

## State Records Committee Meeting

Date: February 16, 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

### Committee Members Absent:

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:

Alisa Larsen

Corey Coleman

Mohamed Abdullahi, Logan City

Jann Farris

Kevin Olsen

Mark Barnes

Rosemary Cundiff, Archives

Dennis Judd, Attorney, Vernal City

Roxanne Behunin, Vernal City

Alison Coleman

Blaine Hansen

Brady Eames

Amanda Drito, Utah State University

Mia McKinney, Utah State University

Made Olsen

Kolbie Peterson, Salt Lake Tribune  
Tyler Dever, Utah State University  
Courtney Tanner, Salt Lake Tribune  
Scott Young, VECC  
Burke Nazer, Utah State University  
Staci Wollam, VECC  
Robert Harrington  
Bryan Baggaley  
MaryAlice Baggaley  
Ben Horsley, Granite School District  
Dani Cepernich, Attorney for President Cockett  
Chris Bramwell  
Micah Vorwaller  
Anna McGrath, State Treasurer  
Chris Pieper, Assistant Attorney General, Treasurer  
Burke Naiser, Assistant Attorney General, Utah System of Higher Education (USHE)  
Danny , Attorney

**Agenda:**

- o Five Hearings Scheduled
  - o Jeff Hunt (for Kolbie Peterson, The Salt Lake Tribune) v. Salt Lake Valley Emergency Communications Center (VECC) (2022-208)
  - o Courtney Tanner (The Salt Lake Tribune) v. Utah State University (2022-229)
  - o Bryan Baggaley v. Granite School District (2022-160. Continuance)
  - o Corey Coleman v. Vernal City (2022-179)
  - o Brady Eames v. Utah State Treasurer (2022-182, 2022-183, 2022-185, 2022-189, 2022-228)
  
- o Business
  - 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 called the meeting to order.

**1. Jeff Hunt (for Kolbie Peterson, The Salt Lake Tribune) v. Salt Lake Valley Emergency Communications Center (VECC) (2022-208)**

The parties stated they reached an agreement and the recording in dispute was provided.

**Motion** to dismiss. Seconded by Ms. Dean.

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

**2. Courtney Tanner (Salt Lake Tribune) v. Utah State University (2022-229)**

Ms. Dubovik recused herself because she works for Utah State University.

**Petitioner Statement:**

Ms. Keiley stated the request was for any emails sent by President Crockett about her possible departure from the University or the school football program. The request was denied because they were sent in a private capacity, which the assistant attorney general affirmed. She stated that GRAMA excludes personal notes and communications but the respondent does not dispute that the emails could be related to the public's business. She stated the denial states they were sent to family members but do not mention the context. She asked the Committee to view the records in camera.

Ms. Keiley stated that the records may relate to President's Crockett's departure so they would not be something she would have created in a personal capacity. She stated that being sent to family does not exempt the content of the email from GRAMA. She asked the Committee to consider the implications that any record sent by a government official to a family member would automatically be exempt. Ms. Keiley stated the emails were sent using a USU email address. She asked the Committee to check if the signature block is used or if there are attachments.

**Respondent statement:**

Mr. Naiser reviewed the statute. He stated the email sent about work can still be done in a personal capacity if it is not about the public's business. He stated that emails that communicate something of a personal impact do not further the public's business. He reviewed the legislative intent of a right to privacy. He asked the Committee to uphold the denial.

**Questions from the Committee:**

The Committee asked if the only emails sent in the four day time frame of the request are of a personal nature. Mr. Naiser stated that was correct. He stated the decision to leave the University was not announced until later, so President Cockett had informed the Utah System of Higher Education (USHE) and her family. A later email was sent to colleagues and coworkers which the requester already has.

**Intervening Party:**

Mr. Cepernich stated that Utah Code 63G-2-403 allows an intervening party when their rights are affected. He stated President Cockett is such an individual. He referenced a previous decision regarding the Salt Lake Tribune and Department of Transportation. He stated President Cockett sent an email to her mother and siblings when her decision was fresh. None of the recipients of the email are employees of the University or the Utah System of Higher Education.. He said the emails were sent as a sister and daughter speaking to her family about a personal decision and the impact it had on her. He stated they are not subject to GRAMA and the appeal should be denied.

**Petitioner Closing Statement:**

Ms. Keiley stated that the content reflects whether the email is personal or not. She stated the respondent does not dispute they relate to the conduct of public business. The request is not for correspondence using a personal email address. She asked the Committee to weigh in favor of public disclosure.

Ms. Tanner stated the emails were sent in the capacity of president of the university because they were sent using the USU email address. She stated the email will show information that there may be other factors involved in the resignation. She stated the content makes the email a record, not the addressees.

Ms. Keiley stated that personal content can be redacted.

**Respondent Closing Statement:**

Mr. Naiser stated that using a state email account does not mean the email is always sent in a professional capacity. He stated the university's policy on email states that all institutional emails must be sent using the USU email, but personal use is permitted.

Mr. Naiser stated that the argument of public interest versus private interest only applies to records. He stated personal correspondence cannot become professional mid email so redactions would not be appropriate. He stated if the Committee determines the emails are

records, then the respondent would like to review them and issue another decision under GRAMA regarding the classification.

**Deliberation:**

**Motion** by Mr. Buchanan to review the records. Seconded by Ms. Dean.

**Vote:** Yea: 5 Nay 0. Mr. Biehler, Mr. Williams, Mr. Buchanan, Ms. Petersen, Ms. Dean voted in favor of the motion.

**Motion** by Ms. Petersen to deny the appeal under Utah Code 63G-2-103(22)(B)(i). After reviewing the records in camera, the emails are not records under GRAMA. Seconded by Ms. Dean.

**Discussion to the motion:**

Ms. Dean stated that the Committee looked at all the petitioner's questions. The Committee feels strongly about transparency. In this case she supports the motion.

The Committee reminded counsel to make sure the order reflects there is an intervening party.

**Vote:** Yea: 5 Nay 0. Mr. Biehler, Mr. Williams, Mr. Buchanan, Ms. Petersen, Ms. Dean voted in favor of the motion.

**Motion** by Ms. Dean to saunter.

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

**3. Bryan Baggaley v. Granite School District (2022-160. Continuance)**

**Petitioner Statement:**

Mr. Baggaley reviewed what was received from the district and what he believes is missing. He stated a lot that they received on the thumb drive is unreadable. He asked the Committee to consider sending a letter to the Governor or a fine. He stated they cannot get redress without the records.

**Respondent Statement:**

Mr. Horsley stated everything has been provided unless the requester can clarify something specific that is missing.

**Questions from the Committee:**

The Committee reviewed the list provided by the requester last time of what they believed had not been provided and asked for clarification from the respondent. Mr. Horsley stated the incident at issue was several semesters ago and the materials from the teacher may not exist anymore. He stated he was not aware until now that links were not working. He stated the class roster is not required to be maintained longer than needed.

The Committee asked if no other records exist apart from what had been provided. Mr. Horsley stated that was correct. He stated that they offered to go back and do an investigation and provided the requester the contact for the district's independent attorney.

**Petitioner Closing:**

Mr. Baggaley stated that the statement from the teacher was falsified as evidenced by the date. He stated they need to see what happened to an email after it was sent. He stated records should be kept once a GRAMA request is received. He asked the Committee to recommend the Governor address the matter with the Board of Education.

**Respondent Closing:**

Mr. Horsley stated that a civil rights investigation is not done by the district. He stated that it is unreasonable to expect someone to keep a video from a year ago that is not related to the dispute.

**Questions from the Committee:**

The Committee asked why so much metadata was on the thumb drive. Mr. Horsley stated the records were provided via OneDrive but the requester wouldn't use it so they provided a thumb drive.

The Committee asked if visitor logs are maintained. Mr. Horsley stated it depends on the school and how they create the log. He stated he did not think it was relevant because the record of class visitors was provided. He stated they do not consider the visitor logs security logs.

**Deliberation:****Motion by****Discussion to the motion:**

Ms. Dean expressed appreciation to the respondent for going through the list and searching for more responsive records. Ms. Dubovik stated there is no dispute on classification. Mr. Biehler and Ms. Petersen reviewed what the Committee's role is.

**Motion** by Ms. Dean to deny the appeal. The respondent has done a reasonable search and did a second search with the list provided at the previous hearing. Seconded by Ms. Petersen.

**Discussion to the motion:**

Mr. Biehler asked if the Committee should address what is inaccessible on the thumb drive.

Ms. Petersen asked the petitioner why they could not access the OneDrive. Mr. Baggaley stated they did not want to accept the privacy policy to access the file.

The Committee discussed whether the petitioner has access to all the responsive records.

**Motion** to continue to the next meeting.

The Committee discussed how to make sure the requester has access to all the records that were provided on OneDrive. Ms. Dean stated the requester needs to be willing to sit with the respondent to look at the drive so the respondent knows what the issue is. Ms. Petersen stated this is a technology issue and they are not asking the respondent to do another search.

Mr. Horlsey stated he is willing to print everything to resolve the hearing. Ms. Petersen stated that would resolve the matter.

**Motion** by Ms. Dean to deny the appeal. The district has done a reasonable search and went back a second time with the list provided at the last hearing. The respondent will print the responsive records and provide them as expeditiously as possible but no longer than two weeks. Seconded by Mr. Buchanan.

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

**4. Corey Coleman v. Vernal City (2022-179)**

**Petitioner Statement:**

Mr. Coleman stated the time card he requested is a record he had received from other governmental entities with no redactions. He reviewed Utah Code 63G-2-301(2)(b). He stated

he has a right to see the time card of any government employee. He reviewed Utah Code 63G-2-102. He stated he needs the records for his protection.

**Respondent statement:**

Mr. Judd stated the requester did not explain what public interest there could be in the time card of this specific employee who was a witness in an investigation related to Mr. Coleman. He stated the hours worked and gross compensation was provided in the redacted time card. He stated it provides everything except sick leave and vacation time. He stated the redacted time card complies with Utah Code 63G-2-302(2)(b). He stated if the Legislature wanted time cards to be public in whole, they would have included it in the list. Mr. Judd requested the Committee deny the appeal.

**Petitioner Closing Statement:**

Mr. Coleman stated Utah Code 63G-2-102 favors public access in matters of equal weight. He stated accusations have been made without evidence. He stated he is defending himself in a lawsuit and needs the records for his legal counsel. He stated there is no medical information on the time card because sick leave can be used for non-medical reasons.

**Respondent Closing Statement:**

Mr. Judd stated the requester's conviction is not related to the investigation because the record at issue is later than the case. He stated if the requester has an attorney who wants the record, they can subpoena the record.

**Questions from the Committee:**

Ms. Dean asked if this is about one time card or eight. Mr. Judd stated it is for all eight which were provided with redactions. Mr. Coleman asked the Committee to order their release. Mr. Judd stated the record is not related to the investigation. He stated the law requires them to provide total hours worked per pay period, not per day.

**Deliberation:**

**Motion** by Ms. Dubovik to review the records in camera. Seconded by Ms. Dean.

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

Ms. Dean and Ms. Petersen were not convinced the records were properly redacted. Ms. Dubovik stated there is an expectation of privacy on the time card and a private classification



would be applicable. Ms. Dean and Ms. Dubovik stated they were not convinced the records were properly classified and protected under 63G-2-305(11).

**Motion** by Mr. Biehler to deny the appeal. The redactions are proper under Utah Code 63G-2-302(2)(d) and releasing it would be an invasion of privacy. Utah Code 63G-2-301(2)(b) is applicable because it provides the overall compensation and hours worked per pay period. Seconded by Ms. Dean.

**Vote:** Yea 3. Nay 3. Mr. Biehler, Ms. Dubovik, Mr. Williams voted in favor of the motion. Mr. Buchanan, Ms. Petersen, Ms. Dean voted against the motion.

The Committee discussed whether sick leave is medical and private. Mr. Biehler asked if the code is referencing the time card where it says total compensation and total hours. The Committee discussed what expectation of privacy a public employee has under Utah Code 63G-2-301(2)(b).

**Motion** by Mr. Biehler to deny the appeal. The redactions are appropriate under Utah Code 63G-2-302(2)(d) and releasing it would be an invasion of privacy. Utah Code 63G-2-301(2)(b) is applicable because it provides the overall compensation for the employee and hours worked per pay period. Seconded by Ms. Dubovik.

**Vote:** Yea 3. Nay 3. Mr. Biehler, Ms. Dubovik, Mr. Williams voted in favor of the motion. Mr. Buchanan, Ms. Petersen, Ms. Dean voted against the motion.

Mr. Buchanan stated the Code is not clear. Since sick leave and vacation time is not called out, it should be assumed it's public. He stated sick leave is not a medical record. He stated the public has a right to know the time is used appropriately.

Mr. Biehler stated it is not a medical record, but when someone is sick no one needs to know except the employee and their boss. Your neighbor knowing when you take sick leave is an invasion of privacy. Ms. Petersen stated the public is his boss. Mr. Biehler stated he is accountable to the public for tax money, which is provided in the total hours worked. Ms. Petersen stated there is no evidence of where the number came from.

Mr. Swan suggested the Committee adjourn for lunch.

**Motion** by Mr. Biehler to adjourn for lunch. Seconded by Ms. Dean.

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

**Questions from the Committee:**

Ms. Dean asked the respondent why they had classified the record as protected under Utah Code 63G-2-305(11). Mr. Judd stated the employee is the building inspector and they are concerned about the personal animosity that exists.

**Deliberation:**

Ms. Dean reviewed the legislative intent that all records are public unless otherwise classified.

Mr. Williams stated the government is accountable to the public using the Transparency Website which shows gross compensation of government employees. The Committee discussed whether sick leave is private.

Ms. Petersen stated if a member of the public believes someone is mis-using their leave they should be able to look into it. Ms. Dean stated one redacted time card shows actual hours worked and total time paid so it's clear 20 hours of leave was used.

**Motion** by Mr. Biehler to deny the appeal. Based on additional testimony, and that the redactions are appropriate under Utah Code 63G-2-302(2)(d). Utah Code 63G-2-301(2)(b) is applicable because the redacted records give the overall compensation for the employee, including the number of hours worked per pay period. The motion includes if the vote is a tie, the Chief Administrative Officer's denial will stand. Seconded by Ms. Dubovik.

**Vote:** Yes 5. Nay 1. Mr. Biehler, Mr. Williams, Mr. Buchanan, Ms. Dean, Ms. Dubovik voted in favor of the motion. Ms. Petersen voted against the motion.

Mr. Buchanan stated the added information about the Transparency Website was persuasive. Ms. Dean and Ms. Dubovik agreed.

**5. Brady Eames v. Utah State Treasurer (2022-182, 2022-183, 2022-185, 2022-189, 2022-228)**

**Petitioner Statement:**

Mr. Eames stated he would like to withdraw the request for the 2021 PTIF report that the pending fee is for. He stated he had never agreed to pay the fee and he was never provided any records. He stated he has not received a response to any of the appeals he made.

**Respondent statement:**

Mr. Pieper stated the request the petitioner just withdrew was for \$60 that needed to be prepaid because it was over \$50. That was appealed to the Committee and resulted in order 21-56. The denial of the fee waiver was upheld.

Mr. Pieper stated the request cannot be withdrawn at this point under Utah Code 63G-2-203(8)(a). He stated the Committee made it clear the fee was valid. He stated they can require payment of past fees.

**Questions from the Committee:**

The Committee asked if the request is withdrawn and records have not been provided, is the fee still valid? Has the request been processed? Mr. Pieper stated the requests stated to increase in number and volume to the Treasurer required that before anything is processed, fees be paid. They have not processed any of the pending 18 requests sent since then. He stated they have reviewed them and provided assistance in other ways outside the scope of the request.

The Committee asked if the requester has received any records. Mr. Pieper stated some records from subsequent requests were provided and assistance in other ways.

**Respondent Statement:**

Mr. Pieper stated an entity may require past fees which were upheld by the Committee. He stated the entity may require payment of past fees before beginning to process the request even if it is withdrawn. He stated if the requester can withdraw the request and not pay the fee, he could continue to file requests until stymied by the fees which undermines the intent of the statute.

**Questions from the Committee:**

The Committee asked if there are other fees besides the pending \$60. Ms. McGrath stated there are subsequent fees. She stated they issued a response that they will not respond to any more requests because they would all be the same because he has not paid the pending \$60 fee. They have not assembled the records. Once the requester pays the \$60 there will be other fees so they have not allocated tax funds to assemble the records.

Ms. Dean stated the fee is for records the requester has not received and services not rendered. The fee was upheld by the Committee, but the services have not been performed because the fee is still unpaid.

Ms. Petersen asked counsel if the requester can withdraw the request at this stage. Mr. Swan stated it is his request so he can withdraw it.

Mr. Pieper stated that they are compliant with the statute. He does not dispute the fact that the requester can withdraw, but it does not negate the fact that there are past fees.

Ms. Dean stated she supports entities ability to charge fees, but the fee is associated with a service rendered. She stated a request must be in writing so perhaps withdrawing a request should also be in writing.

Ms. Dean asked counsel how a requester can withdraw the order. Mr. Swan stated the order cannot be withdrawn. Ms. Petersen stated even with the order no services have been performed.

Ms. Petersen said the entity said they would move forward if the requester pays the fee. She asked if that means the past fee or anticipated fees. Mr. Pieper said the past fee and any future fees exceeding \$50. He stated the dispute is self-inflicted by the petitioner.

Ms. Dubovik asked if the \$60 would be applied to another request. Mr. Pieper stated that withdrawing the request undermines the authority of the Committee.

**Petitioner Closing Statement:**

Mr. Eames stated GRAMA does not force fees when the requester does not agree to pay them. He stated he asked for a fee waiver on the withdrawn request. He stated the Committee determined the fee was reasonable but he is not forced to pay them.

Mr. Eames stated the respondent never answered the requests or appeals. He stated he did not receive a statement of facts. He stated he expects the Committee to rule in his favor and grant the release of all the records he asked for.

**Respondent Closing Statement:**

Mr. Pieper stated that the respondent respectfully decline to respond to requests due to the past fees pending. He stated the Committee heard that and found the fee to be valid.

**Deliberation:**

**Motion** by Ms. Dean to deny the appeal for 2022-182, 2022-183, 2022-185, 2022-189, and 2022-228 in accordance with Utah Code 63G-2-203(8)(a) that the entity may require payment of

past fees before beginning to process a request given that in Order 21-56 the Committee denied a fee waiver and the entity is abiding by the order of the Committee that past fees need to be paid. Seconded by Ms. Dubovik.

**Vote:** Yea 5 Nay 0. Abstain 1. Mr. Biehler, Mr. Williams, Mr. Buchanan, Ms. Dean, Ms. Dubovik voted in favor of the motion. Ms. Petersen abstains.

**Business:**

**Approval of January 19, 2023, SRC Minutes, action item**

**Motion** by Ms. Dean to approve the January minutes. Seconded by Mr. Biehler.

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

A quorum was confirmed for March 16, 2023.

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

**X /e/ Rebekkah Shaw**