



GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

State of Utah Department of Commerce

FRANCINE A. GIANI
Executive Director

THOMAS A. BRADY
Deputy Director

September 10, 2014

Laura Smith, Esq.
Legal Director
Truth in Advertising, Inc.
PO Box 927
Madison, CT 06443

also by email: lsmith@truthinadvertising.org

RE: Appeal From Denial of Records Request

Dear Ms. Smith:

On September 2, 2014, the Executive Director of the Department of Commerce, Ms. Francine Giani, received your letter appealing a decision of the Division of Consumer Protection ("Division"), which denied your request for records. Pursuant to the Government Records Access and Management Act ("GRAMA"), Utah Code Ann. § 63G-2-401(9), Ms. Giani has delegated to me the duty of making a determination on this appeal. Thank you for your consideration in allowing me extra time to respond to the appeal.

On August 22, 2014, the Division received a letter from Fran Silverman, Editor of truthinadvertising.org. Ms. Silverman's letter stated, "[u]nder the Utah Government Records Access and Management Act, §63-2-101 et seq., I am requesting an opportunity to inspect or obtain copies of public records regarding any investigations and consumer complaints relating to . . . Wake Up Now, 504 West 800, North Orem, UT 84057." The Division denied Ms. Silverman's request by letter dated August 22, 2014 on the grounds that records of complaints are classified under GRAMA as protected and private records, and that the Division could not confirm or deny that the Division has received any complaints. The Division letter notified Ms. Silverman, however, that no disciplinary action has been taken against Wake Up Now.

On appeal, you argue that any complainant identifying information can be redacted and that the rest of the investigative file should be provided. After reviewing this matter, I find that the Division's denial was appropriate. In addition to the applicable GRAMA provisions cited in the Division's response, Subsections 63G-3-302(2)(d) and 63G-2-305(10), the Utah Consumer Sales Practices Act expressly prohibits the Division from publicly disclosing "the identity of a person investigated unless his identity has become a matter of public record in an enforcement proceeding or he has consented to public disclosure." Subsection 13-11-7(2). The Division's denial letter confirmed that no disciplinary action has been taken against Wake Up Now. Therefore, disclosure of any requested records, whether redacted or not,

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would be a violation of the requirements in Subsection 13-11-7(2). Therefore, the Division's denial of your request is hereby upheld.

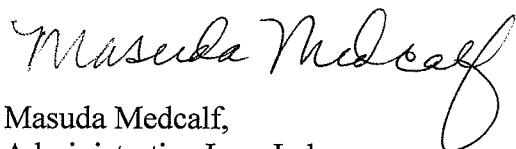
You may appeal to the Records Committee as provided in Utah Code Ann. § 63G-2-403 or petition for judicial review in district court as provided in Utah Code Ann. § 63G-2-404. If you decide to appeal to the Records Committee, you must file a Notice of Appeal with the Executive Secretary within 30 days after the date of this determination. Your Notice of Appeal must contain your name, your mailing address, your daytime telephone number, statement of the relief you seek, and a copy of this determination. With your Notice of Appeal, you may also file a short statement of facts, reasons, and legal authority in support of the relief you seek from the Committee.

Appeals to the Executive Secretary should be addressed to:

State Archives Building
State Records Committee
Attention: Susan Mumford, Executive Secretary
346 S. Rio Grande
Salt Lake City, UT 84101

If you decide to file an appeal with the district court, you must do so within 30 days after the date of this determination and you must comply with the procedures set forth in Section 63G-2-404.

Sincerely,



Masuda Medcalf,
Administrative Law Judge

cc: Jennifer Bolton, Public Information Officer, Department of Commerce
Daniel O'Bannon, Director, Division of Consumer Protection