

State Records Committee Meeting

Date: May 25, 2023

Time: 1:00 p.m. – 2:30 p.m.

Committee Members Present:

Nancy Dean, Chair pro tem, Political Subdivision Representative

Mark Buchanan, Private Sector Records Manager

Linda Petersen, Media Representative

Marie Cornwall, Citizen Representative

Jim Kichas, State Archivist Designee

Committee Members Absent:

Legal Counsel:

Brian Swan, Assistant Attorney General

Executive Secretary:

Rebekkah Shaw, Utah State Archives

Others Present Online:

Courtney Johns, ABC 4

David Reymann, counsel for ABC 4

Ben Van Noy, counsel for Utah County

Agenda:

- o Courtney Johns (ABC 4) v. Utah County (2023-57) Expedited hearing

Call to Order

The Chair pro tem called the meeting to order.

1. Courtney Johns (ABC 4) v. Utah County (2023-57)

Petitioner Statement:

Mr. Reymann stated the subject of the record is has been arrested multiple times and released because he has not been found competent to stand trual. Each time he reoffends. He stated a judge tried to end the cycle by ordering “restorative care” from the Department of Health and Human Services (DHHS). The order was in a public hearing.

Mr. Reymann stated the fact that Mr. Soberanis received this care is public information. That care is the subject of a story by ABC 4. They sought the jail visitor log to know how many times they visited Mr. Soberanis and how long they were there. He stated they are not asking for phone numbers or the content of the visit. He stated the visits from DHHS were redacted from the provided log.

Ms. Johns stated she started covering the story in February 2022, but the station covered it before that. She provided background on the story and the crimes Mr. Soberanis was charged with. She stated various evaluators had different diagnoses. She stated DHHS went back to the judge that they did what they could but he could not be restored to competency.

Mr. Reymann shared his screen to show the redacted record. Ms. Johns stated that she is looking for the visitor name column. Many visitors were provided, but not the DHHS personnel. She stated that information provides context on the amount of care he received. She stated she does not want specifics on his treatment, other than how much time each DHHS visitor spent with him.

Ms. Johns stated the public has a right to know for few reasons. First there is a question of public safety if he is released again. Another is accountability of taxpayer money spent on his treatment. Mr. Soberanis is either faking it or he cannot control his behavior. The public has a right to know what DHHS is doing to provide treatment so there are no more victims. She stated he has received similar logs from other jails without redactions.

Mr. Reymann stated there is not exception in GRAMA for jail visitor logs and the standard for Utah Code 63G-2-302(2)(d) is high. He stated the subject of the record is incarcerated. He found the argument that releasing the log would invade an inmate's privacy odd. He stated inmates do not have an expectation of privacy of who visits. He stated they are not seeking the content of any conversations, and the public already knows he is getting treatment. Even if they were, the invasion of privacy is not "clearly unwarranted". He stated even if it applied, it should be released due to the public interest. He asked that the redactions be released.

Respondent statement:

Mr. Van Noy stated that normally jail logs do not have an expectation of privacy. He stated Mr. Soberanis is someone a judge and ABC 4 recognize needs help. He stated the county was concerned about a news agency exposing the treatment and services Mr. Soberanis is getting and releasing it would have a chilling effect. Mr. Van Noy stated Mr. Soberanis has not been convicted. He stated exposing the treatment could have negative effect on Mr. Soberanis and

further stigmatize a vulnerable adult as a potential criminal. He stated this is a simple case and the classification of Utah Code 63G-2-302(2)(d) was appropriate.

Questions from the Committee:

The Committee asked if there is a legal definition of a “vulnerable adult”. Mr. Van Noy stated he used it colloquially, but Mr. Soberanis has already been found to be intellectually disabled.

Petitioner closing:

Mr. Reymann stated that the respondent worked with the petitioner in good faith to narrow the issues of the appeal. He stated all that remains is what privacy interest is implicated in knowing how many times DHHS went to the jail. He stated a judge ordered the care, and there was a news story about it. He stated there is public interest in whether DHHS did its job. He stated the jail log is not intrusive, but basic information released by other jails.

Respondent closing:

Mr. Van Noy stated that the the number of times Mr. Soberanis is visited can be determined even with the redactions. He stated that knowing how many times Mr. Soberanis was visited does not reveal anything about his disability, but he has an expectation of privacy. He stated people in jail still have an expectation of privacy.

Deliberation:

Motion by Dr. Cornwall to review the record in camera. Seconded by Ms. Petersen.

Vote: Mr. Kichas, Mr. Buchanan, Dr. Cornwall, Ms. Petersen, Ms. Dean voted in favor of the motion.

Motion by Ms. Petersen to grant the appeal with the addresses and phone numbers redacted. It is not an unwarranted invasion of privacy given the case is part of public record. The public interest outweighs the privacy concern. Seconded by Mr. Kichas.

Vote: Mr. Kichas, Mr. Buchanan, Dr. Cornwall, Ms. Petersen, Ms. Dean voted in favor of the motion.

Motion by Ms. Peterson to adjourn the meeting. Seconded by Mr. Buchanan.

Vote: Mr. Kichas, Mr. Buchanan, Dr. Cornwall, Ms. Petersen, Ms. Dean voted in favor of the motion.

This is a true and correct copy of the May 25, 2023, SRC meeting minutes, which was approved on June 15, 2023. An audio recording of this meeting is available on the Utah Public Notice Website.

X /e/ Rebekkah Shaw

APPROVED