

Performance Audit No. 16-03

A Limited Performance Audit of Independent State Entity Transparency



**OFFICE OF THE
UTAH STATE AUDITOR**



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UTAH STATE AUDITOR

July 18, 2016

The Office of the Utah State Auditor conducted *A Limited Performance Audit of Independent State Entity Transparency* and presents its findings and recommendations herewith. As part of this review, we evaluated nine independent state entities' compliance with the state's *Open and Public Meetings Act* (OPMA). Specifically, we assessed entity compliance with reporting requirements for public meeting notices, meeting minutes, meeting recordings, and OPMA training.

Compliance with OPMA increases independent state entity transparency and accountability to stakeholders and encourages proper oversight. Several independent state entities regularly do not comply with aspects of OPMA, as demonstrated in this audit report. We make eight recommendations to independent state entities to increase compliance with OPMA to ensure the proper degree of transparency and accountability.

We distributed a draft report to all nine independent state entities reviewed and gave them each the option to issue a written response to the recommendations. Only three entities—School and Institutional Trust Fund, School and Institutional Trust Lands Administration, and Utah Housing Corporation—submitted written responses. These responses can be found beginning on page 11 of this report.

Sincerely,

Office of the Utah State Auditor

Office of the Utah State Auditor

Director: David Pulsipher, CIA, CFE
Audit Staff: Rachel Dyer, MPA
Taylor Mosolf, JD

Background

Utah has 10 independent state entities that are subject to OPMA.¹ Each of these entities is established in statute and serves a wide range of public interests, including mortgage lending, administration of public trust lands, and industry promotion, among others.

Each independent entity is overseen by a board, and most have a corresponding office and employees to carry out their legislated purpose. These entities' operations vary in size, as reflected in the size of their budgets and office employment. Figure 1 summarizes background information for each of the independent entities reviewed.

Figure 1 Summary Of Independent Entities Subject To OPMA

Entity Name	Year Created	Board Size	FY 2016 Budget (in millions)	Employees
Dairy Commission	1979	13	\$2.7	6 Full-Time, 15 Part-Time
Heber Valley Historic Railroad Authority	2010	8	\$1.3	1 Full-Time
Military Installation Development Authority	2007	7	\$1.7	2 Full-Time
School and Institutional Trust Fund	2014	5	\$0.9	3 Full-Time
School and Institutional Trust Lands Administration	1993	7	\$17.7	85 Full-Time
Utah Energy Infrastructure Authority ²	2009	9	N/A	None
Utah Housing Corporation	1975	9	\$10.2	93 Full-Time, 2 Part-Time
Utah State Fair Corporation	1995	13	\$4.7	7 Full-Time, 6 Part-Time
Utah State Railroad Museum Authority	2010	12	\$0.1	None

Source: OSA Analysis

OPMA's stated purpose is to ensure that "the state, its agencies, and its political subdivisions: (a) take their actions openly; and (b) conduct their deliberations openly."³ OPMA details specific requirements that public bodies must adhere to when conducting public meetings, which include requirements for meeting notices, minutes, recordings, closed meetings, and annual

¹ The Utah Communications Authority (UCA) was recently reviewed by the Office of the State Auditor and was not included in this review. UCA's level of compliance with OPMA can be found in OSA's 2016 Report No. PA 16-01, *A Performance Audit of Utah Communications Authority Financial Management And Transparency*.

² The Utah Energy Infrastructure Authority Board last met on January 22, 2015, and has undergone restructuring in its organization. As such, it has no employees and the board not met since January 2015.

³ UT Code 52-4-102.

board member OPMA training. OPMA relies on the Utah Public Notice Website (UPNW)⁴, which is administered by Utah State Archives, to act as the central repository for meeting notices, minutes, and recordings.

We reviewed independent state entities subject to OPMA for compliance with four aspects of compliance: meetings notices, meeting minutes, meeting recordings, and annual OPMA training.

Multiple Independent State Entities Failed To Provide Proper Meeting Notice

To notify stakeholders and the public, OPMA has specific notice requirements detailing the timing, content, and location of meeting notices. One of these requirements is that the public must be given at least 24 hours' notice prior to an entity holding a board meeting, except in emergency situations, and this notice must be posted on the UPNW.⁵ While most independent state entities provided timely notice for all meetings held in 2015, both the Dairy Commission⁶ and Heber Valley Historic Railroad Authority did not provide statutorily required public notices for any of their meetings held in 2015.

Heber Valley Historic Railroad Authority provided written minutes for seven meetings held in 2015, none of which were publicly noticed. Staff also indicated that the Heber Valley Historic Railroad Authority may have conducted other meetings in 2015, which lacked the necessary documentation to comply with OPMA. Staff did not respond to multiple inquiries regarding these additional possible meetings, or provide the corresponding meeting notices, minutes, or recordings.

One-third of Dairy Commission meetings occurred in other states in 2015. The Dairy Commission held six meetings in 2015, but did not provide notice in the locations required by OPMA. Instead meetings were noticed in their newsletter, which is sent to dairy producers in the state. The Dairy Commission's minutes also reflect that two board meetings in 2015 were held outside of Utah, one in Arizona and one in Florida, which effectively does not allow the public to attend. The Dairy Commission should refrain from conducting inaccessible meetings out of state.

Figure 2 shows how each board complied with the OPMA 24-hour notice requirement.

⁴ <http://www.utah.gov/pmn/index.html>

⁵ UT Code 52-4-202.

⁶ The Dairy Commission oversees an office called the Dairy Council of Utah and Nevada. The Dairy Council of Utah and Nevada has a board of directors that includes the members of the Dairy Commission, as well as members that are not defined in the Dairy Commission's enabling statute. All documents used in this report reflect meetings held by the Dairy Council of Utah and Nevada.

Figure 2 24-Hour Notice Requirement Compliance (percent compliant)

Entity Name	Number of Meetings Held	Notices Posted to UPNW	24-Hour Notice Given
Dairy Commission	6	0.0%	0.0%
Heber Valley Historic Railroad Authority	7	0.0%	0.0%
Military Installation Development Authority	6	100%	100%
School and Institutional Trust Fund	13	100%	100%
School and Institutional Trust Lands Administration	13	100%	100%
Utah Energy Infrastructure Authority	1	100%	100%
Utah Housing Corporation	7	100%	85.71%
Utah State Fair Corporation	12	100%	33.33%
Utah State Railroad Museum Authority	6	83.33%	83.33%

Source: OSA Analysis

Boards for three entities—the Dairy Commission, Heber Valley Historic Railroad Authority, and the Utah State Railroad Museum Authority did not post all meeting notices to the UPNW, as reflected in Figure 2. Although boards for the Utah State Fair and the Utah Housing Commission posted notices to the UPNW, they did not always provide notice within statutory timeframes. Six of the eight untimely notices for the State Fair Board were posted *after* the individual board meetings were held.

Failure to notify stakeholders and the public, or notifying them after the meeting has occurred, does not allow for meeting participation, and does not meet the intent of OPMA.

It is unclear if all entities posted notices in all required places. In addition to posting notices on the UPNW, OPMA also requires these entities to post notice of each meeting at the principal office of the body, and in a statewide newspaper or media correspondent.⁷ Due to the impermanent nature of manual postings we were not able to verify if this occurred for each instance.

Most entities’ meeting notices included required information. In addition to the 24-hour posting requirement, OPMA also requires each posted notice to include the agenda, date, time, and location of the meeting.⁸ Figure 3 shows each board’s compliance with OPMA meeting notice informational requirements.

⁷ UT Code 52-4-202(3)(a).

⁸ UT Code 52-4-202(1)(b).

Figure 3 Meeting Notice Requirements Compliance (percent compliant)*

Entity Name	Total Meetings	Agenda	Date	Time	Location
Dairy Commission	6	0.0%	0.0%	0.0%	0.0%
Heber Valley Historic Railroad Authority	7	0.0%	0.0%	0.0%	0.0%
Military Installation Development Authority	6	100%	100%	100%	100%
School and Institutional Trust Fund	13	100%	100%	100%	100%
School and Institutional Trust Lands Administration	13	100%	100%	100%	100%
Utah Energy Infrastructure Authority	1	100%	100%	100%	100%
Utah Housing Corporation	7	85.7%	85.7%	85.7%	85.7%
Utah State Fair Corporation	12	50.0%	50.0%	50.0%	50.0%
Utah State Railroad Museum Authority	6	83.3%	83.3%	83.3%	83.3%

* These figures reflect that information which was posted on the UPNW before board meetings were held.

Source: OSA Analysis

Only four of the nine entities reviewed complied with all aspects required on meeting notices in 2015.

Independent State Entity Boards Did Not Fully Comply With Meeting Minutes Requirements

OPMA requires state entities to upload meeting minutes to the UPNW within three business days of approval.⁹ The majority of independent state entities did not upload any of their written minutes of board meetings within three days of approval, despite the statutory requirement to do so. Boards for four independent state entities, the Dairy Commission, Heber Valley Historic Railroad Authority, the Utah Energy Infrastructure Authority, and the Utah State Railroad Museum Authority, did not post any meeting minutes for 2015 on the UPNW despite holding a combined total of at least 20 meetings during that year.

Figure 4 shows each board’s compliance rate with OPMA meeting minutes posting requirements.

⁹ UT Code 52-4-203(4)(e)(ii).

Figure 4 Meeting Minutes Posting Compliance (percent compliant)

Entity Name	Total Meetings	Minutes Uploaded to UPNW	Uploaded Within 3 Days After Approval
Dairy Commission	6	0.0%	0.0%
Heber Valley Historic Railroad Authority	7	0.0%	0.0%
Military Installation Development Authority	6	100%	0.0%
School and Institutional Trust Fund	13	100%	38.46%
School and Institutional Trust Lands Administration	13	100%	84.62%
Utah Energy Infrastructure Authority	1	0.0%	N/A ¹⁰
Utah Housing Corporation	7	100%	28.57%
Utah State Fair Corporation	12	100%	0.0%
Utah State Railroad Museum Authority	6	0.0%	0.0%

Source: OSA Analysis

Boards for each of the nine entities should ensure that all board meeting minutes are uploaded within three business days after approval, as required by OPMA.

Boards for the majority of entities reviewed did not fully comply with written minutes documentation requirements. Like the notice requirements, OPMA also requires that “[w]ritten minutes of an open meeting shall include: . . . the date, time, and place of the meeting.”¹¹ While nearly all of the independent state entity boards included the date and place of their meetings in the written minutes, the majority did not include the time of their meetings in any of their written minutes, as required by statute.

Figure 5 shows each board’s compliance rate with OPMA meeting minutes documentation requirements.

¹⁰ The Utah Energy Infrastructure Authority only met once in 2015, and has not met since, not allowing it approve those prior meeting minutes.

¹¹ UT Code 52-4-203(2).

Figure 5 Meeting Minutes Documentation Compliance Rate (percent compliant)

Entity Name	Total Meetings	Date	Time	Location
Dairy Commission	6	100%	0.0%	100%
Heber Valley Historic Railroad Authority	7	100%	0.0%	0.0%
Military Installation Development Authority	6	100%	100%	100%
School and Institutional Trust Fund	13	100%	0.0%	100%
School and Institutional Trust Lands Administration	13	100%	0.0%	100%
Utah Energy Infrastructure Authority	1	100%	100%	100%
Utah Housing Corporation	7	100%	100%	100%
Utah State Fair Corporation	12	100%	0.0%	100%
Utah State Railroad Museum Authority	6	100%	100%	100%

Source: OSA Analysis

Boards for most independent state entities properly documented board member attendance.

OPMA requires that written minutes of meetings include “the names of members present and absent.”¹² Without explicit mention of those board members that are absent, it can be difficult for stakeholders and members of the public, who may lack familiarity with a board, to recognize the absence of specific board members’ names in meeting minutes.

Figure 6 shows each board’s compliance rate with OPMA meeting minutes attendance documentation requirements.

Figure 6 Meeting Minutes Attendance Documentation Compliance

Entity Name	Total Meetings	Proper Documentation of Attendance
Dairy Commission	6	100%
Heber Valley Historic Railroad Authority	7	100%
Military Installation Development Authority	6	100%
School and Institutional Trust Fund	13	100%
School and Institutional Trust Lands Administration	13	30.77%
Utah Energy Infrastructure Authority	1	100%
Utah Housing Corporation	7	100%
Utah State Fair Corporation	12	81.82%
Utah State Railroad Museum Authority	6	100%

Source: OSA Analysis

¹² See UT Code 52-4-203(2)(b).

Most independent state entity boards did not comply with OPMA’s vote recording requirements. OPMA requires each board to include “a record, by individual member, of each vote taken.”¹³ The majority of independent state entities did not include an individual record of board members votes on any of their written minutes of board meetings, despite the statutory requirement to do so. Instead these entities recorded board votes as passing “unanimously” or being “approved.” A record of a “unanimous” votes could be misleading if the meeting minutes do not contain an accurate record of board members present and absent.

Failure to include each board member’s individual vote limits individual member’s accountability, and allows for the possibility of unrecorded abstentions or non-votes. Each board should ensure that all board members’ individual votes, as well as the overall board vote on each issue, are included in meeting minutes as required by OPMA. Figure 7 shows each boards’ compliance with OPMA voting documentation requirements.

Figure 7 Meeting Minutes Voting Requirements Compliance

Entity Name	Total Meetings	Individual Member Record of Votes
Dairy Commission	6	0.0%
Heber Valley Historic Railroad Authority	7	0.0%
Military Installation Development Authority	6	100%
School and Institutional Trust Fund	13	0.0%
School and Institutional Trust Lands Administration	13	92.31%
Utah Energy Infrastructure Authority	1	N/A
Utah Housing Corporation	7	0.0%
Utah State Fair Corporation	12	0.0%
Utah State Railroad Museum Authority	6	0.0%

Source: OSA Analysis

Six Of Nine Boards Did Not Upload Any Recordings Within Required Period

In addition to the written meeting minutes requirements, OPMA requires that meetings be recorded (either by audio or video) and be posted to or linked from the UPNW. These recordings, with limited exception, must “be kept of all open meetings.”¹⁴ After holding the open meeting, each body is then required to “within three business days after holding an open meeting, post on the [UPNW] an audio recording of the open meeting, or a link to the recording.”¹⁵

¹³ UT Code 52-4-203(2)(d).

¹⁴ UT Code 52-4-203(1).

¹⁵ UT Code 52-4-203(4)(e)(iii).

Six of the nine independent entities did not post recordings of any meetings within three business days, as required by statute. Additionally, four of these entities have not posted any recordings to the UPNW for meetings in 2015. These are the same four entities that have not publicly posted any written meeting minutes, providing stakeholders and the public almost no information regarding the actions of these boards.

Figure 8 shows each boards’ compliance rate with the OPMA meeting recording requirements.

Figure 8 Meeting Recordings Requirements Compliance (percent compliant)

Entity Name	Total Meetings	Posted to UPNW	Posted Within 3 Business Days
Dairy Commission	6	0.0%	0.0%
Heber Valley Historic Railroad Authority	7	0.0%	0.0%
Military Installation Development Authority	6	83.33%	0.0%
School and Institutional Trust Fund	13	100%	92.31%
School and Institutional Trust Lands Administration	13	100%	76.92%
Utah Energy Infrastructure Authority	1	0.0%	0.0%
Utah Housing Corporation	7	100%	42.86%
Utah State Fair Corporation	12	83.33%	0.0%
Utah State Railroad Museum Authority	6	0.0%	0.0%

Source: OSA Analysis

Written minutes provide the public with limited detail as to the discussions of each board; as such, recordings are an important aspect to provide the public with timely information regarding the actions of the board and each individual board member. Each board should ensure that recordings of their meetings are publicly available in adherence to the requirements of OPMA.

Independent State Entities Should Receive Annual OPMA Training

OPMA requires that “[t]he presiding officer of the public body shall ensure that the members of the public body are provided with annual training on the requirements of this chapter.”¹⁶ While

¹⁶ UT Code 52-4-104.

multiple independent state entities claimed to follow all of the aspects of OPMA, the board minutes for most entity boards do not reflect that annual board member OPMA training took place in 2015. Each board chair should ensure that each board member receives annual training on the requirements of OPMA.

Recommendations

1. We recommend that each independent state entity board improve meeting notifications by:
 - a. Notifying the public regarding meetings at least 24 hours in advance.
 - b. Including the date, time, location, and agenda of each meeting in the notification.
 - c. Posting the meeting notice in a statewide publication, on the UPNW, and at the principal office of each independent state entity.
2. We recommend that each independent state entity board upload written meeting minutes to the UPNW within three business days after approval, as required by the *Open and Public Meetings Act*.
3. We recommend that each independent state entity board include the following in written meeting minutes, as required by the *Open and Public Meetings Act*:
 - a. Meeting date, time, and location.
 - b. Members present and absent.
 - c. The votes of Individual board members.
4. We recommend that each independent state entity board make a complete, unedited recording of each public meeting, as required by the *Open and Public Meetings Act*.
5. We recommend that each independent state entity board post meeting recordings to the UPNW within three business days of the meeting, as required by the *Open and Public Meetings Act*.
6. We recommend that each board member of an independent state entity receive annual transparency training, as required by the *Open and Public Meetings Act*.
7. We recommend that the Dairy Commission refrain from conducting inaccessible meetings out of state.
8. We recommend that the Dairy Commission clarify its relationship with the Dairy Council of Utah & Nevada to ensure appropriate entity oversight and transparency.

Independent State Entity Responses¹⁷

¹⁷ We distributed a draft report to all nine independent state entities reviewed and gave them each the option to issue a written response to the recommendations. Only three entities — School and Institutional Trust Fund, School and Institutional Trust Lands Administration, and Utah Housing Corporation — submitted written responses.



David Pulsiper, CIA, CFE
Performance Audit Director
Office of the Utah State Auditor
East Office Building, Suite E310
Utah State Capitol Complex
Salt Lake City, UT 84114

July 7, 2016

Dear Mr. Pulsiper,

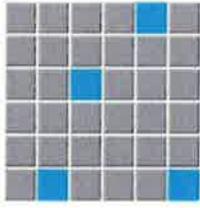
In response to the findings and recommendations of the *Limited Performance Audit of Independent State Entity Transparency* conducted by the Office of the Utah State Auditor.

As a new state agency, we are grateful to the auditor's office for providing this review. It has been helpful in highlighting practices we need to develop further. While experienced professionals, our team is new to Utah state government. As such we have invested a considerable amount of time establishing principles and laying the operational foundation for the future of the agency, and are close to being fully operational and independent. Though we have fallen short of OPMA requirements in the aspects outlined in the report, we know we are working in the service of the public and encourage engagement and interest in our work. Our understanding of the specific systems and methods for recording our practices will be updated to be 100% compliant with OPMA going forward.

Sincerely,

School and Institutional Trust Funds Office

Director/CIO: Peter Madsen
Staff: Ryan Kulig
Nathan Barnard



State of Utah
School & Institutional
Trust Lands Administration

Gary R. Herbert
Governor
Spencer J. Cox
Lieutenant Governor
David Ure
Director

675 East 500 South, #500
Salt Lake City, UT 84102-2818
801-538-5100
801-355-0922 (Fax)
www.trustlands.com

July 11, 2016

Director David Pulsipher
Office of the Utah State Auditor
Utah State Complex, East Office Building, Suite E310
Salt Lake City, Utah 84114-2310

Re: Independent State Entity Audit Response

Thank you for providing the report to understand how our agency can comply with the Open Public Meeting Act (OPMA). For the purpose of clarification, in the background section of the report it states SITLA administers public lands. A key part of the statute, by which the agency operates, is cited below.

"53C-1-102. Purpose.

...(d) the beneficiaries do not include other governmental institutions or agencies, the public at large, or the general welfare of this state."

Nonetheless, SITLA desires transparency to comply 100% with the OPMA. The audit received on July 6, 2016, provided the necessary recommendations to allow SITLA to become fully compliant. Because the report was provided midway through the 2016 calendar year, SITLA will not be fully compliant during the first six months of 2016. SITLA can provide Board training in 2016 and make necessary adjustments to be fully compliant in the 2017 calendar year.

The annual training for Board members will be accomplished at the August meeting each year, when a new board member is sworn-in to replace an outgoing board member. Specific topics for training include the recommendations in the 2015 audit report.

1. Notice of meeting will be accomplished by:
 - Notifying the public regarding meetings at least 24 hours in advance.
 - Including the date, time, location, and agenda of each meeting in the notification.
 - Posting the meeting notice in a statewide publication, on the UPNW, and at the principal office of each independent state entity.

2. Written minutes will include:
 - Meeting date, time, and the location.

- Members both present and absent.
 - The votes of individual board members.
3. Upload meeting minutes within three business days after approval.
 4. Post a complete and unedited recording of each public meeting.
 5. Recordings will be posted within three business days of the meeting.
 6. Annual transparency training will be planned for the August meeting.

Thank you for the opportunity to review our practices and make necessary adjustments to meet the requirements of the Open Public Meeting Act.

Sincerely,

A handwritten signature in black ink that reads "David Ure". The signature is written in a cursive, flowing style.

David Ure
Director

cc: Rachel Dyer
Taylor Mosolf



Grant S. Whitaker
President & CEO

July 7, 2016

David Pulsipher, CIA, CFE
Office of the Utah State Auditor
Utah State Capitol Complex
East Office Building, Suite E310
P.O. Box 142310
Salt Lake City, UT 84114

Dear Mr. Pulsipher,

Utah Housing Corporation has reviewed a copy of the draft report of Audit No. 16-03: A Limited Performance Audit of Independent State Entity Transparency. Utah Housing commends you and your staff for the thorough analysis of compliance with the state's Open and Public Meetings Act (OPMA).

Utah Housing agrees with the findings and will strive to fully comply with OPMA to ensure the proper degree of transparency and accountability, with particular attention to timely posting of meeting notices, recordings and minutes and recording the individual votes of board members.

Thank you for providing me with an opportunity to review and respond to the draft report.

Sincerely,

A handwritten signature in blue ink, appearing to read "Grant S. Whitaker", with a long horizontal line extending to the right.

Grant S. Whitaker
President & CEO