

THE UTAH REPORTERS

2023



ALMANAC

By The Utah Investigative Journalism
Project

Utah SPJ Needs You!

The Utah Headliners Chapter of the Society of Professional Journalists is looking for a few good volunteers interested in joining the board and standing up for the Fourth Estate here in the Beehive State.

The board meets monthly, where we do such work as:

- Advocating against idiotic legislation hurting the work of the press.
- Organizing training and other career development events for journalists.
- Preparing the annual SPJ award contest and deciding on special Honors Awards winners.
- Pushing back against other attempts by government agencies to block access to records and open meetings.



Think you got what it takes? Email utahspj@gmail.com or epeterson@utahinvestigative.org for more information. We'd love to have you on board!

© The Utah Investigative Journalism Project
2023 Edition

Design and production by Kolbie Peterson
Edited by Kolbie Peterson and Dan Harrie

Cover image by Adobe Stock

All portraits were provided by the subjects unless
otherwise specified.

UtahInvestigative.org

TABLE OF CONTENTS



© Adobe Stock

3 **Introduction**

- 4 Welcome from the advisory board
- 5 Free trainings
- 6 Thanks to our sponsors

I: GRAMA and State Records Committee Decisions

- 8 How to appeal a records denial to the State Records Committee
- 15 Records appeal for another U. tragedy affirms initial contact reports are public
- 18 Snow job: FOX 13's Nate Carlisle on winning against an agency's industry-friendly records denial arguments

II: Legal

- 22 Who you gonna call?: First Amendment attorney Jeff Hunt reflects on three decades of running Utah's Freedom of Information Hotline
- 25 Court decision on internal police documents gives reporters some hope

III: Legislature 2023

- 30 Legislature 2023: A big win and minor setbacks

IV: Data and Databases

- 36 Finding stories in the data

Thank you for reading the 2022-23 Utah Reporters Almanac!

We are so excited to again be able to offer this resource to all of you interested in open records and open government. Whether muckraking is your full-time profession, a freelance gig, a hobby or you just want to better understand how to access and understand the machinery of government, this resource is for you.

The Utah Investigative Journalism Project was founded in 2016 to not just be another outlet but to be a resource to help all media organizations in their mission of serving their readers, viewers and listeners. We've always been about collaborating with local media, not competing. To that end, all the stories we've developed and provided to our media partners (Over 100 investigations!) have been provided free of charge. It's why we also provide our trainings free as well. The goal has always been to help media organizations tell the stories their audiences want to hear.

We are proud of the collaborations we've done across the state with organizations big and small, from The Salt Lake Tribune and the Deseret News down to community journals like West View Media, serving Salt Lake City's diverse west-side communities, or The Insider, serving rural Wayne and Garfield counties. But this collaboration isn't just about helping strengthen the local media ecosystem, it's ultimately about serving the public.

If you're not a journalist, then this resource is especially for you!

Now more than ever, it seems journalists and the public at large need to work together to provide accountability and a check to those in power. It is a combined effort. It is not just about storytellers and audiences, it is about journalists and citizens as partners working to ensure the mistakes of today are not repeated tomorrow. It is a contract to make sure progress and good works are brought to bear to solve our most difficult problems.

We hope this issue is useful for all. In it, we have an in-depth guide on appealing records disputes to the State Records Committee with the help of the state's own records committee secretary, Rebekkah Shaw. We've also got an examination of key records disputes, a look at the free FOIA hotline offered by the good folks at the law firm of Parr, Brown, Gee & Loveless, as well as a recap of the 2023 legislative session and key court decisions from 2022.

As always, thanks for reading and believing in what we do. Because we can't do it without YOU!



Sincerely,

Eric S. Peterson
Executive director
The Utah Investigative Journalism Project

Dear UIJP Friends,

Pam and I are passionate believers in the importance of well researched journalism. We believe that in-depth, carefully vetted investigative reporting is critical for the health of our community and democracy. The Internet has forever changed traditional print journalism. The UIJP model of collaborative online journalism and its association with other local and statewide media appears to be the new way forward to speaking truth to power. Although investigative reporting can be disruptive to a community, it is essential to bring truth and fairness to its citizens. Investigative journalism also gives a voice to the underrepresented population, which has resulted in government reforms, reducing stereotypes and attitudes, and a healthier community.

It is important that UIJP have the resources to undertake deep-dive research that gives readers confidence in the reporting. That is why we urge you to consider a donation to this important organization.

Best regards, Scott and Pam Parkinson

The Utah Investigative Journalism Project Advisory Board

Scott and Pam Parkinson

Jorge Fierro

Jean Welch-Hill

Amy Maestas

Board of directors:

Eric S. Peterson

Ted McDonough

Rone Tempest

Cathy McKittrick

Cindi Mansell

Dan Harrie

Kamaile Tripp-Harris

James Brown

Free trainings

The Utah Investigative Journalism Project offers free trainings and consultations to newsrooms big and small and interested community groups in Utah. Our aim is to better equip journalists with the skills they need to utilize databases, fight for public records, and employ better investigative techniques.

OUR COURSES:

“Investigative Techniques and Strategies” gives an overview of strategies for developing investigative stories and provides an introduction to GRAMA and helpful public databases.

“GRAMA-Nomics: Making the Most of Public Records Requests” focuses on how to make GRAMAs or public records requests, how to fight records request denials, and strategies for getting the records you need.

“Digging With Databases” surveys numerous useful databases reporters can tap into to scour through everything from municipal budget documents to nonprofit financials and court records.

“State Records Committee Consultation” is a specialized service where we help focus in on a specific records dispute that you might take to the State Records Committee for appeal. We can help assess how strong the appeal is and help prepare oral and written arguments for the appeal.

“Investigative Interviewing” is all about the interview. How to talk to reluctant sources, get useful information and better quotes, and even how to assess the truthfulness of what the interview subject is telling you.

All trainings are designed and taught by the Project's executive director, Eric Peterson, a veteran Utah reporter who serves on the board for the Utah Headliners Chapter of the Society of Professional Journalists, and previously served as the board's president.

Since training is brought directly to your newsroom, it can be tailored to fit the interests of participants and could blend components of multiple training programs, as well as offer journalists the opportunity to ask specific questions about stories and projects they're working on.

We also now offer trainings as a paid service to non-media groups. If you're interested in setting up a training, contact Eric Peterson at epeterson@utahinvestigative.org.

Thanks to our sponsors!

This publication would not exist without the generosity of some incredible individuals and institutions in our community. Remember their names because they are heroes in our book!

Champions of the First Amendment, \$5,000+:

The Joseph Simmons Foundation and
The Lightspark Foundation

Defenders of Democracy, \$1,000-\$4,999:

The Economic Hardship Reporting Project;
Parr, Brown, Gee & Loveless; The Kingfisher
Foundation; Ronna Cohen and Stan Rosenzweig;
Scott and Pam Parkinson; Sarah Woolsey and
Michael Rubin; Jean Hill; and George Hall

GRAMA and STATE RECORDS COMMITTEE DECISIONS

SECTION I



© Adobe Stock

How to appeal a records denial to the State Records Committee

A master class from the current State Records Committee secretary Rebekkah Shaw.

By Eric S. Peterson | The Utah Investigative Journalism Project

Probably the biggest qualification Rebekkah Shaw had to become executive secretary for the State Records Committee was the fact that she's a total, unabashed records nerd.

She got started at Utah Archives working on a grant to sort through and organize the agency's storehouse of microfiche — the now basically obsolete records technology that exists mainly in older movies about reporters unearthing secrets through the whirring small-screen images.

While the work sounds monotonous, Shaw was in heaven.

That temporary gig led to full-time work at the archives in 2013, during which time she started sitting in on State Records Committee meetings, just for the thrill of it.

"I thought it was fascinating



Rebekkah Shaw

in my own nerdy way," Shaw said.

She even took to sending instant messages to her colleagues about all the interesting records appeals she observed. When the previous secretary stepped down in 2020, Shaw was a natural to become the new secretary and landed her "dream job."

» See next page

Since then, she's observed dozens of appeals and has learned well what people should expect when bringing their appeal to the committee.

Before you file

The State Records Committee is a unique body, with Utah being one of only a handful of states that has one. In many states, when someone has been denied a records request, any appeal goes straight to court, often requiring the requester to hire a lawyer to pursue the desired information.

In Utah, however, requesters may turn to the State Records Committee after two denials by an agency. This committee offers the first chance to make an argument to a neutral and independent body — and no attorney is required.

The committee is made up of volunteers, including a member of the media, state archives, local government and other citizen representatives. They make decisions based on Utah's open records law, the Government Records Access and Management Act, or GRAMA.

A first denial from an agency should include instructions on

how to file the next appeal to the agency's chief administrative officer, or CAO. If that appeal is denied, the next step is to appeal to the State Records Committee.

Shaw notes that if you file a GRAMA request with an agency, you need to keep a copy, along with subsequent denials.

"Hopefully, when you make a records request you keep things organized and keep everything together so when you appeal that to the State Records Committee you have everything ready," Shaw said.

She also stresses that the appeal to the State Records Committee should be a new appeal. You can draft a letter arguing why your records request should have been granted, explaining why it's in the public interest and then include that with everything else that you can email to Shaw at rshaw@utah.gov, while also copying the records officer at the agency that previously denied you.

The Written Appeal

When it comes to the written appeal, Shaw said that it's important to cover all your points but to also remember that it

should be brief.

“Brevity is your friend,” Shaw said. She said some requesters have filed appeals that were hundreds of pages long, proving overwhelming to volunteer committee members and can be ineffective.

Writing an appeal that is simple and clear — not pretending to be a legal brief — is often the best strategy.

“Plain English is good,” Shaw said. “We don’t have any lawyers on the committee.”

While a committee attorney is present, his or her job is mostly to help answer legal questions for the committee, not to tell members how to vote.

In almost every appeal filed to the committee, a hearing will be scheduled. In recent years, however, the hearing date has been at least several months out.

There are rare cases, Shaw said, when a hearing might actually be denied. In some instances, requesters have filed a GRAMA only to be told by the government agency that there are no records to be provided.

According to administrative rules, a requester has to provide “sufficient evidence”

that the records should in fact, exist. This can be tricky. The requester should be prepared to make an argument about why the records should exist in their written appeal.

Shaw takes such requests to the committee chair, who can decide to deny the appeal if it doesn’t look like the requester has evidence that the records should exist. These types of requests do often go to hearings, but usually are unsuccessful as the committee, in the end, must rely on agency assurances of what records exist or not.

If a requester is denied a records committee hearing, he or she can appeal to the district court.

The Hearing

OK, so the big day has finally arrived. You now have the chance to argue your case before the committee and likely against an agency lawyer, usually an assistant attorney general in a state case.

As the requester, you go first and have 20 minutes to make your argument. You don’t have to take up the full 20 minutes and, again according to Shaw, brevity is likely to win you points.

» See next page

You are allowed to call a witness if they add something to your case not already included in your written argument. They will be sworn in.

“What they provide should be unique and not just reaffirming what you already said,” Shaw said.

Keep in mind that the other side will be given the opportunity to ask questions of the witness. On the flip side, if the agency calls a witness, you also can ask them questions.

After your turn, the other side will get its 20 minutes.

Committee members may ask questions of either side as the hearing proceeds.

You will be given five minutes to close your argument and make any rebuttals to points brought up by the other side.

Shaw said that an easy trap to fall into is airing grievances that you feel you’ve been jerked around by the agency holding the records. Complaining to the committee usually won’t help your case because the committee’s marching orders are to focus only on the records themselves.

“Focus on the records as much as possible,” Shaw advised. “[The committee’s] man-

date is only to deal with access to the record. If you think there has been bad faith along the way during the process, the committee just can’t do anything about that.”

Shaw said that referencing other relevant State Records Committee decisions can be helpful. While not all committee members treat past decisions as binding, citing such precedents can be a useful approach.

“I haven’t seen a case where it wasn’t helpful for a requester to say ‘You previously agreed with me on this case and this case...,’” Shaw said.

While focusing on records is important, it still is also important to talk about the importance of the records to the public.

“The big thing is to talk about the public interest. You can’t assume the committee sees the interest that you know is there,” Shaw said.

Unusual situations

Most hearings will stick to a clear 20-minute testimony and a five-minute closing structure. It is possible, however, that with permission of the chair, the public may be allowed to



Courtesy photo

A view of the former State Records Committee meeting room.

speak to a particular appeal. If you want the public to have the opportunity to speak, you should talk to Shaw about that ahead of time so she can clear it with the committee chair.

Some records appeals might involve more than just you and a government agency, but might also include an affected business. For example, maybe an agency has records involving a private contractor that it's denied you access to. In that case, after you and the government agency representative have given your five-minute closing argument, a representative of the private business will also get five minutes to

address the committee.

Another circumstance to watch out for involves mediation.

Whenever you have an appeal pending before the committee, the state records ombudsman will reach out to see if you are open to discussing settling the dispute through voluntary mediation. Shaw said these conversations can be very helpful and productive and, depending on your appeal, might be your best bet for getting at least some of the records you want.

But mediation is also a confidential process. Meaning neither side is to talk about

» See next page

discussions from mediation should the case proceed to a committee hearing.

Yet you should be aware that the confidentiality isn't always honored. In multiple appeals brought by The Utah Investigative Journalism Project, assistant attorneys general have aired details of the mediation discussions, not only in oral arguments but even in written submissions to the committee.

Shaw noted that the committee has no idea what happened in mediation, so members don't know if someone is discussing something confidential from mediation.

Shaw recommended that you might want to take note of what was said that shouldn't have been during the agency's testimony and then during your five-minute closing bring it up to the committee and ask them to disregard what was said.

She acknowledged there might be instances when it is worth attempting to stop an agency during its testimony from disclosing sensitive details from mediation, but recommended raising your hand to seek committee approval to interrupt rather than trying to pretend you are a lawyer by

asserting an "objection."

"Objections never really go over well with the committee," Shaw said. "They tend to find that a little obnoxious."

Deliberation

After closing statements, the committee will move into deliberation.

Sometimes they begin the process by going behind closed doors to review the records in question.

But the deliberation itself is supposed to be public. This can be an unusual process because the committee may talk about your arguments and case right in front of you. You may even be tempted to interrupt to add a point or correct something you think was misunderstood, but the deliberation phase means your turn to talk is over. Usually.

While deliberation is a time for committee members to just talk among themselves, Shaw said that if you are polite, you may raise your hand and the committee chair has the discretion to call on you. But she advised doing so sparingly, and never to repeat a point already made or to raise a brand-new one.

After the committee ends its deliberation with a majority vote, it will announce its decision, and both parties will receive a written order within seven business days, after which parties have 30 days to decide if they want to appeal the decision to district court.

Final takeaways

Shaw said that strategically you might need to consider a few things for the most effective appeal, like attending the hearing in person. It is possible to attend online, but it may put you at a disadvantage. If you are there in person, for example, the committee can easily see you and so it would be easier to politely interrupt if you chose to do so.

Also, if you're inclined to interrupt the other side's argument or committee deliberations, think twice if it's later in the day. Toward the end of its hearing schedule, the committee might not have time to indulge an interruption, no matter how well meaning.

Lastly, Shaw noted it's important to remember that the committee is empowered to review the disputed records for themselves in camera, mean-

ing they go into closed session to read the documents and review them in private.

Under Utah's GRAMA balancing test, if you successfully argue that the public has a compelling interest in seeing the records, then they can be made public even if they are normally considered private and protected.

While the committee is required to review the records if you argue the public's right to know, Shaw said it can be useful to remind the committee at the hearing about the power they have.

This is especially true because the government sometimes will try to convince the committee that it actually has no choice but to deny an appeal, often referencing open investigations or other justifications.

"They tend to make their presentation like the committee has no choice but to agree with them," Shaw said. "But asking the committee to review the records does help them to bring to the front of their minds that they don't have to take anyone's word for it, that they can look at the records themselves." •

Records appeal for another U. tragedy affirms initial contact reports are public

By Eric S. Peterson | The Utah Investigative Journalism Project

In 2018, Salt Lake Tribune reporter Courtney Tanner wrote a story about her investigation into the murder of University of Utah student Lauren McCluskey, killed on campus by a man she had briefly dated. McCluskey's friends had warned university staff about him.

Four years later, Tanner wrote another story with a near identical lead: U. student Zhifan Dong had been killed by her ex-boyfriend, and the university, once again, had received multiple warnings before tragedy struck.

When Tanner got the records into the university's handling of the Dong murder, she was struck by the astounding similarities.

"It was a similar mess to the McCluskey case," Tanner said.

The university ultimately released all of its documents on the Dong case to Tanner and to the public at large. But this



Courtney Tanner • 2022 GRAMA Contest Winner!

gesture of transparency didn't happen until the school first had denied Tanner's requests for basic documents on the case and then were overruled by the State Records Committee in June 2022.

Tanner's request in February sought police reports about the case, specifically initial contact reports. These are the reports that officers draft when responding to a complaint or

discovery that a law has been broken. The Utah State Archives say these records are normally public, but a number of agencies have tried to challenge that classification, arguing that even these early reports are documents that, if released, could jeopardize an ongoing investigation.

The university invoked **Utah Code 63G-2-305(10)** in its denial, which specifically refers to records for civil, criminal and other enforcement purposes. The university also cited **63G-2-302(2)(d)** to deny the records, arguing that their release would be an unwarranted invasion of personal privacy for the students involved.

At her June hearing, Tanner argued for release of the campus police initial contact report, which is public under the Government Records Access and Management Act (GRAMA). She also invoked GRAMA's balancing test, which allows for the release of private and protected records if the public's right to know outweighs the government's interest in secrecy.

"I had argued the public deserves to see these records. These students went to a public university for help, so peo-

ple had a right to know what happened," Tanner said.

The committee reviewed the record in private, and when it emerged to deliberate and make a ruling, Tanner said members stressed that the record was an initial contact report and thus should be released to the public.

The following month, the university decided to not only release the report, but to make public all of its documents on the case. Tanner was pleased the university went the extra mile after losing at the committee, when the school could have challenged the decision in court and delayed release of the documents.

Tanner's story documented a laundry list of mistakes made by the university. Campus staff repeatedly confused the names of Dong and her ex-boyfriend, they repeatedly called the number of a student with the same name as her ex-boyfriend, and, worst of all, they didn't relay Dong's concerns to campus police until after she had been reported missing.

These were the same mistakes the university had prom-

» See next page

ised to never repeat after the tragedy of the McCluskey case played out over several years and resulted in a \$13.5 million settlement to McCluskey's family.

The university owned up to these shortcomings in a statement acknowledging its inadequate response to "this complex situation, including insufficient and unprofessional communications, a gap in the training of housing workers, and a delay in notifying university police of indications of domestic violence."

Takeaways

The committee's decision provides a useful reference for anyone facing pushback for requesting an initial contact report. You can now reference State Records Committee Case No. 22-27, Courtney Tanner v. University of Utah, as an example of the committee affirming that initial contact reports are public documents.

For Tanner, prevailing at the State Records Committee is all about doing your homework.

"I'm not the best public speaker, so for anyone going up against institutions that have multiple people repre-

senting them that are very familiar with the law, take the time to actually prepare," she advised.

That meant reviewing other State Records Committee cases involving initial contact reports and referencing the state's own guidance on the documents.

When filing GRAMA requests, Tanner also stressed being clear and specific.

"When I actually fill out the request, I try to be as specific as possible and as detailed as possible," she said, adding that in this case, that meant names and a timeline to help the university understand the scope of her request.

While Tanner has broken multiple stories about neglect and mismanagement at the university, she notes that she has always strived to be professional and polite in dealing with campus officials, and it has often paid off. In the past, having good rapport with the university has helped her persuade campus officials to forgo records committee battles and appeals and to just release records to her instead.

"I think that being nice can pay off," Tanner said. •

Snow job

FOX 13's Nate Carlisle on winning against an agency's industry-friendly records denial arguments.

By Eric S. Peterson | The Utah Investigative Journalism Project

The holidays can make for a pretty slow news day. That's usually the case, but Christmas Eve 2021 proved to be an exception. That day, 167 skiers got stranded on Deer Valley Resort's Carpenter Express Ski Lift due to a mechanical failure. For two hours, skiers waited, some of them dangling over 100 feet in the air while they waited to be rescued and lowered gently down by hoists. No one was injured, and a number of TV stations got a good story with some great snowy rescue reels.

FOX 13 investigative reporter Nate Carlisle was filling in on the general assignment desk a couple of days later and thought there was more to the story. The question he kept kicking around was *who is in charge of these things when they break?*

In his story, Carlisle answered that question by introducing Utahns to an obscure agency called the Passenger Ropeway Safety Committee, which is hou-



Nate Carlisle

sed as a division under the Utah Department of Transportation.

As part of his investigation, he discovered that the owner of a lift is required to file a report within days of any mechanical failure to the Passenger Ropeway Safety Committee. So, on Jan. 20, 2022, Carlisle filed a Government Records Access and Management Act request, or GRAMA, with UDOT to see the report filed.

» See next page

UDOT denied his request, challenging it on a couple of grounds. For one, it argued that the report was an “accident report” that is protected from disclosure under **Utah Code 63G-2-305(38)**. The agency also threw another curveball at Carlisle — arguing that release of these reports would make ski resorts unwilling in the future to let government regulators know when a problem occurs.

It’s something Carlisle scoffs at, thinking of how disciplinary action and regulation of other industries is regularly made public. For 14 years, he covered Peace Officer Standard and Training meetings where discipline was meted out to police officers for on-duty misconduct.

“Talk about bringing some dirty laundry to the public,” Carlisle said. Or for that matter, reports on violations and incidents involving bartenders and cocktail waitresses violating state liquor laws.

“And yet we want to treat ski resorts as some little baby that’s not going to tell us what’s the matter if we announce it over the intercom?” Carlisle asked.

In his appeal, Carlisle argued that the report was an incident report, or initial contact report generally considered public. He

also invoked GRAMA’s balancing test, which encourages the release of private or protected records should there be a compelling public interest that outweighs the reasons for secrecy.

Carlisle made that argument at his State Records Committee hearing while an assistant attorney general representing UDOT continued to argue that disclosure would negatively impact the industry’s business and erode its trust with state regulators.

Carlisle argued the public has a right to know about the regulation and safety of machinery that carries hundreds of thousands of winter sports enthusiasts through the air every year. But he also challenged the “accident report” statute used by UDOT as well.

After the committee reviewed the records in closed session, it ruled in Carlisle’s favor, marking a significant win.

Not only did it agree with Carlisle that the records were of compelling public interest, but also went further and determined that Utah’s Legislature created the “accident report” exemption in 2000 for legislation specifically related to motor vehicle accidents, and so UDOT was wrong in arguing it applied to a ski lift.

"The [SRC] order found the 'record was not properly classified,' which is fancy Utah legal speak for 'Hey, you applied the wrong statute,'" Carlisle said.

"I think it puts the writing on the walls," he said of the decision. "From now on, UDOT and the Ropeway Passenger Safety Committee will regard these incident reports with ski lifts and gondolas as public records."

Takeaways

Besides clarifying that these ski lift reports are public, the committee's decision also helped solidify that an accident report is only protected when it involves motor vehicle traffic accidents.

"You can see a scenario where a park employee runs someone's foot over with a lawnmower and the city is going to argue this is an accident report," Carlisle said.

For Carlisle, research is key when it comes to preparing for a State Records Committee appeal. In this case, he looked up the "accident report" statute UDOT used to see how far the agency was trying to stretch it. Not being intimidated by legal code is important, he said, especially when the

law can easily be researched online.

He recalled an instance some years ago when he was denied a police record, "and they cited a statute relating to water district infrastructure," Carlisle said. "They just snagged the wrong statute is what it turned out to be, which tends to speak volumes in and of itself."

His research for the ski lift appeal also got him to thinking about useful comparisons outside of Utah. Here, UDOT was arguing that release of the record would hurt the ski resort business, so Carlisle looked at how similar regulations affect the industry in other states.

He found that other states readily make this information public and was able to present this finding at the hearing. He pointed out how California and Washington make public lists of all the specific injuries people suffer at resorts, even down to which bones were broken from lift-related injuries.

Carlisle even noted that in Colorado, where the Deer Valley owners have another resort, the records he sought were public.

"Colorado, last I heard, still had a pretty healthy ski industry," Carlisle said. •

LEGAL

SECTION II



© Adobe Stock

Who you gonna call?

First Amendment attorney Jeff Hunt reflects on three decades of running Utah's Freedom of Information Hotline

By Eric S. Peterson | The Utah Investigative Journalism Project

More than three decades ago, Jeff Hunt was ready to make a decision about where he wanted to put down roots.

He had been a journalist in Iowa for four years and spent a year at the Deseret News before making the switch to practicing law. He clerked at a firm in Arizona but also had a good experience in Utah.

Luckily for Utah, the trout fishing lured him back as much as the brutal Arizona summers sent him packing. Hunt returned to Salt Lake City and joined the law firm of Parr, Brown, Gee & Loveless in the early '90s. He was in only his second year at the firm when he asked his bosses to set up a 1-800 number for journalists in need of some pro bono legal help.

"I pitched it when I was just a green associate and they said 'go for it!'" Hunt recalled.



Jeff Hunt

The idea was simple: Give journalists an easy resource to quickly learn about their rights and, if necessary, come up with a game plan for how to access public records and closed meetings, or address other legal conundrums.

Hunt recalled how hard it

» See next page

could be sometimes as a reporter to get simple legal advice when it meant convincing your editor to start racking up billable hours. With the hotline, attorneys at Parr, Brown, Gee & Loveless could at least triage a problem. Sometimes that might mean helping a reporter draft an appeal to a records denial or sometimes it might mean the attorney writing a strongly worded letter to prod an obstinate government agency. And sometimes it might mean the firm taking on a client and fighting it out in court.

Since the days of the landline, the firm has donated over 5,000 hours of free legal advice to journalists.

"It's probably close to \$2 million we've donated in attorney time," Hunt said. "It's a big commitment for the firm."

Not only journalists benefit — so do members of the public.

Nowadays, the hotline is also a web portal where interested individuals can enter their requests online at <https://parrbrown.com/services/the-utah-freedom-of-information-hotline/>.

"On average, we get about

three contacts a week through the hotline," Hunt said. "Most of those are journalists and some are members of the public who find us using Google."

Hunt said most questions are about GRAMA, followed by open-meetings queries and after that, questions about court proceedings—like when a courtroom might legally be closed to media.

Over the years, the firm has not only answered questions but helped win major battles in court. That includes journalist Cathy McKittrick's fight for investigation records into former Weber County Commissioner Kerry Gibson, a case that went all the way to the state Supreme Court (see the Utah Reporters Almanac 2022). Then there was the battle Dan Schroeder, a physics professor from Weber State University, waged to get records of money funneled to the former Ogden mayor's campaign from a mysterious shell organization back in 2011.

"We were helping him in the background and then all of a sudden it gets to the point where he's got to take it to

court, and so we volunteered our services,” Hunt said. “We litigated that and got it to the Utah Supreme Court and established some really important precedent on how GRAMA is supposed to be interpreted.”

Since the firm has been handling the hotline for decades, it has also been in a unique position to monitor trends in access to open government. Hunt said he’s seen a few troubling patterns emerge in recent years. While more and more government agencies have been putting their records into online databases for their own efficient access and retrieval, they are charging journalists and members of the public higher fees to get them.

“It should be less expensive to search for and provide the information, but often we see just the opposite,” he said. Excessive fees are an area where the firm can help people calling the hotline.

The other problem he sees is government agencies more often taking losing battles to the State Records Committee or to court.

“They have government lawyers on salary so it doesn’t

cost [the agency] any more to do that, but it sure costs the public to try and go find a lawyer to take their case on,” Hunt said.

There are positive trends, though. Hotline attorneys have interacted with many government records officers and have been invited to provide trainings so they may better understand laws affecting GRAMA and open meetings. As a result, many records officers are on top of GRAMA and the Open Meetings Act more than in the past. Over the years, Hunt said he and other members of the firm have had the pleasure of working with government officials eager to understand GRAMA for the benefit of everyone.

“There’re some really good ones that want to understand the value of transparency and want to get it right, so we love working with them,” Hunt said.

The other encouraging trend Hunt has seen is reporters who have reached out for hotline help then sharing what they’ve learned with colleagues.

“It’s had a ripple effect through newsrooms across the state.” •

Court decision on internal police documents gives reporters some hope

Lawmakers blocked access to Garrity reports, but a district judge rules they are of public interest.

By Eric S. Peterson | The Utah Investigative Journalism Project

In the 2022 legislative session, Rep. Ryan Wilcox, R-Ogden, passed a bill to block public access to internal police investigation documents known as “Garrity statements.”

Wilcox criticized journalists seeking these documents as being motivated by a desire “to sell papers.” Journalists, however, have long maintained that the public has a right to know how officer-involved shootings are investigated.

Although lawmakers sided with Wilcox and voted overwhelmingly to block these records from the public, a few months later, a district court judge ruled in a specific case that the public did indeed have a right to access these records. The decision concluded that the

public deserves to have all the facts when a police officer has to pull the trigger in the line of duty.

While the ruling was a win—and a useful reference for reporters and citizen records requesters—the legislation still creates a difficult path for those seeking these statements.

The statements themselves are disclosures officers are required to give to their employing agency or face termination. At the same time, the law shields officers from having the disclosures used against them in criminal proceedings. The name comes from a 1967 Supreme Court case decision *Garrity v. New Jersey*.

Mike Judd, an attorney at Parsons, Behle and Latimer, represented The Salt Lake

Tribune in its legal battle for these records. The dispute originally started in 2021, when reporter Sam Stecklow, working with The Salt Lake Tribune and PBS' Frontline, filed dozens of records requests with every police department in Utah to help the paper build out its Shots Fired database of police shootings. While most agencies turned over the records, a number of departments challenged the request. Stecklow fought and won all the record denials at the State Records Committee, but three agencies— police departments for Cottonwood Heights and West Jordan, along with the Washington County Sheriff's Office — appealed the committee losses to district court.

The cases took different paths to resolution. The family of Zane James, who was killed by Cottonwood Heights police in 2018 after an officer rammed his car into James' motorbike, sued the department, and the Garrity statement came out as a result of that litigation.

During the Washington



*(Courtesy Parsons, Behle
and Latimer)*
Mike Judd

County case, Judd said that new leadership came into the local government and decided the matter wasn't worth pursuing since the Legislature was taking up their cause to make the records private in the future. But that left West Jordan police deciding to press the matter before 3rd District Judge Vernice Trease.

The West Jordan case focused on the 2018 shooting death of Michael Glad, who had robbed a

» See next page

convenience store and was shot after pointing a gun at police.

The case ended in a summary judgment, with Judge Trease ruling against the city on each of its arguments: that the statement was part of an employee's protected personnel file, and that disclosure would invade the personal privacy of officers involved and discourage officers in the future to be forthcoming in Garrity statements.

The city made every argument it could "to see what would stick," and the judge's refuting all the points provided useful case law for future decisions, Judd said.

"She found that these records shouldn't have been classified as private under the old law, but even if they were [private] that the public interest in accessing those documents outweighed any interest in keeping them secret," Judd said.

The ruling, he added, "is a big deal for [journalists'] purposes, because that is the plank that people will have to rely on going forward with the new legislation."

Takeaways

Time and Money:

Garrity documents are hard but not impossible to get. The one legislative concession was that going forward, these statements could still be accessed by arguing the public's right to know under the state's Government Records Access and Management Act, or GRAMA. Under GRAMA, there is a "balancing test" that allows public disclosure of even private or protected records if it's shown that the public's right to know outweighs the government's interest in secrecy.

This fail-safe means that even though the Legislature has now classified Garrity statements as protected, reporters and citizens seeking them can still at least make this argument in requesting them. It just makes it more likely that a requester may need a lawyer to take it to court to succeed.

"It can still be a challenge if an agency does dig in their feet on their side, it can take time and, obviously, money," Judd said.

The court can award fees for the requester's side, but it's not guaranteed.

Privacy:

Trease sided with reporters seeking public release of a Garrity statement, finding that these records can't be considered an unwarranted invasion of privacy for the officers. Even as traumatic as it is for an officer to use lethal force, it's still something happening on the job and the public has a right to understand what happens on the taxpayer-funded dime.

Employee File:

Another significant decision here that could be applicable beyond police shooting cases is how Trease pushed back against arguments made that the Garrity documents were part of an employee's protected personnel file. Judd said West Jordan and the Attorney General's Office that filed a friend of the court brief went too far in attempting to stretch the protections of the personnel

file.

"[Trease] specifically said that if you adopted their ruling you could literally shield any record from GRAMA," Judd said. In that case, "there are real opportunities for abuse."

Trease's ruling provides precedent that there is a limit to what an agency can claim as privileged personnel information.

The public's right to know:

West Jordan's fight against disclosure appeared to have been more out of principle to challenge such releases than any effort to suppress damning information, Judd said, because the records did not reveal any clear sign of recklessness in the shooting.

The judge's ruling may be useful in future challenges finding as it did that, based on the public trust invested in law enforcement and the high stakes involved in any use of lethal force, "there is a clear, strong public interest in ensuring that officers only use lethal force appropriately." •

LEGISLATURE 2023



Matt Morgan

SECTION III

Legislature 2023: A big win and minor setbacks

Not a bad year on the hill for public records and open government.

By Eric S. Peterson | The Utah Investigative Journalism Project

There was a lot less posturing and raging against the media from lawmakers in the 2023 legislative session than the previous year. In fact, a number of potentially damaging bills were fixed before they were passed. And a very substantive reform was passed with Senate Bill 18, the Public Expression Protection Act, which will help push back against spurious lawsuits targeting journalists and others facing censorship by litigation just for speaking out.

That bill alone is a big step forward, but it wouldn't be the Utah Legislature without at least a couple steps back, and those bills were passed as well.

SB18 Public Expression Protection Act—Passed

SLAPP is a harsh acronym for a disturbing legal trend in

the First Amendment arena standing for Strategic Lawsuits Against Public Participation. These are often frivolous defamation suits filed not to actually win in court but to intimidate someone from speaking up and speaking out. The SLAPPers know they will likely have their suits tossed in the long run, but in the short run, filing litigation forces citizens, public officials and journalists to hire expensive legal representation to defend against the claims. Even frivolous suits will still rack up enough billable hours to create a chilling effect on free speech.

"The essence of this bill is really quite simple," Sen. Curtis Bramble, R-Provo, told a House committee in January. "There has been a movement in the United States, not just Utah, but across the

» See next page

country to shut down free speech in the public square through intimidation.”

In 2022, a former Salt Lake County Republican Party official had filed suit against 148 defendants ranging from public officials who had commented on negative stories about him, including Utah Gov. Spencer Cox, to The Salt Lake Tribune for writing about complaints against the official by multiple women. A judge later dismissed the suit. At the committee hearing, Bramble made reference to the suit without going into much detail about it, to explain how his legislation would deter plaintiffs from shotgunning claims without cause.

“If a plaintiff names you and you can show it’s without merit, then that plaintiff may be responsible to pay your legal fees,” Bramble said. “It’s designed to protect freedom of speech.”

The legislation was passed by both houses and has been signed by the governor.

SB231 GRAMA Amendments—Passed

There is a lot to unpack in this bill, with some conces-

sions to First Amendment attorneys as well as to beleaguered records officers at agencies who have been trying for a while to deal with “vexatious requesters,” the kind who tend to file dozens of requests, often for huge volumes of records and possibly just to spite an agency.

The bill would also prohibit new arguments from being raised in court that were not first raised at the State Records Committee when it comes to records disputes. This could benefit journalists who win at the SRC but have to continue the battle in court, by not forcing them to respond to countless other arguments brought up later in the judicial review.

The bill does other key things, for example, requiring certain businesses to indemnify the government if they want to fight to keep records private. In some records battles, a business might seek to keep its records confidential and ask a government agency to fight for that designation through the legal process. Previously, this led to taxpayers footing the bill to defend a company’s secrecy interests

even if the argument was defeated at the State Records Committee. Now, if a company wants the state to fight to keep its business records secret, the company will have to foot the bill in case the government loses its case.

The Utah Media Coalition also helped negotiate some better outcomes when it comes to “vexatious requesters.”

The bill language for the first time creates a mechanism whereby an agency can petition the State Records Committee to designate a requester as vexatious. A hearing can be held and if agreed, that requester can’t file GRAMAs with the agency for a period of a year.

A fail-safe was built into this legislation. Under the language, if a person fights the designation and wins, the court can award reasonable attorney fees in doing so.

HB511 Crime Victim Identification Amendments—Passed

This bill, which would prohibit law enforcement from disclosing to the media the identity of a minor victim

of a criminal homicide, flew through both houses with bipartisan support, and 38 co-sponsors.

The bill had so much support that at a Feb. 28 hearing, Rep. Candice Pierucci, R-Riverton, spent less than a minute presenting the legislation.

“Last year at the end of the session, I got a phone call from a constituent representing families who were incredibly distraught, beyond distraught. Their two sons ... had been shot in the shooting at Hunter [High School] and they found out it was their kids that were killed from a media report,” Pierucci said, referring to a 2022 school shooting where one teen killed two students and injured a third during a lunchtime altercation.

“This makes sure parents are informed and given consent before a child’s names are published,” Pierucci said.

The committee chair thanked Pierucci for the quick presentation and opened the floor to public comment, joking that no one better be speaking against the bill.

» See next page

“Currently, there are 12 different agencies inside the government that [have] some form or fashion of operations over the lake, and they may be moving in different directions, so it’s important to bring everybody together.”

— Rep. Mike Schultz, R-Hooper

The Utah Media Coalition, however, warned that the legislation unnecessarily tied the hands of law enforcement from releasing that information in the right context. The coalition noted that GRAMA already provides exceptions that allow police to withhold that information if they need to do so to protect privacy of individuals along with ensuring public safety and preserving the integrity of investigations.

The bill still was easily passed by lawmakers.

HB491 Amendments Related to the Great Salt Lake—Passed

This legislation created a Great Salt Lake “czar” although in discussion this position was referred to more formally as a Great Salt Lake commissioner.

Rep. Mike Schultz, R-Hooper, presented the bill as necessary to help the lake’s longterm survival by consolidating decision-making authority.

“Currently, there are 12 different agencies inside the government that [have] some form or fashion of operations over the lake, and they may be moving in different directions, so it’s important to bring everybody together,” Schultz told a February Senate committee.

With so many different interests, he said what was missing in terms of leadership was a “quarterback calling the plays.”

But the legislation also now makes some records non-public, like records “concerning a claim to the use of water in the Great Salt Lake.”

This could give the Com-

missioner broad power to keep records of water usage and negotiations with water users blocked from the public view.

HB97 Government Records Access Amendments—Failed

HB97 was the kind of legislation journalists have long been waiting for to clarify how public officials and government employees search personal devices for records. It's also the kind they'll have to keep waiting for since this bill failed to advance in the Legislature.

Under GRAMA, a public record can include an email or a text on a private device if it's about matters of public business. The problem is that searching for such records is left up entirely to the official who owns the device.

Rep. Andrew Stoddard, D-Sandy, proposed the legislation, which would create a more formalized process for searching personal electronic devices and also created a misdemeanor criminal penalty for public officials and employees who refuse to follow the process or who

submit a materially false declaration about the search for records they conducted.

Not only did the bill not advance, it never even got assigned to a committee.

Creation of a Capitol Press Corps—Never even talked about

In the 2022 session, the Legislature took unprecedented measures to block media access to the House and Senate floors and committee rooms. During those debates, a solution was floated of creating a Capitol Press Corps that would help moderate and regulate media access on the hill with media stakeholders collaborating with lawmakers.

The model would be based on other similarly successful collaborations in other states, the White House Press Corps and, more locally, the very successful Utah Courts Pool.

The presentation was set to be discussed at a November Interim study committee, only to be pulled from the agenda at the last minute. The idea was not brought up again throughout the session. •

DATA & DATABASES



© Adobe Stock

SECTION IV

Finding stories in the data

State data coordinator Drew Mingl explains the potential of Utah's Open Data Portal.

By Eric S. Peterson | The Utah Investigative Journalism Project

Drew Mingl, the state's open data coordinator, is a man obsessed with data. As the state data coordinator, Mingl oversees efforts to make sure the most vital public records transform from paper records collecting dust in dingy filing cabinets across the state into easy-to-access information all members of the public can find at the click of a few buttons.

"Remember when you were a kid and how when you went into a library you had to go to a card catalog or onto a computer and it would tell you the book you want is in this section with this number?" Mingl said. "That's basically what I do for Utah, but with data. I'm like the head librarian of all of Utah's data."

For a man with a full-time job of turning ink on paper into data online, his work is not abstract. He doesn't stare at a "Matrix"-like screen of 1s and 0s. Instead, every data point he sees could be a story. How much crime is



Drew Mingl

in Bountiful versus Orem, for example. Or how much a knee replacement might cost you, or how much government employees are getting paid and how their agencies are spending your tax dollars.

Mingl's background is as an auditor. He knows how easy it is for numbers to get fudged

» See next page

when they get buried in rows of inaccessible data, and he knows what's at stake when fudged numbers mean wasted taxpayer resources.

"I grew up poor as shit," Mingl said. His family relied on public assistance and, knowing how important that was, it kills him to think of how wasted public funds could be better spent on those who need it.

After working as an auditor at Salt Lake Community College, Mingl was called on to fill the new position of state data coordinator, created by Senate Bill 70 (SB70) in the 2014 legislative session by then Sen. Deidre Henderson, R-Spanish Fork. The legislation created the Utah Open Data portal, opendata.utah.gov, as well as the Open Records Portal, openrecords.utah.gov, where Utahns can file records requests with all state and local government agencies. He also manages the state's financial transparency site, spending.utah.gov. Not only does he work with small rural towns and counties in the state, but he also wrestles with federal bureaucracy to pull federal data about Utahns and make it accessible at the data portal as well.

His work consists primarily of

"finding [data], cleaning it and then uploading it," he said with the biggest time suck being involved in spending hours cleaning and polishing the data into a consistent format.

His marching orders are to prioritize and curate the most important information for easy online access. The data he's found can often be surprising.

"There was a new federal law that required hospitals to make available their cost structures for every single procedure with Medicaid cost data," Mingl recalled. Within miles of each other he found two doctors doing the same knee replacement surgery with drastically different billing.

"Two providers, one cost \$39,000 and the other was \$80,000," Mingl said.

That's just one interesting data set easily found on opendata.utah.gov by searching on the "Health" tile on the home page, among numerous other categories of data including "Education," "Transportation," "Government & Taxes" and more.

The tiles bring up unique catalogues worth exploring, but Mingl said the next step is to curate the data even more.

"What I'm doing now is when you click on the 'Health' button

it's going to take you to an already completely curated page," Mingl said.

With health data sets specifically, that will include interface with federal databases like those that show what pharmaceutical companies pay to doctors in stipends, free lunches and honorariums. The kind of data point that might help some Utahns understand "why does my doctor keep shoving statins down my throat," Mingl said, as an example.

The new functionality will also include custom visualizations.

"I'm going to pick the best ones and make lots of maps," Mingl said. The new site could then allow you to not only know how much a big pill company is paying a doctor, but you could scroll across a map of health care providers in your county and click on each one and get quick stats on how much they receive and from what companies.

"I'm going to make it super easy for people to get the data you need as quickly and seamlessly as possible," Mingl said.

Takeaways:

While the data is valuable for

everyone, Mingl said journalists especially should take advantage of all the data available to them online. He said it can even help journalists who are being quoted excessive fees for GRAMA requests for digitally stored data.

Under Utah law, agencies are only supposed to charge the hourly rate for the lowest-paid employee capable of providing the records. He said you could easily look up the salary of the records officer for an agency on spending.utah.gov and then figure out their hourly rate and see if it matches up with what an agency is trying to charge for a GRAMA request.

"I would calculate the average salary she or he makes per hour, then I would take that total and divide by the amount of hours spent to get it, that's going to give you a defensible charge," he said.

His other takeaway is to encourage people to reach out with questions and help on finding data to him at dmingl@utah.gov. He is the friendly data librarian after all.

"If I can show what can be done with the data, hopefully it will incentivize people to jump in and get their own data," Mingl said. •