Luesse said the Department of Corrections had instituted a policy restricting indigent inmates to a maximum of one hundred pages of GRAMA request copies. A series of requests that were submitted in early May had been denied based on the policy being put into effect in June. He said it was a substantial burden to indigent inmates who were dependent on the department to provide public records.

Opening statement– respondent

Matt Anderson from the Attorney General's Office introduced himself. He represented the Utah Department of Corrections (UDC). He said GRAMA allowed an agency to charge a reasonable fee for providing a record in response to a GRAMA request. GRAMA also encouraged agencies to waive the fee when a requester is impecunious and where the record requested directly implicated his legal rights. The Department of Corrections receives a high number of records requests from inmates – an average of one hundred requests a week. This does not include requests from the media or from offenders who were no longer incarcerated. A substantial number of the requests were from inmates who are impecunious. These inmates seek fee waivers for all their requests. Until recently, records were provided free of charge. A handful of inmates made requests for a large number of records. Employee time and materials were expended to provide inmates with records at taxpayer expense. The department instituted a policy to provide oversight so that automatic fee waivers are not granted. If an inmate had received over one hundred pages in the calendar year, the request was denied. It could be appealed to the executive director's designee. Considerations were made for the circumstances of the particular inmate, and fee waivers were often granted. So far in 2012, Mr. Luesse had made 98 records requests. He had already received 350 pages or more without charge. Three records requests were at issue for the day's hearing. The information involved in the three requests was either available to Mr. Luesse in another format, or did not directly implicate his legal rights. The department requested that the committee uphold the fee waiver denial in the case.

Petitioner – testimony

Mr. Luesse said he had received copies of pages from eight different policy manuals. The manuals had included: a mission statement, guides to construction of the manual system, the staff code of conduct, the exposure control plan, incident reporting, DNA specimen collecting, a description of bureau function, health care services at community correctional centers, and business contracts for the contract attorneys. He said the requests were not trivial. Of 345 manuals that the department had, all of the manuals implicated inmates' rights and should be made available. Some were in the inmates' library, but others were not. The policy manuals he had received totaled 275 pages. The Incident reporting manual was requested because Mr. Luesse suspected that incidents were not being adequately reported by staff. The DNA specimen collecting manual was requested because there was a fee associated with DNA collecting. Mr. Luesse said he automatically qualified for a fee waiver for that service. All the records requests affected his rights. The AB series of policy manuals that he had requested dealt with the internal structure of the Department of Corrections. The documents were all public and should be readily available. The new policy placed a substantial burden on indigent inmates. His

requests had been submitted in May. An agency should provide the request within ten days of receiving a request. The policy did not go into effect until June.

Respondent – testimony

Mr. Anderson asked to call Lisa Nielson as a witness. She was sworn as a witness. She had served for five years in the department and currently supervised a staff of eight who handled housing for incoming and outgoing inmates as well as all phone calls and GRAMA requests. She said each GRAMA request was logged as it was received and either forwarded to a division that maintained the records or processed. Each request was reviewed for accuracy. The records requested were classified and redacted if necessary and reviewed before the fee issue was addressed. There were 6,917 inmates housed at the prison. There were 16 inmates that had exceeded the limit of copies for indigent inmates. Mr. Luesse had made 98 requests for records in 2012. The C-notes he requested were available to him through his caseworker. Gina Proctor was sworn as a witness for UDC. She said she had been employed by UDC for seven and a half years and as the records manager for four years. She handled all requests for records from the public and inmates and trained all the other records officers. She was the executive director's designee to deal with appeals. Mr. Haddon sent appeals to her to research the history of the request. He then made a decision about the appeal. She said appeals for records when an inmate had exceeded the one hundred page limit were submitted to Mr. Haddon. He could review the records if they were easily gathered and make a decision to release the records if legal rights were implicated. Some of the appeals had been approved and records released under those circumstances. Phone contact with Mr. Luesse was lost.

Break: 10:16 until 10:30

Respondent – testimony – continued

Phone contact with Mr. Luesse was reconnected. Ms. Proctor said that a former manual (FM109) had been replaced by the current manual ACR 28. She said each housing block had access to the current manual for making GRAMA requests. The housing sergeant in each block could arrange for access. The AB manuals that Mr. Luesse had requested contained information about the organizational structure of the prison, its divisions, and an organizational chart. Another manual contained general information for Adult Probation and Parole for running half-way houses. The manuals Mr. Luesse had requested were administrative manuals for support staff. While some of the policies impacted inmates, others had no bearing on an inmate's life. The manuals available in the inmates' library included manuals dealing with grievance policies, property issues, communications, security, work policies, and any policy that would affect inmates. Mr. Anderson said the new policy was a way for the director's designee to handle the large amount of requests and appeals received from a few prisoners.

Closing – petitioner

Mr. Luesse said the policy was not in effect when he made his request. He said if he could not be provided with a hard copy of the records, he should be able to view them. He said there was no provision for inmates to view manuals that were not included in the inmates' reference library. He said the financial savings to the department was negligible

since the policy was implemented. His request was not responded to until after the policy was implemented. He said it was an attempt by the department to avoid having to deal with access to records.

Closing – respondent

Mr. Anderson said that inmates were denied fee waivers before the new policy. The limitation of one hundred pages was a way to assist staff as they responded to and processed hundreds of requests. When a fee waiver was denied under this policy, an inmate could still appeal to the executive director for consideration of the request. Mr. Luesse could review the C-notes he had requested with his case worker. The outdated GRAMA policy manual had been replaced and was available to Mr. Luesse in the library. The AB policy manuals dealt with the organizational structure of the department and did not affect Mr. Luesse's legal rights. Mr. Anderson said prisoners give up luxuries when they are incarcerated. He asked the committee to uphold the fee waiver denial for Mr. Luesse's three requests.

Deliberation

Ms. Smith-Mansfield referred to a former committee decision: 97-01, Gregory M. Bedard vs. Utah Department of Corrections. In that case the committee had upheld the denial of a fee waiver to an indigent inmate but had granted access to prison manuals. She made a motion to uphold the fee waiver denial, but said that some access must be provided to public records pursuant to UCA 63G-2-201(1). She said prison officials should find some way to provide access. Mr. Misner seconded the motion. A vote was taken. Mr. Hemphill, Mr. Misner, Ms. Richardson, Ms. Ross and Ms. Smith-Mansfield voted in favor of the motion. The motion passed unanimously.

11:17 a.m.

Hearing – Janelle Stecklein, *Salt Lake Tribune* vs. Utah Transit Authority

Hearing – Janelle Stecklein vs. Utah Transit Authority (UTA)

Ms. Ross explained the procedures for the hearing to the parties. She asked them to introduce themselves. Ms. Ross said a pre-hearing conference had been held. There had been an attempt to resolve the issues but a solution had not been reached.

Opening – petitioner

Ms. Janelle Stecklein introduced herself. She introduced Tony Semerad who accompanied her at the hearing. She said the *Tribune* had requested access to crime data including the verified crimes investigated by UTA. A third-party contractor paid for with taxpayer money maintained the database. The *Tribune* had requested similar data from 16 different agencies in Salt Lake County. Full compliance was received from 14 of the agencies. The Utah Highway Patrol was in the process of updating its database and the data was not easily available. The GRAMA request in that instance was waived for one year until the data can be provided in the requested format. Similar cooperation had not been forthcoming from UTA. The software provider, FatPot, was contacted with the idea that Tony Semerad might be able to work directly with Captain Jason Peterson and FatPot to retrieve the requested records. UTA said the *Tribune* had no right to directly

inspect the crime records. Mr. Semerad said the data they had requested was public information. They had asked for the date, time of day, location, and a description of the crime. *The Tribune* was investigating crime information for 2011 and wanted to know where and what types of crime were occurring in Salt Lake County.

Opening statement – respondent

David Moll, an attorney with the firm of Snow Christensen and Martineau, introduced himself as representing UTA. Michelle Larson, GRAMA officer for UTA, and Captain Jason Peterson of the UTA police force had been asked to accompany him. Captain Peterson was familiar with the technical elements that had made it difficult to produce the requested records. Mr. Moll said that UTA's position was that UTA was eager to provide the requested data. The data requested is considered public, but retrieving the data with the geographic coordinates and in the format *The Tribune* had requested would require work. Fees would be associated with the work and *The Tribune* had asked for a fee waiver. The fees were a larger issue. An estimated cost for the work would be \$5,000 to \$10,000.

Testimony – petitioner

Mr. Semerad said the route to a hearing before the State Records Committee was not achieved in a conventional manner. UTA had created its own way of handling appeals. The estimate of a cost of \$5,000 to \$10,000 had come up late in the process. Ms. Stecklein said that *The Tribune* had submitted a wide array of requests to various agencies. Some of the agencies had the same provider for records management: FatPot. FatPot had agreed to provide the data to the City of West Jordan for a nominal charge. The total of fees paid by *The Tribune* to the 14 agencies was \$77.50. Draper Police Department worked with FatPot to produce a report. The information was provided by creating a query to extract the four data elements. Bluffdale City and Saratoga Springs were also involved in the crime mapping project and had provided the information. Mr. Semerad said that an offer by UTA to let *The Tribune* review initial contact reports was later withdrawn. UTA had locked its data with a third party who was not subject to GRAMA. *The Tribune* had not asked for a fee waiver and was willing to pay for access to the records. They objected to paying \$6,700 for paper copies of initial contact reports. The fees were hindering access to public records. Release of the records was clearly in the public interest. The process of requesting the records and appealing the denials had taken five months. Mr. Semerad said UTA had claimed that going to mediation suspended the clock for their response. All law enforcement agencies were required to report crime statistics to the federal government. The standards for reporting are the same across the country. The records should be easily available through UTA's database. Aggregate numbers of total crimes had been supplied to the *Tribune* as a response to the initial GRAMA request.

Testimony – respondent

Mr. Mull said that UTA had a crime enforcement division. He asked that Captain Peterson be sworn as a witness. Captain Peterson was sworn as a witness. He said he had been a patrol captain for UTA for twelve years. He was familiar with the technical aspects of representing crime statistics with reports and charts. The use of FatPot as a

provider for records management began in 2009. Before that UTA had its own in-house program and tracked crime by separate reporting in the various cities along UTA's route. FatPot had promised a statistical report and a web analytical feature that would be able to pull up crime data. UTA had upgraded its service with FatPot and still had no web reporting feature. The reports did not deliver the geographic data that had been requested. Version three of the FatPot software was being installed and the provider had promised better access to the statistical data. The UTA police force was responsible for only 25 percent of the crime data. The other reports were provided by individual cities along UTA's routes. Each municipality had different enforcement and record keeping procedures. Michelle Larson was sworn as a witness. She said that the verified crime data search currently did not provide the date, time, and location information. Sometimes individual reports went well beyond the initial contact information and included private or protected information, dates of birth, or information protected by the Health Insurance Portability and Accountability Act (HIPAA). To provide the requested data at the time of the hearing, she said, there would be 4,000 cases to print out and to redact.

Closing – petitioner

Mr. Semerad said the requested information was compiled while UTA was conducting public business. The difficulty of access was created through UTA's management of the records in their care. The agency was attempting to pass on a legal responsibility to a third party. The GRAMA request had exposed the inability of UTA to access records. Title 53 outlined the procedure for accessing the Public Safety Code. There was also a provision in state law for access to the records for research purposes.

Closing – respondent

Mr. Mull said that the issue was a technical one and a cost issue. The possibility of a *Tribune* employee being cleared to examine the crime database had not been brought up until recently. An agency can assess a fee for the production of records. *The Tribune* made a GRAMA request. *The Tribune* is a profit-making enterprise. Public records are produced in response to a request. UTA is not throwing up legal roadblocks. It was not UTA's responsibility to coach someone in the legal way to access criminal records. The legal department at UTA and the Bureau of Criminal Identification had weighed in on the possibility of having a *Tribune* employee access the database. It was not seen as a viable option. UTA is obligated to segregate the information in records that may and may not be released to the public. Case law suggests that the requestor pays for the cost of segregating information from a database. The vendor had not provided the desired service, but UTA had not had a reason to request the information in the format that was desired by the *Tribune*.

Deliberation

Ms. Ross said there seemed to have been an effective denial of the records because of the cost. Ms. Smith-Mansfield said that producing the initial contact reports should not be an additional burden for the agency. The data was needed by the agency and was required to be kept by the division. Access to the data was a requirement of government. Mr. Hemphill made a motion that pursuant to UCA 63G-2-201(1)(11) the agency could not use the physical form of the record to deny access and should provide for inspection of

the records free of charge. Ms. Richardson seconded the motion. A vote was taken. Ms. Richardson, Ms. Ross, and Mr. Hemphill voted in favor of the motion. Ms. Smith-Mansfield and Mr. Misner voted against the motion. The motion passed three to two. Ms. Ross thanked the parties and said an order would be sent within seven working days.

Approval of minutes for October 11, 2012

There were several corrections to the minutes. Ms. Mumford said she would send the members a corrected version of the October minutes and the approval could take place at next month's meeting.

SRC Appeals received

See attached report.

District Court updates

See attached report.

Adjournment 3:23 p.m.

Next meeting December 13, 2012

STATE RECORDS COMMITTEE
November 15, 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: Michael Luesse vs. Utah Department of Corrections.
Mr. Luesse is appealing the denial of his request for C-notes and other records. Corrections policy is to limit indigent inmates to 100 pages a year of copies without charge.

Hearing: Julie Stecklein, *Salt Lake Tribune* vs. Utah Transit Authority. The Tribune is appealing the denial of the location and type of crime on UTA facilities and property.

Other Business

- 1. Approval of October 11, SRC Minutes, action item**
- 2. SRC appeals received**
- 3. Cases in District Court**
- 4. Other Business**

ADJOURNMENT

Next meeting scheduled for Thursday, December 13, 2012, at 9:30 a.m.

**SRC Appeals Received
November 2012**

1. **Julie Stecklein, *Tribune vs. UTA***. Rescheduled for November. Request for crime database information.
2. **Michael Luesse vs. UDC**. Scheduled for November Request for C-notes, 100 page limits for fee waivers for indigent inmates.
3. **Cimaron Neugebauer, *Tribune vs. Career Service Review Board***. Discipline of a DPS Officer. Resolved
4. **Mark Tolman, KSL TV vs. Wasatch County**. Records of the arrest of Petersen. Resolved.
5. **Steven Sanchez vs. Tax Commission**. Incomplete
6. **Karianne Lisonbee vs. Syracuse City Mayor**. Ms. Lisonbee, a Syracuse City Council member, requested and was denied records of all applicants for position of Police Chief. New request. Schedule for December
7. **Don Stryker vs. University of Utah**. Fee denial issue. Scheduled for December.
8. **Robert Baker vs. UDC**. Request for TMF06, a technical medical procedural manual. Scheduled for December.
9. **Clayton Simms vs. Utah Attorney General's Office**. Appeal of denial of records regarding Ben Murray, former Vernal Police Detective. Schedule for December.

November 2012 Records Committee Case Updates

District Court Cases

Utah Dept. of Workforce Services v. Guberev, 3rd District, Salt Lake County, Case No. 120907203, Judge Faust, filed October 23, 2012.

Current Disposition: Petition for review filed by DWS. Answer to be filed on behalf of the State Records Committee.

Salt Lake City Corp. v. Mark Haik, 3rd District, Salt Lake County, Case No. 120905667, Judge Kelly, filed August 21, 2012.

Current Disposition: Complaint filed by Salt Lake City Corp., answer and counterclaim filed by Haik on September 6, 2012. Will be filing a motion to dismiss the Committee as a party (not an appeal from a decision by the Committee).

Danysh v. Unified Police Dept., 3rd District, Salt Lake County, Case No. 120904327, Judge Quinn, filed June 22, 2012.

Current Disposition: October 9, 2012, Mr. Danysh filed a "Petition to Withdraw Petition" with the Court claiming that since the Court is unable to waive his court filing fee pursuant to Utah Code, he needs to withdraw his petition.

Utah Dept. of Human Services v. Wilson, 3rd District, Salt Lake County, Case No. , Judge Kelly, filed May 10, 2012.

Current Disposition: Complaint filed by Human Services, answers filed by the Committee and Wilson. Answer filed by Wilson raised issues outside of the appeal filed by Human Services. June 5, 2012, Human Services filed a "Motion to Strike, or in the Alternative, for More Definite Statement." Court held that Wilson's answer did not constitute a counterclaim and therefore, there was no need to grant the motion to strike.

Attorney General Office. v. Schroeder, 3rd District, Salt Lake County, Case No. 110917703, Judge Kelly, filed Sept. 20, 2011.

Current Disposition: Trial held on October 19, 2012. Based upon evidence presented, including affidavit submitted by AG office employee, Court found that majority of records were protected under the attorney client privilege or the Utah Constitutional right to have bank records obtained by the government to remain private. Written decision to be approved of by the Court at a future time after submission by the parties.

Salt Lake City v. Jordan River Restoration Network, 3rd Judicial District, Salt Lake County, Case No. 100910873, Judge Stone, 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.