

SUMMARY OF FEE WAIVER DECISIONS OF THE STATE RECORDS COMMITTEE -- 1992-2012.

The following is a brief summary of State Records Committee (SRC) appeals involving fees. Each summary includes a link to the associated order.

1. Deseret News vs. Department of Public Safety Driver License Division – 1992 <http://archives.utah.gov/src/srcappeal-1992-02.html>

Based on the provision that every person has the right to inspect a public record free of charge (63G-2-201(1)), the Deseret News wanted to inspect without charge the driving records of 50 candidates for public office. Driver's License Division was willing to allow inspection of the records but not without charge because Utah Operator's License Act governs disclosure of driving records and allows for a fee. The committee determined that the provisions of GRAMA do not override provisions in other statutes. While the Operators' License Act, authorizes the Driver's License Division to charge a fee, it does not require them to do so. **The committee determined that while it does not have authority to enforce the fee waiver, it strongly believed that a fee waiver should be extended.**

2. Thomas Garcia vs. Department of Corrections – 1994 <http://archives.utah.gov/src/srcappeal-1994-14.html>

Mr. Garcia requested a fee waiver for copy costs associated with medical records. The hearing included a discussion of whether the records were being released to him under GRAMA or some other statute. Mr. Garcia was further grieved that the Department did not notify him what the cost would be prior to providing the records. The Committee determined that the records were released under GRAMA; that 63-2-204 did apply (presumably 63G-2-204(b)). **The Committee further determined that not advising the requester in advance what the cost would be or that the request for a fee waiver would be denied is contrary to the interest of justice. Therefore, the Committee reversed Corrections denial of the request for a fee waiver.**

3. Colorado Legal Services vs. Department of Agriculture – 2001 <http://archives.utah.gov/src/srcappeal-2001-07.html>

Colorado Legal Services requested a fee waiver for records concerning the death of a migrant farm worker based on 63-2-203(4) which states that a governmental entity may fill a request without charge and is encouraged to do so in certain circumstances. The State Records Committee found that while the law encourages, it does not mandate fee waivers. **The Committee determined that it does not have authority to order a fee to be waived and therefore Utah Department of Agriculture's decision to deny the requested fee waiver was affirmed.**

4. Jeremy Beckham vs. University of Utah – 2004

<http://archives.utah.gov/src/srcappeal-2004-09.html>

Mr. Beckham requested a fee waiver for certain records that the University of Utah provided to him for research purposes. The Records Committee determined that the University was entitled to the actual cost of providing the record. The actual cost included the right to charge a reasonable fee to cover the cost of segregating information Mr. Beckham is entitled to inspect from information that he is not entitled to inspect. Scientists and technicians were the lowest paid employees who could segregate the records. While the University could waive the fee if the research benefited the public rather than an individual, **the statutory language is permissive and not mandatory and therefore the University's decision to deny Mr. Beckham a fee waiver was affirmed.**

5. Joycelyn Straight vs. Lieutenant Governor's Office – 2006

<http://archives.utah.gov/src/srcappeal-2006-08.html>

Among other things, Straight requested a fee waiver for obtaining voter registration records. The Committee was persuaded that under Utah Code § 63-2-203(4) the fee charged to Ms. Strait was valid. **The Committee determined that the Lt. Governor's Office can charge a reasonable fee.**

6. Southern Utah Wilderness Alliance vs. Oil, Gas and Mining – 2006

<http://archives.utah.gov/src/srcappeal-2004-09.html>

Southern Utah Wilderness Alliance (SUWA) requested a fee waiver for certain records provided by the Department of Oil Gas and Mining. The Records Committee determined the Utah Division of Oil, Gas and Mining has properly assessed fees for the actual cost of staff not exceeding the salary of the lowest paid employee with the necessary skills to perform the request for summarizing, compiling, search, retrieval and other direct costs of compiling records to comply with SUWA's request. The committee was persuaded that the fee was reasonable per Utah Code § 63-2-103 and **there is no statutory requirement which provides for prior notice to a requestor for compilation fees.**

7. William H. Doubtis Jr., vs. Corrections – 2006

<http://archives.utah.gov/src/srcappeal-2006-11.html>

Mr. Doubtis asked for records associated with his correctional history held by the Department of Corrections and a waiver of the related fees. The committee determined that under Utah Code § 63-2-302(2)(a) and 302(2)(b) **the fee charged to Mr. Doubtis was valid. The Committee was persuaded that as the actual fees exceeded the amount of \$50.00, the respondent had the discretion to require payment of fees before processing the request per Utah Code § 63-2-203(8).**

8. Reginald Williams vs. Attorney General – 2007

<http://archives.utah.gov/src/srcappeal-2007-10.html>

Mr. Williams sought a waiver of the fees assessed by the Utah Attorney General's Office for providing certain records. Mr. Williams requested that he be considered impecunious and that he receive a fee waiver because his legal rights were directly implicated by the information in the record. **The committee determined that the Utah Attorney General's Office may charge a reasonable fee to cover the actual cost of providing a record pursuant to Utah Code § 63-2-203(1).**

9. Lawrence Jackson vs. Corrections – 2010

<http://archives.utah.gov/src/srcappeal-2010-03.html>

Mr. Jackson requested ten statistical data sets about prisoners confined at Utah State Prison in Draper. Corrections argued that it cannot fill Mr. Jackson's request without lengthy statistical analysis and writing a data extraction program. Furthermore, Corrections is not required to compile, format, manipulate, package, summarize, or tailor information pursuant to Utah Code § 63G-2-201(8), Corrections offered to perform the requested statistical analysis upon receipt of the future estimated costs pursuant to Utah Code § 63G-2-203(8)(a)(i). The committee determined that **Mr. Jackson was impecunious, his legal rights may be affected, and his request may benefit the public. Because Corrections offered no reason to deny the request for a fee waiver other than that the decision is discretionary, the Committee ordered Corrections to waive the fee and provide the records to Mr. Jackson without charge.**

10. Steve Maxfield vs. Lieutenant Governor's Office – 2010

<http://archives.utah.gov/src/srcappeal-2010-06.html>

Mr. Maxfield submitted a request to the Lt. Governor's Office for the Statewide Voter Registration List. Mr. Maxfield also requested a waiver of the \$1,050.00 fee. Mr. Maxfield argued that the \$1,050.00 fee charged by the Lt. Governor's Office was excessive and far exceeded the actual cost and value of the records he requested pursuant to Utah Code § 63G-2-203(2). Mr. Maxfield testified that the actual cost of the information sought was approximately \$11.00 based on the approximate value of one recordable compact disc and approximately twenty minutes of staff time to format a computer request. At the hearing, the Lt. Governor's Office argued that fees for voter registration records were set in 2001 by the Lt. Governors' Office, after consultation with county clerks as required by Utah Code § 63G-2-203. Once established, these fees were specifically approved and adopted by the Utah State Legislature. The committee determined that the **Lt. Governor's Office has met its burden in compliance with Utah Code § 63G-2-203(10) in setting the \$1,050.00 fee for a copy of the statewide voter registration list. The committee recognized the right of Lt. Governor's Office to establish the fee and Mr. Maxfield's petition was denied.**

11. Ray Wheeler vs. Salt Lake City – 2011

<http://archives.utah.gov/src/srcappeal-2011-09.html>

Mr. Wheeler appealed the denial of his request for a fee waiver for records regarding the proposed regional sports complex to be located adjacent the Jordan River. Mr. Wheeler based his request for a fee waiver on the fact that he is a journalist and that the public has an interest in knowing about the sports complex. Salt Lake City denied his request for a fee waiver and declined to produce the requested documents without a monetary deposit because it is the policy of Salt Lake City to deny all requests for fee waivers regardless of their merits or the status of the requestor. The Records Committee found that **the policy of Salt Lake City Corporation to deny all requests for fee waivers is contrary to statute and against public policy. Therefore, the decision to deny Mr. Walker's request for a fee waiver was reversed.**

12. Steven Onysko vs. Tax Commission – 2011

<http://archives.utah.gov/src/srcappeal-2011-15.html>

Mr. Onysko appealed a denial of his request for a fee waiver for records pertaining to his 2007-2009 State of Utah income tax returns. The Tax Commission argued that a governmental entity may charge a reasonable fee to cover the governmental entity's actual cost of providing a record." The actual cost may include: the cost of staff time for compiling, formatting, manipulating, packaging, summarizing, or tailoring the record either into an organization or media to meet the person's request; the cost of staff time for search, retrieval, and other direct administrative costs for complying with a request; and in the case of fees for a record that is the result of computer output other than word processing, the actual incremental cost of providing the electronic services and products together with a reasonable portion of the costs associated with formatting or interfacing the information for particular users. The Tax Commission presented evidence that the total fee was \$131.70, which included \$120.00 for twelve (12) hours of staff labor at \$10.00 per hour and \$11.70 for printing 117 copies at 10 cents per copy. The Tax Commission volunteered to allow Mr. Onysko to inspect the records free of charge to determine what records he needed. The Records Committee was convinced that the Tax Commission's denial of a fee waiver for \$11.70 with regards to the copies was "reasonable" and within the meaning of Utah Code § 63G-2-203. However, **based upon the fact that the Tax Commission volunteered to allow Mr. Onysko the opportunity to inspect the records free of charge and no additional programming was required to export the records from proprietary software, the Committee found that denying Mr. Onysko's request for waiver of the \$120.00 fee for twelve (12) hours of staff labor was unreasonable within the meaning of Utah Code § 63G-2-203.**

13. Ken Cromar vs. City of Cedar Hills – 2012

<http://archives.utah.gov/src/srcappeal-2012-11.html>

<http://archives.utah.gov/src/srcappeal-2011-15.html>

In an initial hearing Mr. Cromar requested access to email to/from members of the Cedar Hills governing body. The committee supported Mr. Cromar's right to receive these records and found that 1) because the requested emails were not normally maintained in the format requested, Cedar Hills could charge for search and compilation to locate and make the documents available; since the estimated cost would exceed \$50, the city was entitled to require prepayment pursuant Utah Code § 63G-2-203(8); 3) after paying the fees, Mr. Cromar was entitled to receive the requested records; 4) after providing a reasonable estimate and prepayment of fees, Mr. Cromar should be allowed to view the relevant records and receive paper copies at his discretion.

Mr. Cromar subsequently appealed the city's denial of a request for a fee waiver for the cost of providing the emails, claiming that providing the email was in the public rather than his personal interest. The city argued that extending a fee waiver is discretionary and not mandatory and the city does not agree that releasing the email is in the public interest. The committee found that pursuant to Utah Code § 63G-2-203(6) the City's denial of Mr. Cromar's request for a fee waiver was reasonable. **The city did not determine that releasing the records benefits the public and, if it had, the statute is permissive and not mandatory.**