
BEFORE THE DEPUTY COMMISSIONER OF THE
UTAH DEPARTMENT OF AGRICULTURE AND FOOD
STATE OF UTAH

UTAH ANIMAL RIGHTS COALITION
(UARC),

Petitioner,

vs.

DEPARTMENT OF AGRICULTURE AND
FOOD,

Respondent.

DECISION AND ORDER

By this appeal, Petitioner, UARC, through Mr. Jeremy Beckham, seeks access to various records related to Utah mink farms which have identified cases of SARS-CoV-2 and/or COVID-19, including diagnostic test reports, necropsy reports, correspondence, and documents related to protocols or biosecurity measures implemented or recommended as a response to COVID-19 outbreaks on mink farms.

FACTS

On or about October 14, 2020, UARC made a records request of the Utah Department of Agriculture and Food (The Department), Respondent.

In response, the Department denied the request in part and granted it in part. Specifically, the Department provided UARC with a link to public guidance for animal health and public health officials managing farmed mink and other farmed mustelids with SARS-CoV-2 in response to

UARC's request for information regarding biosecurity measures implemented on fur farms and protocols or documents dealing with precautions being taken or recommended to Utah mink farms. The Department denied the request for additional records and correspondence.

UARC now appeals the Department's denial to the Chief Administrative Officer for the Department. In an appeal letter dated November 12, 2020, UARC through Mr. Beckham, disputed the Department's reasoning in denying the request and argued that the information they have requested should be released because it relates to areas of significant public health concern, particularly with regard to the risk of bidirectional zoonotic transmission of SARS-Cov-2 or COVID-19 which UARC argued has been shown during prior mink outbreaks. While the Department does not dispute the evidence UARC provided in the exhibits to their appeal letter, current evidence does not support the existence of animal to human transmission within mink populations in the State of Utah, which is consistent with State Veterinarian Dr. Dean Taylor's statements related to the COVID outbreak at mink farms in the state.

The Department's Chief Administrative Officer, having reviewed the materials requested and the arguments submitted, now issues the following Decision and Order.

STATEMENT OF REASONS FOR DECISION

1. GRAMA specifies that "all records are public unless otherwise expressly provided by statute." Utah Code Section 63G-2-201(2). Records that are not public are designated as either "private," "protected," or "controlled." See, Utah Code Sections 63G-2-302, -303, -304 and -305.

2. Every person has the right to inspect a public record free of charge, and the right to take a copy of a public record during normal working hours, subject to Sections, 63G-2-203 and 204. See Utah Code Section 63G-2-201(1)
3. A governmental entity shall provide a person with a certified copy of a record if the person identifies the record with reasonable specificity. See, Utah Code Section 63G-2-201(7)(b).
4. Utah Code Subsection 63G-2-204(1) states that “A person making a request for a record shall submit [the request] to the entity that retains the record.” In Subsection 63G-2-204(2)(a) the statute goes on to state that “a governmental entity may not provide a record that it has received under Section 63G-2-206 as a shared record” and that a request for such a record should be denied. See Subsection 63G-2-204(2)(b).
5. Utah Code Subsection 63G-2-305(10) states that “records created or maintained for civil, criminal, or administrative enforcement purposes or audit purposes, or for discipline, licensing, certification, ore registration purposes” should be considered protected records if one of five listed conditions are present. See Subsection 63G-2-305(10)(a-e).
6. Utah Code Subsection 63G-2-305(49) provides that “records of the Department of Agriculture and Food that provide for the identification, tracing, or control of livestock diseases, including any program established under Title 4, Chapter 24, Utah Livestock Brand and Anti-Theft Act, or Title 4, Chapter 31, Control of Animal Diseases.”
7. Except as provided in Section 63G-2-406, the chief administrative officer may, upon consideration and weighing of the various interests and public policies pertinent to the

classification and disclosure or nondisclosure, order the disclosure of information properly classified as protected under Subsection 63G-2-305 if the interests favoring access are greater than or equal to the interests favoring restriction of access.

8. After reviewing arguments and reviewing the records in question, the Chief Administrative Officer finds that based upon a preponderance of the evidence:

- (1) UARC has failed to show that Utah Code Subsections 63G-2-204(2)(a) and 63G-2-206 are not applicable to this request. Necropsy reports and diagnostic test reports that the Department has received from the USDA National Veterinary Services Laboratory, the Centers for Disease Control and Prevention, and Utah Department of Health, as well as correspondence between the Department and these outside entities that are not retained by the Department cannot be released by the Department because they have been classified as “private, controlled, or protected” by another governmental entity and qualify as shared records under Section 63G-2-206. If UARC seeks these records, they must be requested from the entity that retains them under Subsection 63G-2-204(2)(b)(ii).

- (2) Pursuant to Utah Code Section 63G-2-305(10), the records in question in this appeal that are related to the identity of mink farms are properly classified as protected records because they relate to the Department’s **current actual and ongoing** investigation of SARS-Cov-2 and COVID-19 outbreaks in mink farms in the State of Utah. Specifically, Subsection 63G-2-305(10)(a-e) could all apply, although subsection a, b, and c are most relevant to this request because release of records that relate to the identity of mink farms “(a) reasonably

could be expected to interfere with investigations undertaken for enforcement, discipline licensing certification, or registration purposes; (b) reasonably could be expected to interfere with audits, disciplinary, or enforcement proceedings; [and] (c) would create a danger of depriving a person of a right to a fair trial or impartial hearing.” The Department is not obligated to provide the specific details of their ongoing investigations, as doing so would jeopardize the investigations themselves, as well as risk the safety of the public and animals in the state.

(3) Pursuant to Subsection 63G-2-305(49) correspondence related to the identity of mink farms subject to outbreak as well as diagnostic or necropsy reports of the Utah Veterinary Diagnostic Laboratory are properly classified as protected because they relate to the “identification, tracing, or control of livestock diseases,” by the Department. While the statute mentions programs that track diseases under Chapter 4-24 and Chapter 4-31, the protected status does not apply only to programs under these statutes. The Department is not required to have a program in place to control COVID-19 caused by novel coronavirus in mink farms in order for the status to apply. Indeed, it would be fairly impossible for the Department to have created and implemented such a program at this point in time. It is the Department’s position, rather, that Subsection 49 applies more broadly to any records linked to the Department’s “identification, tracing, or control of livestock disease.” Livestock is defined under Section 4-1-109 as cattle, sheep, goats, swine, horses, mules, poultry, domesticated elk as defined in Section 4-39-102, or any

other domestic animal or domestic furbearer raised or kept for profit.” While mink are not specifically mentioned in the definition of livestock they are reasonably classified as protected under this subsection because they are a furbearing animal raised for profit.

(4) In considering and weighing the various interests and public policies pertinent, the interests favoring access are not greater or equal to the interests favoring restriction. The Department does not dispute the significant public health threat associated with the COVID-19 pandemic, however, UARC has not provided sufficient evidence of a current threat posed by Utah’s mink farms or how the release of the information requested would lessen that threat.

ORDER

THEREFORE, IT IS ORDERED THAT Petitioner’s appeal is Denied.

RIGHT TO APPEAL

You may appeal this Decision and Order to the District Court or to the State Records Committee. The petition for review must be filed no later than thirty (30) days after the date of this order. The petition for judicial review must be a complaint. The complaint and the appeals process are governed by the Utah Rules of Civil Procedure and Utah Code Section 63G-2-404. The court is required to make its decision *de novo*. In order to protect its rights on appeal, a party may wish to seek advice from an attorney.¹

¹This notice is required by Utah Code Section 63G-2-403(12)(d).

Entered this 24 day of November 2020.

BY



KELLY PEHRSON, Deputy Commissioner
and Chief Administrative Officer, Utah
Department of Agriculture and Food

CERTIFICATE OF MAILING

I hereby certify that I sent a true and correct copy of the foregoing Decision and Order
via email, this ____ day of November 2020, to the following:

UARC, through Mr. Jeremy Beckham
PO Box 3451
Salt Lake City, UT 84110

A copy has also been sent by email to:
UARC, through Mr. Jeremy Beckham
jeremy@uarc.io
