

## State Records Committee Meeting

Date: April 20, 2023

Time: 9:00 a.m. – 4:00 p.m.

### Committee Members Present In Person or Online:

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  
Jim Kichas, State Archivist Designee

### Legal Counsel:

Brian Swan, Assistant Attorney General  
Michelle Adams, Paralegal

### Executive Secretary:

Rebekkah Shaw, Utah State Archives

### Others Present Online or In Person:

Valerie Jacobson, Archives  
Marlon Smith  
Kevin Olsen, attorney, Utah System of Higher Education (USHE)  
Alison Adams, attorney, USHE  
Heather, attorney, The Salt Lake Tribune  
Courtney Tanner, The Salt Lake Tribune  
David Mooers-Putzer, Attorney, Dept. Public Safety  
Tyler Dever, The Salt Lake Tribune  
Melanie Marlow, Dept. Public Safety  
Jennifer Lewis  
Chad Outzen, Austin Special Service District  
Cindy O'Neil  
Christian Bryner, Attorney, East Carbon City  
Jason Jorgensen, East Carbon City  
Chris Bramwell  
Micah Vorwaller

Tiffany Ward, Dept. Public Safety  
Melanie Marlow, Dept. Public Safety  
Blaine Thomas, Attorney, Dept. Health & Human Services

**Agenda:**

- o Five Hearings Scheduled
  - o Courtney Tanner (Salt Lake Tribune) v. Utah System of Higher Education (2022-231)
  - o Marlon Smith v. Dept. of Public Safety, (2022-223)
  - o Jennifer Lewis v. Austin Community Special Service District (2022-224)
  - o Cindy O’Neil v. East Carbon City (2022-219)
  - o Judith Zimmerman v. Dept. of Health & Human Services (2022-235 Continuance)
  
- o Business
  - o Approval of March 2023 SRC Minutes, action item
  - o Administrative Rule update, action item
  - o Cases in district court, report
  - o Corrections v. Halloran court update, SRC order 22-50, action item
  - o SRC appeals received and declined, notices of compliance, and related action items
  - o Committee members’ attendance polled for next meeting, format and quorum verification

**Call to Order**

The Chair called the meeting to order.

**1. Courtney Tanner (Tribune) v. Utah System of Higher Education (2022-231)**

**Petitioner Statement:**

Ms. Dever stated the state bears the burden of proving that they properly classified the records as nonpublic. He stated the request was for communications among members of the Board of Higher Education, the commissioner and his team, and President Cockett about her departure and what any agreements may look like. The request was not for a specific agreement, but communications related to it.

Ms. Dever reviewed Utah Code 63G-2-302(2)(a), 63G-2-305(25) and (28). He stated a Supreme Court decision said that a nonpublic classification needs to not only invade personal privacy, but must be “clearly unwarranted”. He stated President Cockett is not an intervening party so she

does not feel this is a clearly unwarranted invasion of personal privacy. Ms. Dever reviewed Utah Code 63G-2-305(17) and (18) stating that cc'ing an attorney is not sufficient.

Ms. Tanner stated that there is no other record to get this information. She reviewed the public interest and stated public officials give up some privacy rights due to the position.

**Respondent statement:**

Mr. Olsen stated the request is for employment records. He stated there has been no completed disciplinary action. He reviewed Utah Code 63G-2-305(25) and (28). He stated there is correspondence between general counsel and the board members. He stated attorney-client privilege are not public records. He stated the records would also fall under closed meeting records.

Mr. Olsen stated the records are normally public except when they are otherwise classified. He stated the weighing balance does not change the classification. He stated the communications are important to keep nonpublic so the board knows they can speak candidly.

**Petitioner Closing Statement:**

Ms. Dever stated it is critical for the public to see if the board acted appropriately or not. She stated the university president is a state appointed position.

Ms. Tanner stated the respondent said the responsive records were personnel evaluations, and then they said they weren't, but were still not public. She stated there is no provision for a "chilling effect" in GRAMA. The board can be as candid or not as they want.

**Respondent Closing Statement:**

Mr. Olsen stated that the balancing test weighs heavily to allow entities to withhold records.

Ms. Adams stated GRAMA is broader than the personnel file, but also protects records about an employee. The performance evaluation is an example of that.

**Deliberation:**

**Motion** by Ms. Dean to continue the hearing to June 15th to allow the Committee time to review the records in camera. Seconded by Dr. Cornwall.

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

Mr. Williams left the meeting. Mr. Kichas joined the Committee as his designee. Ms. Dean is the chair in Mr. Williams' absence.

## **2. Marlon Smith v. Dept. Public Safety (2022-223)**

### **Petitioner Statement:**

Mr. Smith stated his request is for an incident report. He stated the record is necessary to challenge his conviction. He stated he requested the narrative and testimony of the officer. He stated he was told he needed an attorney to access the records. He reviewed his case and why he needed the record.

Mr. Smith stated that if there are no records responsive to his request then he should not be in prison. He stated he wants full disclosure of his arrest including the dash camera footage, arrest records, the search, and everything related to it.

### **Respondent statement:**

Mr. Mooers-Putzer stated Utah Code 63G-2-201(10) says a government entity is not required to respond after five requests in a calendar year from an inmate. He stated there were five requests before the record at issue. He stated the Department has determined not to respond under the statute.

Mr. Mooers-Putzer stated they understand the requester believes the requested records would be valuable, but the Legislature has instructed them not to respond. He reviewed the requests that they answered to illustrate the respondent is not trying to stonewall him.

### **Questions from the Committee:**

The Committee asked how he counted the requests. Mr. Mooers-Putzer reviewed the previous requests and stated one letter asked for multiple things.

The Committee asked if there are any records still outstanding that the requester has still not received. Mr. Mooers-Putzer stated the requester has received most of the records. He stated a search was not done for this request because the requester was over his limit.

### **Petitioner Closing Statement:**

Mr. Smith reviewed records he wanted which were not provided in discovery.

### **Respondent Closing Statement:**

Mr. Mooers-Putzer stated each request they have received has multiple requests and the statute addresses those circumstances. He reviewed the records Mr. Smith listed and what was provided and what exists.

**Questions from the Committee:**

The Committee asked if everything outside the five request limit had been provided. Mr. Mooers-Putzer stated apart from the three requests at issue, everything has been answered.

**Deliberation:**

**Motion** by Dr. Cornwall to deny the appeal based on Utah Code 63G-2-201(10). The requester has exceeded the five request limit. Seconded by Mr. Biehler.

**Discussion to the motion**

Ms. Dubovik and Dr. Cornwall addressed their concerns with Utah Code 63G-2-201(10) limiting inmates' access to records. Mr. Biehler stated that the Legislature added it for a reason.

Ms. Petersen addressed her concern that respondents can decide if one submission includes one request or multiple. Ms. Dean stated extraordinary circumstances address the need to parse one request into multiple parts.

Ms. Petersen stated the records Mr. Smith requested do not exist so she votes aye.

**Vote:** Yea: 6. Nay 0. Abstain: 1. Dr. Cornwall, Mr. Biehler, Mr. Williams, Mr. Buchanan, Ms. Petersen, Ms. Dean voted in favor of the motion. Ms. Dubovik abstained.

**3. Jennifer Lewis v. Austin Community Special Service District (2022-224)**

**Petitioner Statement:**

Ms. Lewis stated the board of the special service district said she has an outstanding fee, but she does not. She stated she paid for everything she has received. She stated the fee from 2021 is a record she had never seen or received. The invoice was for \$581.20 for 115 pages.

Ms. Lewis reviewed the request from 2021. She stated she filed a request for a copy of the proposal and contract for Jones & Demille Engineering ("Engineering"). She stated her request asked for copies of what was received against the federal grant money. Her request asked to be notified if the fee would be over \$100. She stated she asked for clarification about the charge and did not get a response. She stated her request in November 2021 was for a copy of the

invoice the respondent received from Jones & Demille Engineering to fulfill the request. Ms. Lewis stated the charge is from Engineering and the cost was passed on to her.

**Respondent statement:**

Mr. Outzen stated the respondent contacted Jones & Demille Engineering asking for records responsive to the request. It consisted of 115 pages and they were billed for the information provided. The bill was passed on to Ms. Lewis and she refused to pay it. He stated she withdrew the request and they have denied further requests due to nonpayment. He stated she needs to pay for the outstanding request. He stated she requested the information and the cost should not be passed on to the taxholders of the district. He stated the requester has admitted she found the records elsewhere online.

**Questions from the Committee:**

The Committee asked why they did not contact her about the cost going over \$100. Mr. Outzen stated they did not know it would be over \$100 until they were billed.

The Committee asked if Engineering is on contract with the respondent. Mr. Outzen stated they are. The Committee asked why records the respondent requested were not maintained by the governmental entity, but were maintained by Engineering.. Mr. Outzen stated they had most of the records. The Committee asked why they do not have their own copy of records related to the contract and federal grant. Mr. Outzen stated it was early in the project and they did not have all those records at that point.

The Committee asked if they informed the requester that the records sought were available online for free per Utah Code 63G-2-201(8). Mr. Outzen stated they did not.

**Petitioner Closing Statement:**

Ms. Lewis stated the respondent will not answer email and she has been cut off from speaking in public meetings. She stated she feels the same way the respondent does about the multi-million dollar project and asked that the records be released.

**Question from the Committee:**

The Committee asked if she is seeking the records related to the fee. Ms. Lewis stated she was able to assess the grant from [transparent.utah.gov](http://transparent.utah.gov), but she never got the contract.

**Respondent Closing Statement:**

Mr. Outzen stated he had nothing to add.

**Deliberation:**

The Committee discussed whether the bill was appropriate under GRAMA. Ms. Peterson stated the lack of records maintained by the respondent at the time of the request seems a deliberate oversight. Ms. Dubovik expressed concern with the lack of communication.

The Committee encouraged the respondent to become more familiar with GRAMA and records management requirements.

**Motion** by Dr. Cornwall to grant the appeal. The fee for the October 15, 2021, request should be waived because the governmental entity did not follow Utah Code 63G-2-203(8)(a), and 63G-2-201(8)(e)(i)(A). The requester had asked to be notified if the fee would be over \$100. Seconded by Ms. Peterson.

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

**4. Cindy O’Neil v. East Carbon County (2022-219)**

**Petitioner Statement:**

Ms. O’Neil stated her request in September 2022 was for some billing information. She stated she has rental property in the area but does not live there. She stated she did not receive a response. She stated she received some records in November, but only half of what she asked for.

Ms. O’Neil reviewed what is still pending. She stated she will drop #3. She stated the respondent said there are no records for #8. She reviewed the redactions on #9. She stated #10 is for the application for water, which should be signed. The one provided is not. She stated what she’s asking for is outlined in city ordinance. #14 references old state code which she cannot look up to understand how it is referenced. She asked the respondent to update the citations.

Ms. O’Neil stated the water rebate records are not private and she does not understand why they have not been provided. She stated if she cannot have the names and addresses then there is no transparency.

**Respondent statement:**

Mr. Bryner stated as the property owner, Ms. O’Neil is entitled to the applications for service. He stated he will check with the city if there is anything else that has not been provided. He

stated there are many accounts. To see the rebates given and refunds given, they would have to look into each individual account. He stated there is no way to get a list of all refunds and write offs given. He stated the names and addresses would need to be redacted per Utah Code 63G-2-305(51). He stated the subject of the record is required to file an application.

Mr. Bryner stated the application for water service is an agreement to pay for the water and they can provide a blank one. For #8, he stated the meeting minutes can be provided, but they won't know without reading the minutes if anyone asks for refunds on their utility bills at the meeting. He stated minutes can be provided and the requester can search them.

Mr. Bryner stated the requester is entitled to copies of the ordinance for #14, but they are not required to research the Utah Code citation updates. He stated they have provided records related to her own property.

**Questions from the Committee:**

The Committee stated a lot of this could have been resolved if the parties communicated before the hearing. A statement of facts was not provided. Mr. Bryner stated they did meet in mediation and he quoted the statute there. He stated the city never received her appeal.

**Petitioner Closing Statement:**

Ms. O'Neil stated her water was turned off between renters. When the first renter took over she was told to fill out an application. She reviewed what happened with her renters. She stated nonpublic records can be released if there is public interest.

**Respondent Closing Statement:**

Mr. Bryner stated the request was large and a lot of records were provided. He stated people do not want others to view their history of payments. He stated the information would require checking every single account. Mr. Bryner stated the records are protected under Utah Code 63G-2-305(51).

**Questions from the Committee:**

The Committee asked why the request wasn't answered, but they responded to the Government Records Ombudsman. Mr. Bryner stated he is a contract attorney and he does not get involved unless the city asks him to.

**Deliberation:**

The Committee reviewed items #2, 3, 8, 9, 10, and 14.



Dr. Cornwall stated the respondent never provided a statement of facts.

**Motion** by Dr. Cornwall to grant the appeal in part and deny the appeal in part. Item #2- East Carbon City should produce the records for the applications for service for water users of the requested address. Item #3 was withdrawn by the petitioner. Item #8 is available on the city's website and on the Public Notice Website. Item #9 is denied per Utah Code 63G-2-201(8). The city is not required to create a new record. The names and addresses are properly classified under Utah Code 63G-2-305(51). The respondent has indicated the record does not exist for item #10. They need to do another search to make sure the petitioner agreed in writing to pay the water bill. Item #14 is denied. The Utah Code is publicly available .

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

Mr. Williams returned to the meeting as Chair.

#### **5. Judith Zimmerman v. Dept. of Health & Human Services (2022-235. Continuance)**

##### **Deliberation:**

**Motion** by Mr. Buchanan to move into closed session. Seconded by Ms. Dean

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

Ms. Dubovik left the meeting.

**Motion** by Dr. Cornwall to deny the appeal. After reviewing the records in camera, the Committee determines the records are records under GRAMA. They are not properly classified under Utah Code 63G-2-106. They are not security measures. The records are properly classified under Utah Code 63G-2-302(2)(a) & (d). Seconded by Mr. Biehler.

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

##### **Business:**

**Approval of March SRC Minutes, action item**

**Motion** by Mr. Buchanan to approve the minutes. Seconded by Mr. Williams.

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

**Administrative Rules update, action item**

**Motion** by Mr. Williams to submit the rule changes to Administrative Rules. Seconded by Dr. Cornwall.

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

**SRC appeals received and declined, notices of compliance, and related action items**

The Executive Secretary reviewed the following appeals that were denied.

2023-44	Christopher Marquez v. Weber County Sheriff Office	Requesting access to who on staff worked booking August 21-22, 2023. Denied because records do not exist. The dates of the request have not happened yet. I recommended he review the intended date and submit a new request.
2023-42	Shaun Lucas v. Box Elder County Sheriff Office	Requesting access to the first name name and address of an officer mentioned on an incident report. Denied because the appeal is untimely.
2023-35	Brady Eames v. Cache County	Requesting access to meeting records of the Cache Valley Consortium. Denied because sufficient evidence was not provided that the responsive records exist.

**Corrections v. Halloran court update, SRC order 22-50, action item**

Mr. Swan provided an update that order 22-50 now has nothing in dispute.

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

A quorum was confirmed for May 18, 2023.

This is a true and correct copy of the April 2023, SRC meeting minutes, which was

approved on May 18, 2023. An audio recording of this meeting is available on the Utah Public Notice Website.

**X/e/ Rebekkah Shaw**

APPROVED