
BEFORE THE STATE RECORDS COMMITTEE OF THE
STATE OF UTAH

UTAH ANIMAL RIGHTS COALITION,

Petitioner,

v.

DEPARTMENT OF AGRICULTURE &
FOOD.

Respondent.

DECISION AND ORDER

Case No. 21-06

Petitioner, the Utah Animal Rights Coalition, appeals the decision of Respondent, the Utah Department of Agriculture & Food, to deny access to records requested by Petitioner pursuant to the Government Records Access and Management Act (“GRAMA”). The present appeal was originally heard by the State Records Committee (“Committee”) on December 10, 2020 with each of the parties participating electronically. See, *Utah Animal Rights Coalition v. Dept. of Agric. & Food*, State Records Committee Order No. 20-66 (Dec. 21, 2020). At that hearing, the Committee voted unanimously to continue the hearing to the next available Committee hearing date to allow for an *in camera* review of the records.

FACTS

In a letter dated October 14, 2020, Jeremy Beckham, Executive Director for Petitioner,

made a request for records to Respondent pursuant to GRAMA. Petitioner generally requested records from Respondent regarding Utah mink farms including records detailing issues arising from the COVID-19 pandemic. Mr. Beckham wrote that Petitioner “intends to use these records to enhance public understanding of this important issue and to disseminate information to the news media and the public at large.”

In a letter dated October 19, 2020, Amanda Price, GRAMA Officer for the Division of Animal Industry, partially denied Petitioner’s records request. Ms. Price stated that some records are not prepared, owned, or maintained by Respondent, while other records are protected records because they are related to the identity of mink farms subject to ongoing investigations pursuant to Utah Code §§ 63G-2-305(10) & -305(49).

Petitioner filed an appeal with the Chief Administrative Officer with Respondent on November 12, 2020, arguing that the records should be made public because “mink are the only species known to readily transmit the [COVID-19] virus both to and from humans...” Petitioner’s appeal was denied by Deputy Commissioner Kelly Pehrson in an order dated November 24, 2020. Petitioner filed an appeal to the Committee, who after open deliberation during their January 14, 2020 hearing, 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 § 63G-2-201(2). Records that are not public are designated as either

“private,” “protected,” or “controlled.” See, Utah Code §§ 63G-2-302, -303, -304 and -305.

2. Records created or maintained for civil, criminal, or administrative enforcement purposes, or for discipline, licensing, certification, or registration purposes, are protected records if properly classified by a governmental entity if release of the records: (1) Reasonably could be expected to interfere with investigations undertaken for enforcement, discipline, licensing, certification, or registration purposes; or (2) Reasonably could be expected to interfere with audits, disciplinary, or enforcement proceedings. Utah Code § 63G-2-305(10)(a) & (b).
3. Records of investigations of loss occurrences and analyses of loss occurrences that may be covered by the Risk Management Fund, the Employers’ Reinsurance Fund, the Uninsured Employers’ Fund, or similar division in other governmental entities, are protected records if properly classified by a governmental entity. Utah Code § 63G-2-305(24).
4. Records, other than personnel evaluations, that contain a personal recommendation concerning an individual, is a protected record if properly classified by a governmental entity and if disclosure would either: (1) Constitute a clearly unwarranted invasion of personal privacy; or (2) Disclosure is not in the public interest. Utah Code § 63G-2-305(25).

5. Records provided by the United States or by a government entity outside the state that are given to a governmental entity with a requirement that they be managed as protected records, are considered protected records if properly classified by a governmental entity and the providing entity certifies that the record would not be subject to public disclosure if retained by it. Utah Code § 63G-2-305(31).
6. Records of the Department of Agriculture and Food that provides identification, tracing, or control of livestock diseases, including any program established under the Utah Livestock Brand (Title 4, Chapter 24) or Control of Animal Disease (Title 4, Chapter 31), are protected records if properly classified by a governmental entity. Utah Code § 63G-2-305(49).
7. Even though a record has been properly classified private, controlled, or protected by a governmental entity, the Committee may upon consideration and weighing various interests and public policies pertinent to the classification and disclosure or nondisclosure of a record, order the disclosure of information in the record if the public interest favoring access is greater than or equal to the interest favoring restriction of access. Utah Code § 63G-2-403(11)(b).
8. After considering all the evidence and arguments presented by the parties including an *in camera* review of the records, the Committee finds as follows:
 - Reports 00101-00239 were properly classified as protected records pursuant to

Utah Code §§ 63G-2-305(10) & (49). The Committee considered the weighing provision found in Utah Code § 63G-2-403(11)(b) for these records and found that the governmental interest restricting access was greater than the public interest favoring access to the records.

- Investigation records 00240-00353 part 1, and 00354-00481 part 2 were properly classified as protected records pursuant to Utah Code §§ 63G-2-305(10) & -305(49).
- Group compensation records 00482-00531 are generally public records and should be provided with redactions for information that is protected pursuant to Utah Code §§ 63G-2-305(24), -305(25), & -305(49).
- Group cooperation records 00532-00704 are generally public records and should be provided with careful redactions to the extent the records reveal identifying information of property or farms pursuant to Utah Code §§ 63G-2-305(10) & -305(31). The Committee considered the weighing provision found in Utah Code § 63G-2-403(11)(b) for the portions of the records the Committee held should be protected, and found that the governmental interest restricting access was greater than the public interest favoring access to that information.
- Meeting records 00705-00801 are mostly public but should be reviewed for necessary redactions to the extent the records reveal identifying information of

property or farms pursuant to Utah Code §§ 63G-2-305(10) & -305(31).

ORDER

THEREFORE, IT IS ORDERED THAT the appeal of Petitioner, Utah Animal Rights Coalition, is hereby **GRANTED IN PART** and **DENIED IN PART** as stated above.

RIGHT TO APPEAL

A party to a proceeding before the Committee may seek judicial review in District Court of a Committee's Order by filing a petition for review of the Committee Order as provided in Utah Code § 63G-2-404. Utah Code § 63G-2-403(14). A petition for judicial review of a Committee Order "shall be filed no later than 30 days" after the date of the Committee Order. Utah Code § 63G-2-404(1)(a). The petition for judicial review must be a complaint which is governed by the Utah Rules of Civil Procedure and include the Committee as a necessary party and contain the required information listed in Subsection -404(2). Utah Code § 63G-2-404(1) & (2). The court shall make its decision *de novo* but shall allow introduction of evidence presented to the Committee, determine all questions of fact and law without a jury, and decide the issue at the earliest practical opportunity. Utah Code § 63G-2-404(6). In order to protect a parties' rights on appeal, a party may wish to seek advice from an attorney.

PENALTY NOTICE

Pursuant to Utah Code § 63G-2-403(15)(c), if the Committee orders the governmental entity to produce a record and no appeal is filed, the government entity herein shall comply with

the order of the Committee and shall: (1) Produce the record; and (2) File a notice of compliance with the Committee. If the governmental entity ordered to produce a record fails to file a notice of compliance or a notice of intent to appeal, the Committee may do either or both of the following: (1) Impose a civil penalty of up to \$500 for each day of continuing noncompliance; or (2) Send written notice of the entity's noncompliance to the Governor. Utah Code § 63G-2-403(15)(d)(i)(B). In imposing a civil penalty, the Committee shall consider the gravity and circumstances of the violation, including whether the failure to comply was due to neglect or was willful or intentional. Utah Code § 63G-2-403(15)(d)(ii).

Entered this 25 day of January 2021

BY THE STATE RECORDS COMMITTEE

A handwritten signature in black ink that reads "Patricia Smith-Mansfield". The signature is written in a cursive, flowing style.

PATRICIA SMITH-MANSFIELD
Chair, State Records Committee

CERTIFICATE OF SERVICE

I hereby certify that I mailed a true and correct copy of the foregoing **Decision and Order**, U.S. mail postage prepaid, this 26 day of January 2021 to the following:

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