

State Records Committee Meeting

Date: July 21, 2022

Time: 9:00 a.m. – 4:00 p.m.

Committee Members Present:

Kenneth Williams, Chair, State Archivist

Marie Cornwall, Citizen Representative

Tom Haraldsen, Media Representative

Nova Dubovik, Citizen Representative

Ed Biehler, Electronic Records and Databases Representative

Committee Members Not Present:

Nancy Dean, Chair pro tem, Political Subdivision Representative

Mark Buchanan, Private Sector Records Manager

Legal Counsel:

Paul Tonks, Assistant Attorney General

Michelle Adams, paralegal

Executive Secretary:

Rebekkah Shaw, Utah State Archives

Others Present:

Susan Mumford, Division of Archives

Natalie Nelson, counsel, Utah Tech University

Jayne Blakesley, counsel, Farmington City

Tyler Green, counsel, Parents Defending Education

Joan Andrews, Salt Lake City School District

Patrick Sullivan

Blaine Hansen, Assistant Attorney General

Amber Montague, Assistant Attorney General

Wes Mangum, Sanpete County counsel

“Angie”

“AA”

“AG Clerk Brau”

“Fox 13 News”

Brian Graf

“B”

“C”

“Sharonsnow”

“Iphone”

Erika Hodges
Ilene Hacker
Justin Caplin
MarDee Johnston
"Cheryl"
Kevin Thomas
"T"
"Haylee"
"Angie"
"Neils"
Robert Judd
Daniel Rebolledo
Derek Rodriguez
Daniel Bokovoy
Meb Anderson
"JS"
Burke Staheli
Trent Staheli
"Iphone new"
Marianne Jackson
Rosemary Cundiff, Division of Archives
Cheryle Caplinger
Jared Rasband
Jann Farris
"Luke"
DCarlisle
Jordan Sharp
Justin Chaplin
"Annella"

APPROVED

Agenda:

- Five Hearings Scheduled
 - Patrick Sullivan v. Sanpete County (2022-161 Remanded case)
 - Adam Herbets (Fox 13 News) v. Farmington City Police (2022-66)
 - Parents Defending Education v. Salt Lake City School District (2022-139)
 - George Staheli v. Utah Tech University (2022-149)
 - Brady Eames v. Dept. of Corrections (2022-41)
- Business:
 - Approval of June 16, 2022, SRC Minutes, action item
 - Fiscal Year 2021 and 2022, report
 - SRC appeal received and declined, notices of compliance, and related action items
 - Cases in district court, report

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

Call to Order

The Chair called the meeting to order.

1. Patrick Sullivan v. Sanpete County (2022-161 Remanded case)

Petitioner Statement

Mr. Sullivan explained that he does not believe the Committee has jurisdiction in this case because the Committee was not party prior to the district court case. He stated that the court did not state what issue the Committee needs to address. He expressed confusion about the statute addressing remanding cases from the district court to the Committee. He stated the law gives petitioners the option to appeal to the district court or to the Committee. Mr. Sullivan stated it is not appropriate for the court to remand a case to the Committee when the Committee has never been a party. He stated the Committee was only aware of the case because he forwarded the order to Ms. Shaw and Mr. Tonks.

Respondent Statement

Mr. Mangum stated this is a disagreement of how the statute reads. He stated he is fine either way if the Committee believes it has jurisdiction or not. He stated Utah Code 63G-2-404(6)(b) does not use "remand" in the traditional sense. He stated the court interpreted the statute to mean the Committee is the best body to address the matter of access to records, and the plain reading of the statute allows that.

Mr. Mangum stated the petitioner does not want this case before the Committee because the same requests have been addressed by the Committee before and would have been found as a duplicate request and the Committee would have also found that he had reached his request limit as an inmate.

Questions from the Committee

Deliberation

The Committee discussed precedent and whether the Committee needs to hear the appeal. The Committee discussed a possible "ping-pong" effect if a case can go back and forth between the court and the Committee.

Motion by Dr. Cornwall that the Committee has jurisdiction to hear the appeal per Utah Code 63G-2-404(6). Seconded by Ms. Dubovik.

Vote: Yea 4. Nay 1. Mr. Haraldsen, Dr. Cornwall, Mr. Williams, Ms. Dubovike voted in favor of the motion. Mr. Biehler voted against the motion.

Mr. Haraldsen stated this has not solved the ping pong concern.

Mr. Tonks stated the hearing could be scheduled and then there will be one order that the parties can appeal. Mr. Williams stated a scheduling letter will be sent to the parties.

2. Adam Herbets (FOX 13) v. Farmington City Police (2022-66)

Petitioner statement:

Mr. Herbets explained that this case is related to the accusation of the police chief touching someone inappropriately. He stated the Committee and the court has made decisions previously about why these records are public. He stated the records are public to show what happened so the public can understand the facts.

Mr. Herbets stated he does not know what private interests are involved in the records. He stated the fire chief was demoted and the records can clarify the relation between that and the investigation. He stated the records could be provided with some redactions. He reviewed previous cases he considered related.

Respondent Statement:

Mr. Blakesley stated that they need to protect their contact of the complainant to avoid retaliation. He stated that the requests either have extraordinary circumstances or they are voluminous. He stated that there was no allegation of "use of force" because no one was harmed or threatened with injury. He stated that the supervisor touched someone's arm and the complainant did not like his manner.

Mr. Blakesley stated that the insurance provider was contacted and they assigned attorneys to the case. He stated the records are private so employees can address concerns. He stated the privacy of the individual should outweigh the public interest so the employer can have a safe workplace.

Questions from the Committee

The Committee asked if the supervisor was still employed by the fire department. Mr. Blakesley stated that both the supervisor and the complainant are still working there. Mr. Blakesley explained that the supervisor is now the fire chief instead of the fire marshall. The Committee asked if that was a demotion. It was explained as a lateral move.

Petitioner Closing:

Mr. Herbets stated the report could be released with redacted names. He stated there were three emails left out of the responsive records.

Respondent Closing:

Mr. Blakesley stated that the fire chief could not be heard due to noise and touched the complainant's arm to get her attention. He stated no harm was done and it is not the same as other cases referenced by the petitioner.

Questions from the Committee:

The Committee asked how much time there was between the final decision on the incident and the organizational change. Mr. Blakesley stated that discussions on reorganization were going on before the incident and the investigation was done out of caution.

Deliberation

Motion by Mr. Haraldsen to go in camera to review the records. Seconded by Ms. Dubovik.

Vote: Yea 5. Nay 0. Mr. Haraldsen, Ms. Dubovik, Mr. Williams, Mr. Biehler, Dr. Cornwall voted in favor of the motion.

Motion by Ms.. Dubovik to deny the appeal. After reviewing the records in camera, they are properly classified under Utah Code 63G-2-302(2), 63G-2-301(3)(o), and 63G-2-305(17 & 18). The classification outweighs the public interest. Seconded by Mr. Biehler.

Vote: Yea 5. Nay 0. Mr. Haraldsen, Ms. Dubovik, Mr. Williams, Mr. Biehler, Dr. Cornwall voted in favor of the motion.

3. Parents Defending Education v. Salt Lake City School District (2022-139)

Petitioner Statement:

Mr. Green stated that he is representing Parents Defending Education seeking 512 records from the respondent. He read a letter the National School Board Association (NSBA) sent to President Biden in 2021. He stated that Ms. Sweat was involved in drafting the letter. He stated that involvement in the national school board is connected to her work as a member of the school board. He stated the records should fall under GRAMA and be released.

Respondent Statement:

Ms. Andrews stated that GRAMA is for records involving public business and these records are not government records in the school board's government capacity. She stated there is no requirement for school board members to affiliate with national associations. She stated that the district reviewed the records to determine if they were records under GRAMA. She stated NSBA's requirement to be a school board member does not make the related records public records under GRAMA.

Questions from the Committee:

The Committee asked if there are other records responsive to the request not related to NSBA. Ms. Andrews stated the records had not been classified because they do not believe they are records under GRAMA. The Committee asked if public funds were spent for Ms. Sweat to participate. Ms. Andrews stated dues and conference costs.

Petitioner Closing:

Mr. Green stated that they do not want NSBA records, but the school district records related to their search terms related to public business. He stated there are benefits when a school district works with its national counterpart, but they disagree if they are created in a personal capacity. He stated it has been six months since the request and the district has had time to classify the records and should expedite the process.

Respondent Closing:

Ms. Andrews stated that Ms. Sweat's status as a school board member does not make every action part of her government capacity. She stated GRAMA does not require they classify non-records.

Deliberation

The Committee discussed whether the responsive documents are records under GRAMA.

Motion by Dr. Cornwall that the records fall under Utah Code 63G-2-103(22)(a)(i) and continue the hearing to August 18, 2022 to give the respondent time to classify the records. Seconded by Mr. Haraldsen.

Vote: Yea 4. No 1. Mr. Biehler, Mr. Haraldsen, Ms. Dubovik, Mr. Williams voted in favor of the motion. Dr. Cornwall voted against the motion.

Saunter until 1 pm.

4. George Staheli v. Utah Tech University (2022-149)

Petitioner Statement:

Mr. Staheli stated that there are a lot of questions about the survey regarding the name change from Dixie State University to Utah Tech University ("University"). He stated that he wants the full summary and data so there can be peer review. He stated that the University says they do not own the data, but they can get it from Cicero.

Mr. Staheli stated that the respondent paid for the survey and only received the summary without backup data. He stated that he asked for all the data of focus groups, questions asked along with photos shown, and the answers. He stated that names can be redacted. He stated more than half of the questions were left out and only 2 of the 158 responses are included.

Mr. Staheli stated his request is for raw data that has not been manipulated. He stated the contract is clear that the University owns everything produced per Utah Code 63G-2-301(3)(c, i, k, l). He stated that the professional service agreements reports the University received preliminary data.

Respondent statement:

Ms. Nelson stated that there is no mention of raw data in the contract and both parties agree the University does not own the data. She stated what they own is what they received. She stated there were thousands of answers and the report, but it does not include every question or a narrative of the interviews. She stated the report is over 80 pages including the demographics. She stated the University only owns what Cicero gave them.

Ms. Nelson stated that they reached out to the contractor and they considered the information owned by them and it includes proprietary information. She stated the respondent is not required to compile, format, or manipulate a record not normally maintained by the entity per Utah Code 63G-2-201(8)(a). She stated the participants were told their information would be confidential and not subject to disclosure.

Questions from the Committee

The Committee asked if there was a written claim of business confidentiality. Ms. Nelson says if a private contractor is going to share information with a governmental entity they say if it is confidential for a specific reason and the agency would need to review it. She says they did not give them the information and did not have to provide the claim of confidentiality, but everything they gave the university they are ok with sharing.

Petitioner closing statement:

Mr. Staheli stated that the records should be public because they would be public if the University did the work themselves. He asked the Committee to require the University to provide the requested records.

Respondent closing:

Ms. Nelson stated that they put out a Request for Proposal (RFP) to search for a group with the expertise for this study. She stated they could not have done it on their own.

Questions from the Committee:

The Committee asked if the contract included raw data. Ms. Nelson stated it did not. The Committee asked if the contract included methodology. Ms. Nelson stated that they have no records of reviewing the questions. The Committee asked if the photos used were provided. Ms. Nelson stated they had some screenshots and provided those.

Deliberation:

Dr. Cornwall stated it was unfortunate the University signed a contract that did not include the raw data. Mr. Haraldsen stated that the University does not own the records based on the contract so the Committee's role is limited.

Motion by Dr. Cornwall to deny the appeal because all responsive records were provided.

Amendment from Mr. Williams that all records in their possession were provided.

Motion by Dr. Cornwall to deny the appeal because all records in the entity's possession were provided. Seconded by Mr. Williams.

Discussion to the motion:

Mr. Haraldsen stated the University does not own the work. Ms. Dubovik stated that it is not defined who owns the work and the University should have done a better job of that. She stated they may have been vague on purpose and sympathized with the petitioner.

Vote: Yea 4. Nay 1. Dr. Cornwall, Mr. Haraldsen, Mr. Biehler, and Mr. Williams voted in favor of the motion. Ms. Dubovik voted against the motion.

5. Brady Eames v. Dept. of Corrections (2022-41)

The petitioner did not attend the hearing.

Respondent statement:

Mr. Hansen stated that the respondent had classified the records as private and controlled and Mr. Eames had not satisfied the requirements to have access to the records. He stated there were 12 separate requests. He stated that they provided weblinks where the requester could get information responsive to the request and denied others. He stated there are also medical records which are controlled under Utah Code 63G-2-304.

Deliberation:

Motion by Ms. Dubovik that the records are properly classified under Utah Code 63G-2-302(2)(d) and 63G-2-304. Seconded by Dr. Cornwall.

Vote: Yea 5. Nay 0. Ms. Dubovik, Dr. Cornwall, Mr. Haraldsen, Mr. Biehler, and Mr. Williams voted in favor of the motion.

Business

Approval of June 16, 2022, SRC Minutes, action item

Motion by Mr. Haraldsen to approve the meeting minutes of June 16, 2022 . Seconded by Mr. Biehler.

Vote: Yea 5. Nay 0. Ms. Dubovik, Dr. Cornwall, Mr. Haraldsen, Mr. Biehler, and Mr. Williams voted in favor of the motion.

Fiscal year 2021 and 2022, report

Ms. Shaw reviewed the previous two fiscal years.

SRC appeal received and declined, notices of compliance, and related action items

Ms. Shaw reviewed appeals received and declined.

Cases in district court, report

Mr. Tonks reviewed the status of cases in the court.

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

A quorum was confirmed for the August 2022 meeting.

This is a true and correct copy of the July 21, 2022, SRC meeting minutes, which was approved on August 18, 2022. An audio recording of this meeting is available on the Utah Public Notice Website.

X /e/ Rebekkah Shaw

APPROVED