



Department of Administrative Services

August 22, 2006

State of Utah

JON M. HUNTSMAN, JR.
Governor

GARY HERBERT
Lieutenant Governor

John Baza, Division Director
Division of Oil, Gas & Mining
1594 west North Temple
Salt Lake City, Utah

RECEIVED
AUG 24 2006
MON 8:25
DIV. OF OIL, GAS & MINING
Internal
C 007-0013

Dear Mr. Baza,

The State Records Committee has received a request for an appeals hearing from the Southern Utah Wilderness Alliance. They are appealing the July 9, 2006 decision by the Director of the Division of Oil, Gas & Mining denying SUWA's appeal of a June 12, 2006 fee waiver denial by the Division of Oil, Gas & Mining (DOGM). The instant appeal relates to SUWA's May 30, 2006 GRAMA request to DOGM for records concerning the Horse Canyon Mine, Lila Canyon Extension. A hearing has been scheduled for 10:30 a.m. on October 12, 2006. The hearing will be held in the State Archives Building Courtyard Meeting Room located at 346 S. Rio Grande (450 West) in Salt Lake City unless further notified. At the hearing, you or your representative will be allowed to testify, present evidence, and make comments.

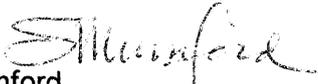
You are required to submit to me, no later than five business days prior to the hearing, a written statement of facts, reasons, and legal authority supporting your position. The State Records Committee finds this information extremely useful when making their decision. Under UCA 63-2-403(5), you must also send copies of any statements to the petitioner by first class mail. I will forward copies of any statements I receive to the State Records Committee for their review prior to the hearing. It is also helpful to the committee members if you include a copy of statutes and rules that you may use to justify your position.

The State Records Committee, under the authority of UCA 63-2-03(9)(a), may review the disputed records. **Therefore, please have the records in question available at the hearing.**

I am sending a copy of this hearing notice, appeal letter, and attached documentation to the parties involved. I have also included a copy of the hearing procedures and a list of the State Records Committee members.

Should you have any questions, please contact me at (801) 531-3861.

Sincerely,


Susan Mumford
Executive Secretary
State Records Committee

cc: Members of the State Records Committee and legal counsel
Stephen Bloch, SUWA Counsel
Vicky Dyson, Records Officer, DOGM
Mary Ann Wright, Associate Director, DOGM



Department of Administrative Services

August 22, 2006

State of Utah

JON M. HUNTSMAN, JR.
Governor

GARY HERBERT
Lieutenant Governor

Division of Archives

PATRICIA SMITH-MANSFIELD
Division Director

Southern Utah Wilderness Alliance
Stephen Bloch, Staff Attorney
425 East 100 South
Salt Lake City, Utah 84111

Dear Mr. Bloch,

The State Records Committee has received your request for an appeals hearing of the July 9, 2006 decision by the Director of the Division of Oil, Gas & Mining denying SUWA's appeal of a June 12, 2006 fee waiver by the Division of Oil, Gas & Mining (DOGM). The instant appeal relates to SUWA's May 30, 2006 GRAMA request to DOGM for records concerning the Horse Canyon Mine, Lila Canyon Extension. A hearing has been scheduled for 10:30 a.m on October 12, 2006. The hearing will be held in the State Archives Building Courtyard Meeting Room located at 346 S. Rio Grande (450 West) in Salt Lake City unless further notified. At the hearing, you or your representative will be allowed to testify, present evidence, and make comments.

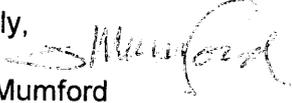
You are required to submit to me, no later than five business days prior to the hearing, a written statement of facts, reasons, and legal authority supporting your position. The State Records Committee finds this information extremely useful when making their decision. Under UCA 63-2-403(5), you must also send copies of any statements to the petitioner by first class mail. I will forward copies of any statements I receive to the State Records Committee for their review prior to the hearing. It is also helpful to the committee members if you include a copy of statutes and rules that you may use to justify your position.

The State Records Committee, under the authority of UCA 63-2-403(9)(a), may review the disputed records. **Therefore, please have the records in question available at the hearing.**

I am sending a copy of this hearing notice, appeal letter, and attached documentation to the parties involved. I have also included a copy of the hearing procedures and a list of the State Records Committee members.

Should you have any questions, please contact me at (801) 531-3861.

Sincerely,


Susan Mumford
Executive Secretary
State Records Committee

cc: Members of the State Records Committee and legal counsel
John Baza, Director, Division of Oil, Gas & Mining
Vicky Dyson, Records Officer, DOGM
Mary Ann Wright, Associate Director DOGM
Steve Alder, Attorney, Natural Resource Division



southern
Utah
Wilderness
Alliance

June 29, 2006

John Baza – Director
Division of Oil, Gas and Mining
P.O. Box 145801
Salt Lake City, Utah 84114-5801

*Re: Appeal of denial of fee waiver relating to Southern Utah Wilderness Alliance
GRAMA request for records concerning Horse Canyon Mine, Lila Canyon
Extension C/007/013*

Dear Director Baza:

Pursuant to the Government Records Access and Management Act (GRAMA), Utah Code Ann. § 63-2-203(6)(a) *et seq.*, Southern Utah Wilderness Alliance (SUWA) hereby appeals the Division of Oil, Gas and Mining's (Division) June 12, 2006 denial of a fee waiver relating to SUWA's May 30, 2006 GRAMA request for records concerning the Horse Canyon Mine, Lila Canyon Extension. (SUWA's GRAMA request is attached hereto as Exhibit 1 and the Division's response is attached hereto as Exhibit 2). Pursuant to § 63-2-401(1)(a), SUWA has 30 days from the receipt of the fee waiver denial to file this notice of appeal to the chief administrative officer of the governmental agency denying our request. Thus, SUWA's appeal is timely filed.

In its June 12, 2006 response to SUWA's GRAMA request, the Division denied SUWA's request for a fee waiver because the Division concluded that the request was not in the furtherance of a public purpose. To the contrary, as SUWA explained in its GRAMA request, the release of these records primarily benefits the public and contributes to the public's understanding of the Division's policies and activities concerning environmental protection and the protection of historic properties listed or eligible for inclusion in the National Register of Historic Places. See Utah Code Ann. § 63-2-203(4)(a). SUWA continuously makes information concerning the management of State and Federal lands available to its members and members of the public through publications, public meetings, electronic and printed action alerts, and press releases, among other means.

Granting SUWA's fee waiver request is also consistent with State policy. In accordance with Utah Code Ann. § 63-2-203(4)(a), "[a] governmental entity may fulfill a record request without charge and is encouraged to do so when . . . releasing the records benefits the public rather than a person." (Emphasis added). Because SUWA requested this information in its capacity as a representative of its members and the public at large, SUWA respectfully requests that you reconsider the Division's denial of SUWA's fee waiver request. In spite of the

425 East 100 South
Salt Lake City, Utah 84111

PHONE: 313-222-1111
FAX: 313-222-1112
WWW: www.suwa.org

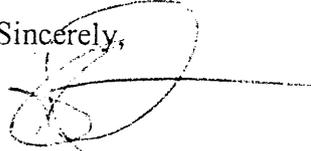
Division's assertion in its denial of SUWA's fee waiver request, SUWA did not request this information for its own purposes.

In addition, the Division's denial of SUWA's fee waiver request should be set-aside because the State's own GRAMA Handbook and model GRAMA form explicitly provide that a requester be made aware of potential fees and costs before they are incurred. Specifically, the GRAMA Handbook states that "[a] requester ordinarily should not be held liable for any fees that he/she did not approve or reasonably anticipate." GRAMA Handbook, at 11 (2005). Additionally, the formal Request for a Record GRAMA form found in the Handbook provides a space for the amount that a requester agrees to pay, along with the statement that "I further understand that the agency will contact me if estimated costs are greater than the amount I have specified and that the agency will not respond to a request for copies if I have not authorized adequate costs." *Id.* at 46. Because the Division sent SUWA the GRAMA Handbook in response to an oral request for information and directed SUWA to conform its request for information to guidance found within the Handbook, SUWA was led to believe that the Division would comply with this guidance. See Electronic mail from Mary Ann Wright, DOGM to Stephen Bloch, SUWA (May 22, 2006) (attached hereto as Exhibit 3). Therefore, when, on page 2 of its GRAMA request, SUWA stated that "if a waiver is not granted, please inform the undersigned of the cost of disclosing the above-described records if such fees are likely to exceed \$15.00," SUWA reasonably expected to be contacted prior to being obligated for fees in excess of that amount. SUWA was not, however, contacted regarding any specific research fee prior to receiving the Division's fee waiver denial. In sum, GRAMA is clear that SUWA should only be required to pay for research costs that SUWA had authorized – in this case \$15.00.

On a related note, SUWA is disappointed that this morning Associate Division Director Mary Ann Wright refused to provide access to the records in question to Mr. Elliott Lips, a SUWA contractor. Ms. Wright apparently has taken the position that because SUWA had one opportunity to review the records compiled by the Division, that SUWA (or its contractors) are not entitled to review the records again until SUWA pays the requested research fee. This is directly contrary to Ms. Wright's June 12, 2006 letter to undersigned counsel in which she states that "SUWA is entitled to examine this box of records in the Public Information Center (PIC) without charge prior to determining if you want copies of all the documents and how you desire to have them copied. A box containing the information itemized above had been placed in the PIC and will be made available to you upon your request." See Exhibit 1. (emphasis added) (attached hereto as Exhibit 4). As Ms. Wright knows, SUWA has not made copies of any of the records in question and this morning Mr. Lips merely asked to review the records – not to make copies of them. SUWA requests that regardless of your decision on SUWA's appeal of the Division's fee waiver denial, that you direct Division staff to permit SUWA and its contractors to review the records in question.

Thank you for your prompt attention to this request. As provided by Utah Code § 63-2-401(5)(a)(i), I look forward to your response within five working days. Please feel free to contact me at (801) 486-3161 with any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to be "Stephen Bloch", written over a horizontal line. The signature is somewhat stylized and loops back.

Stephen Bloch
Staff Attorney



Southern
Utah
Wilderness
Alliance

THIS IS A GRAMA REQUEST

May 30, 2006

Stacy Berry
Division of Oil, Gas and Mining
P.O. Box 145801
Salt Lake City, Utah 84114-5801

Re: *GRAMA request for records concerning Horse Canyon Mine, Lila Canyon Extension C/007/013*

Dear Ms. Berry:

Pursuant to the Government Records Access and Management Act (GRAMA), Utah Code Ann. § 63-2-101 *et seq.*, Southern Utah Wilderness Alliance (SUWA) requests the records¹ identified below. This GRAMA request pertains to records prepared from November 9, 2005 to the present.

1. Any and all correspondence (including, but not limited to, e-mails and hand-written notes) and any records relating to correspondence, (including, but not limited to, e-mails, telephone calls, and hand-written notes), prepared by Division of Oil, Gas and Mining (DOGM) staff regarding the Horse Canyon Mine, Lila Canyon Extension C/007/013. This would include internal DOGM correspondence (i.e., intra-Division correspondence), as well as external correspondence (i.e., e-mails between DOGM and UtahAmerican Energy, Inc.).
2. Day planners **and/or** other time management organizers of all DOGM staff members currently working on the Horse Canyon Mine, Lila Canyon Extension C/007/013, or who worked on the Horse Canyon Mine, Lila Canyon Extension C/007/013 between November 9, 2005 and the present.

¹ Please note the term "record" is defined in Utah Code § 63-2-103(19) as "all books, letters, documents, papers, maps, plans, photographs, films, cards, tapes, recordings, electronic data, or other documentary materials regardless of physical form or characteristics, which is prepared, owned, received, or retained by a governmental entity or political subdivision" and are reproducible. Based on this definition, documentary material such as day planners and/or other time management organizers are intended to be included as a record under § 63-2-103(19). While this request is not intended to include records in violation of Utah Code § 63-2-302(2)(D) as constituting a clear unwarranted invasion of personal privacy, SUWA expects that DOGM will make every effort to comply with the letter and spirit of GRAMA's goal of transparency in state agency decision making processes and release all qualifying records.

425 East 100 South
Salt Lake City, Utah 84111

Phone: (801) 467-4200

Fax: (801) 467-4201

www.suwa.org

This request is made on behalf of SUWA, a Utah-based non-profit organization with thousands of members in Utah and elsewhere throughout the United States. SUWA's overarching goal is to protect Utah's remaining wildlands - lands owned by the American public and administered on our behalf by the Bureau of Land Management (BLM) and various state agencies such as DOGM. SUWA staff and members have a long-standing interest in the management of public lands, including public lands in Utah impacted or threatened by coal mining.

Release of the records described in this request will primarily benefit the public and substantially contribute to its understanding of the government's policies and activities concerning management of coal mine permits, as well as policies and activities concerning environmental protection and areas eligible for inclusion in the National Register of Historic Places. SUWA makes information concerning management of state and federal lands available to their members and members of the public through publications, public meetings, electronic and printed action alerts, press releases, phone calls, administrative appeals, and litigation, among other means.

SUWA has participated in public involvement opportunities on numerous BLM and DOGM proposed actions in Utah, and in appeals relating to coal mining. SUWA has made information public about threats to historic, archaeological or cultural lands and other BLM lands across the nation through the presentation of public comment, the preparation of action alerts, press releases, their newsletters, the filing of administrative appeals, and the production of reports. For example, in 2002, SUWA published a report entitled "Preserving Prehistory, Wilderness: a Sanctuary for Utah's Ancient Treasures," which discussed some of the most pressing current threats to cultural and historic properties. In addition, SUWA has been at the forefront of National Historic Preservation Act litigation and works closely with various state and federal agencies, as well as Indian tribes and other non-profit organizations on these issues. SUWA will make the information obtained from this request available to their members and other groups, including but not limited to the National Trust for Historic Preservation. SUWA may also make available to the media newsworthy summaries of the requested documents, as well as newsworthy documents themselves. Finally, release of the information may empower SUWA or other organizations or citizens to present comment on proposed agency or state or county actions concerning coal mining in Utah.

Release of the information will empower members of SUWA and members of the public to engage in public advocacy efforts to protect and conserve BLM wildlands, and will enable SUWA, its members, and the public to more effectively evaluate the need for appeal and litigation. SUWA is a not-for-profit corporation and does not seek these documents for commercial use.

Accordingly, SUWA requests that all copy and research fees be waived pursuant to Utah Code § 63-2-203(4)(a). A fee waiver is justified because the information requested is likely to contribute significantly to public understanding of the operations of the government, and is not primarily in SUWA's commercial interest, as described above. We fully expect that such a waiver will be granted. However, if a waiver is not

*Southern Utah Wilderness Alliance GRAMA Request
Re: Lila Canyon Coal Mine
May 30, 2006*

granted, please inform the undersigned of the cost of disclosing the above-described records if such fees are likely to exceed \$15.00.

In the event that your office intends to withhold any records or portions thereof, state law requires that we receive an index of such documents, identifying each document and explaining the alleged legal grounds for withholding. See Utah Code § 63-2-205(2).

Thank you for your prompt attention to this request. As provided by Utah Code § 63-2-204, I look forward to your response within ten working days. Please feel free to call me at (801) 486-3161 with any questions or concerns.

Sincerely,


Stephen Bloch
Staff Attorney
(801) 486-3161 x.3981

Cc: Mary Ann Wright – Associate Director, DOGM



Southern
Utah
Wilderness
Alliance

July 12, 2006

John Baza – Director
Division of Oil, Gas and Mining
P.O. Box 145801
Salt Lake City, Utah 84114-5801

*Re: Appeal of denial of fee waiver relating to Southern Utah Wilderness Alliance
GRAMA request for records concerning Horse Canyon Mine, Lila Canyon
Extension C/007/013*

Dear Director Baza:

Thank you for your letter dated July 9, 2006 responding to Southern Utah Wilderness Alliance's appeal of the Division's denial of fee waiver relating to SUWA's GRAMA request. In your letter, you stated that "[a]lthough SUWA has characterized itself as a non-for-profit organization, it is my opinion that SUWA does not represent the interests of the public at large." Your assertion that SUWA is not a non-profit organization is without basis. Indeed, the Internal Revenue Service has recognized SUWA as a 501(c)(3) organization for over twenty years and SUWA is a registered non-profit organization with the state of Utah and has held this status since 1983. I hope that this clears up any confusion that you or your staff may have regarding SUWA's 501(c)(3) non-profit status. Regarding your decision that SUWA should pay one-half the originally requested state records compilation charge, I am still reviewing your letter and I will contact Ms. Dyson if and when SUWA decides to pay this charge.

Sincerely,

Stephen Bloch
Staff Attorney

425 East 100 South
Salt Lake City, Utah 84111



State of Utah

Department of Natural Resources

MICHAEL R. STYLER
Executive Director

Division of Oil, Gas & Mining

JOHN R. BAZA
Division Director

JON M. HUNTSMAN, JR.
Governor

GARY R. HERBERT
Lieutenant Governor

July 9, 2006

Stephen Bloch, Esq.
Southern Utah Wilderness Alliance
425 East 100 South
Salt Lake City, UT 84111

RE: Appeal dated June 29, 2006, of Division of Oil, Gas and Mining denial of fee waiver relating to SUWA GRAMA request

Dear Mr. Bloch:

In accordance with the Government Records Access and Management Act (GRAMA), this letter represents my response to your appeal of the Division of Oil, Gas and Mining's (the Division) denial of a fee waiver for Southern Utah Wilderness Alliance (SUWA) relative to a request for Division records by SUWA. Also pursuant to GRAMA, this response is submitted within five business days from receipt of your appeal letter.

It is my determination that SUWA is not entitled to a fee waiver in this matter. Although SUWA has characterized itself as a not-for-profit organization, it is my opinion that SUWA does not represent the interests of the public at large. Therefore, SUWA is required to pay fees in accordance with the published fee schedule for Division records as well as those fees that the Division is allowed to charge under GRAMA.

In my review of the correspondence between SUWA and the Division, and through my interrogation of Division staff involved in this matter, it is unclear to me that the Division gave SUWA any prior indication or estimate of the extensiveness of the records compilation efforts before the records were actually compiled. I believe that it was not possible to discern or estimate the total amount of work required to respond to SUWA's request until the records were actually compiled. I do believe that the Division has been generous in providing service in this regard in that there may be much more than the 28 hours of staff time (as shown by the Division's letter dated June 12, 2006) that the Division invested in this effort.

In order to be reasonable and to accommodate SUWA's request as much as possible, my determination is that SUWA should provide an up-front payment equal to half of the previously stated records compilation charges (\$308.98) in

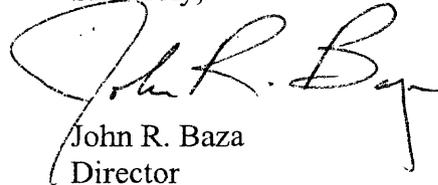
Page 2
Stephen Bloch, Esq.
July 9, 2006

order to sort through and select those records for copying that are needed. Then after the records are selected, SUWA may obtain copies of the records at the previously stated copying rates (\$.25 per page for Division copying or \$.10 per page if SUWA copies the records).

I understand that SUWA has previously been allowed to examine these records compiled by the Division without charge, specifically on one occasion by Mr. Bloch. I also understand that when Mr. Lips visited the Division to examine the records, he stated that "he was not with SUWA", thus he was not allowed to review the compiled material. This may have been a staff misunderstanding, and will be corrected in the future. Other than the aforementioned up-front payment of a compilation charge of \$308.98, SUWA will be allowed to access all of the compiled records for selection of copies.

In order to continue to assist you in this matter, I am referring you to Vicky Dyson (ph. 801-538-5279) at the Division who is our Public Information Center supervisor and also the Division's GRAMA compliance representative.

Sincerely,



John R. Baza
Director

JRB:dh
cc: Steve Alder
Mary Ann Wright
Vicky Dyson



State of Utah

Department of Natural Resources

MICHAEL R. STYLER
Executive Director

Division of Oil, Gas & Mining

JOHN R. BAZA
Division Director

JON M. HUNTSMAN, JR.
Governor

GARY R. HERBERT
Lieutenant Governor

June 12, 2006

Via Fax and U.S. Mail

Mr. Stephen Bloch
Staff Attorney
Southern Utah Wilderness Alliance
425 East 100 South
Salt Lake City, Ut 84111

RE: GRAMA Request for Horse Canyon Mine, Lila Extension, C007/013

Dear Mr. Bloch:

Pursuant to the Government Records Access and Management Act (GRAMA) UCA 63-2-101, et seq. Utah Division of Oil, Gas and Mining (OGM) responds to your request for records prepared between November 9, 2005 and May 31, 2006 with the following information.

1. Emails, organized by employee.
2. Attachment documents to emails, organized by employee.
3. Meeting and phone notes, organized by employee.
4. Group calendar information.
5. Meeting agendas for the weekly Coal Program meetings.

OGM has considered and denies SUWA's request to have fees waived. OGM finds the request is not in the furtherance of a public purpose. There is a broad spectrum of interests that seek to affect mine permitting decisions, and although it may be SUWA's view that this request is in the public interest other groups could make the same claim as they pursue a different result. OGM, as the public agency charged with regulating the coal mining industry in Utah, strives to be open and cooperative, and must be even-handed in its actions. Information that has been filed in the Public Information Center (PIC) has been provided to SUWA without charge. The information provided in response to SUWA's request was compiled for SUWA's own purposes and required extra work by OGM staff to compile.

Page 2
Stephen Bloch
June 12, 2006

Compiling the records required a computer-capable person to access emails of the employees. OGM staff collectively spent 28 hours, billed at a rate of \$22.07 per hour (the rates of the lowest employee qualified for this work) which totals \$617.96. OGM will copy the records at \$.25 per page (according to the fee schedule approved by the Legislature), or SUWA can come into the OGM offices and copy the records for \$.10 per page. SUWA may also bring its own copier and make copies at no charge. Currently, we estimate there are about six reams, of 500 pages, or about 3000 pages that have been produced for SUWA's use.

SUWA is entitled to examine this box of records in the Public Information Center (PIC) without charge prior to determining if you want copies of all of the documents and how you desire to have them copied. A box containing the information itemized above has been placed in the PIC and will be made available to you upon your request. OGM would appreciate SUWA's cooperation in allowing additional time to provide copies, if SUWA elects to have OGM make them.

Prior to making copies, OGM requests that you pay the cost of document preparation, \$617.96, and then pay separately for the number of copies you make.

Please contact Stacy Berry, Office Technician, in the PIC. The records will be available for your review by Monday, June 12, 2006 at 4pm.

Sincerely,



Mary Ann Wright

sm
cc Steve Alder, Attorney
Keli Beard, Attorney
John Baza, Director
Stacy Berry, Office Technician
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State of Utah
Department of
Natural Resources

MICHAEL R. STYLER
Executive Director

Division of
Oil, Gas & Mining

JOHN R. BAZA
Division Director

JON M. HUNTSMAN, JR.
Governor

GARY R. HERBERT
Lieutenant Governor

July 14, 2006

Stephen Bloch, Esq.
Southern Utah Wilderness Alliance
425 East 100 South
Salt Lake City, UT 84111

RE: July 9th Decision regarding the Appeal dated June 29, 2006, of Division of Oil, Gas and Mining denial of fee waiver relating to SUWA GRAMA request

Dear Mr. Bloch:

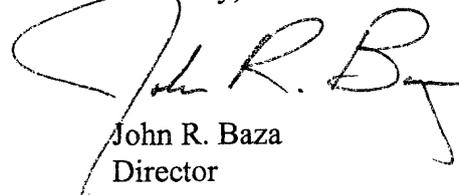
This letter is intended to supplement and clarify the Decision contained in my July 9, 2006 letter regarding your appeal of the denial of fee waiver related to your GRAMA request.

First, my determination that SUWA is not entitled to a fee waiver in this matter assumed that SUWA is a 503(c)(3) non-profit corporation as it claims. The tax status is not the determinative factor, but rather it is my conclusion that SUWA as a non-profit entity does not represent the interests of the public at large.

Second, you are advised that SUWA may appeal my decision to the Records Committee by filing a notice of appeal with the executive secretary, Janelle Tuttle, no later than 30 days from my decision in accordance with the provisions of Utah Code Ann. §63-2-403(1)(a) (2005). Ms. Tuttle can be reached at 531-3862.

If there are further questions or you wish additional clarification of the decision please do not hesitate to contact me or Vicky Dyson, the Division Public Information Center supervisor.

Sincerely,



John R. Baza
Director

cc: Steve Alder
Mary Ann Wright
Vicky Dyson

**Utah State Records Committee
Membership**

Patricia Smith Mansfield, Chair

Governor's Designee

Betsy Ross

State Auditor's Designee

Linda Thatcher

Division of State History-Designee

Dixie Bruner

News Media Representative

Scott Whitaker

Private Sector Records Manager

Carol Heales

Political Subdivision Elected Official

Carl Albrecht

Citizen Representative

Legal Counsel

David Geary

R35. Administrative Services, Records Committee.

R35-1. State Records Committee Appeal Hearing Procedures.

R35-1-1. Scheduling Committee Meetings.

(1) The Executive Secretary shall respond in writing to the notice of appeal within [~~three~~] five business days.

(2) Two weeks prior to the Committee meeting or appeal hearing the Executive Secretary shall send a notice of the meeting to at least one newspaper of general circulation within the geographic jurisdiction.

(3) One week prior to the Committee meeting or appeal hearing the Executive Secretary shall post a notice of the meeting indicating the agenda, date, time and place of the meeting at the building where the meeting is to be held and at the Utah State Archives.

R35-1-2. Procedures for Appeal Hearings.

(1) The meeting shall be called to order by the Committee Chair.

(2) Opening statements will be presented by the petitioner and the governmental entity. Each party shall be allowed five minutes to present their opening statements before the Committee.

(3) Testimony shall be presented by the petitioner and the governmental entity. Each party shall be allowed thirty minutes to present testimony and evidence and to call witnesses.

(4) Witnesses providing testimony shall be sworn in by the Committee Chair.

(5) Questioning of the witnesses and parties by Committee members is permitted.

(6) The government entity must bring the disputed records to the hearing to allow the Committee to view records in camera if it deems an in camera inspection necessary. If the records withheld are voluminous or the government entity contends they have not been identified with reasonable specificity, the government entity shall notify the Committee and the adverse party at least two days before the hearing and obtain approval from the Committee Chair to bring a representative sample of the potentially responsive records to the hearing, if it is possible to do so.

(7) Third party presentations shall be permitted. At the conclusion of the testimony presented, the Committee Chair shall ask for statements from any third party. Third party presentations shall be limited to ten minutes.

(8) Closing arguments may be presented by the petitioner and the governmental entity. Each party shall be allowed five minutes to present a closing argument and make rebuttal statements.

(9) After presentation of the evidence, the Committee shall commence deliberations. A Committee Member shall make a motion to grant or to deny the petitioner's request in whole or in part. Following discussion of the motion, the Chair shall call for the question. The motion shall serve as the basis for the Committee Decision and Order. The Committee shall vote and make public the decision of the Committee during the hearing.

(10) The Committee may adjourn, reschedule, continue, or reopen a hearing on the motion of a member.

(11) Except as expressly authorized by law, there shall be

no communication between the parties and the members of the Committee concerning the subject matter of the appeal before the hearing or prior to the issuance of a final Decision And Order. Any other oral or written communication from the parties to the members of the Committee, or from the members of the Committee to the parties, shall be directed to the Executive Secretary for transmittal.

(12) The following provisions govern any meeting at which one or more members of the Committee or a party appears telephonically or electronically pursuant to Utah Code Section 52-4-7.8.

(a) The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected. The anchor location, unless otherwise designated in the notice, shall be at the offices of the Division of State Archives, Salt Lake City, Utah.

(b) If one or more members of the Committee or a party may participate electronically or telephonically, public notices of the meeting shall so indicate. In addition, the notice shall specify the anchor location where the members of the Committee not participating electronically or telephonically will be meeting and where interested persons and the public may attend and monitor the open portions of the meeting.

(c) When notice is given of the possibility of a member of the Committee appearing electronically or telephonically, any member of the Committee may do so and shall be counted as present for purposes of a quorum and may fully participate and vote on any matter coming before the Committee. At the commencement of the meeting, or at such time as any member of the Committee initially appears electronically or telephonically, the Chair shall identify for the record all those who are appearing telephonically or electronically. Votes by members of the Committee who are not at the physical location of the meeting shall be confirmed by the Chair.

(13) If the petitioner wishes to postpone the hearing or withdraw the appeal, the petitioner shall notify the Committee and the government entity in writing no later than two days prior to the scheduled hearing date. Failure to comply with this provision may result in a Committee order requiring that the petitioner pay the government entity's reasonable costs and expenses. The Committee will ordinarily deny a government entity's request to postpone the hearing, unless the government entity has obtained the petitioner's prior consent to reschedule the hearing date.

R35-1-3. Issuing the Committee Decision and Order.

(1) The Decision and Order shall be signed by the Committee Chair and distributed by the Executive Secretary within [~~three~~] five business days after the hearing. Copies of the Decision and Order will be distributed to the petitioner, the governmental entity and all other interested parties. The original order shall be maintained by the Executive Secretary. A copy of the order shall be made available for public access at the Utah State Archives website.