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BEFORE THE STATE RECORDS COMMITTEE OF THE

STATE OF UTAH

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TRUTH IN ADVERTISING, INC.

Petitioner,

v.

UTAH DEPARTMENT OF COMMERCE,  
DIVISION OF CONSUMER  
PROTECTION,

Respondent.

**DECISION AND ORDER**

Case No. 14-18

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By this appeal, Petitioner, Truth in Advertising, Inc., seeks access to records held by Respondent, the Utah Department of Commerce, Division of Consumer Protection.

**FACTS**

In a letter dated August 18, 2014, Fran Silverman, Editor of Truth in Advertising, Inc. (“Petitioner”) requested from the Utah Department of Commerce, Division of Consumer Protection (“Division”), “an opportunity to inspect or obtain copies of public records regarding any investigations and consumer complaints relating to” a Utah Company, “Wake Up Now.” Ms. Silverman stated that the requested information “is in the public interest and will contribute significantly to the public’s understanding of possible pyramid schemes.” In a letter dated August 22, 2014, the Records Officer for the Division denied Petitioner’s request, stating that records of

complaints received against a particular entity, is a protected record pursuant to Utah Code § 63G-2-305(10), and a private record pursuant to Utah Code § 63G-2-302(2)(d). The Records Officer added that he could “neither confirm nor deny whether the Division has received any complaints against Wake Up Now,” and added that he could confirm that the Division had not taken any disciplinary action against Wake Up Now.

Laura Smith, Legal Director for Petitioner, filed an appeal with Francine A. Giani, Executive Director of the Utah Department of Commerce (“Commerce”), requesting the subject records be disclosed allowing for any personal identifying information of complaining consumers to be redacted from the documents. In a letter dated September 10, 2014, Commerce denied Petitioner’s appeal through Masuda Medcalf, an Administrative Law Judge. Judge Medcalf found that the Division’s denial of the records request was appropriate, and added that the Utah Consumer Sales Practices Act “expressly prohibits the Division” from publicly disclosing the identity or a person investigated unless his identity has become a matter of public record in an enforcement proceeding or he has consented to public disclosure. See, Utah Code § 13-11-7(2).

Petitioner filed an appeal with the State Records Committee (“Committee”). The Committee having reviewed the arguments submitted by the parties and having heard oral argument and testimony on November 13, 2014, now issues the following Decision and Order.

### STATEMENT OF REASONS FOR DECISION

1. The Government Records Access and Management Act (“GRAMA”) specifies that “all records are public unless otherwise expressly provided by statute.” Utah Code § 63G-2-201(2). Records that are private, controlled, or protected under §§ 63G-2-302, -303, -304, or 305, are not public records. Utah Code § 63G-2-201(3)(a). Additionally, records to which access is restricted pursuant to another state statute, are not public records. Utah Code § 63G-2-201(3)(b).
2. The disclosure of a record to which access is governed or limited pursuant to another state statute, is governed by the specific provisions of that statute. Utah Code § 63G-2-201(6)(a). GRAMA applies to those records insofar as GRAMA is not inconsistent with the statute. Utah Code § 63G-2-201(6)(b).
3. According to the Utah Consumer Sales Practices Act (“Act”), the Division “may not publicly disclose 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.” Utah Code § 13-11-7(2). Under the Act, a “person” means an individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, cooperative, or any other legal entity. Utah Code § 13-11-3(5).
4. Counsel for the Division argued that the Act places limitations on the Division including the inability to disclose whether documents exist concerning a named person or entity. Counsel

contended that Act protects businesses from unwarranted bad publicity by ensuring that only businesses that are part of an enforcement proceeding or has consented to public disclosure, are disclosed to the public. Otherwise, individuals or competing businesses could easily tarnish the reputation of businesses by simply filing public complaints with the Division, even though the Division may find after an investigation, that no civil or criminal action is warranted.

5. After reviewing the arguments submitted by the parties, and hearing oral arguments and testimony, the Committee finds that Utah Consumer Sales Practices Act, specifically Utah Code § 13-11-7(2), prohibits the Division from producing or acknowledging that records exist responsive to Petitioner's GRAMA request. Accordingly, complaint records held by the Division concerning "Wake Up Now" are considered non-public records because the Division has not initiated enforcement proceeding and/or Wake Up Now has not consented to public disclosure of any records that may be held by the Division.

**ORDER**

THEREFORE, IT IS ORDERED THAT the appeal of Petitioner, Truth in Advertising, Inc., is **DENIED**.

**RIGHT TO APPEAL**

Either party may appeal this Decision and Order to the District Court. 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 § 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.<sup>1</sup>

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<sup>1</sup>This notice is required by Utah Code § 63G-2-403(12)(d).

**PENALTY NOTICE**

Pursuant to Utah Code § 63G-2-403(14)(d), the government entity herein shall comply with the order of the Committee and, if records are ordered to be produced, file: (1) a notice of compliance with the records committee upon production of the records; or (2) a notice of intent to appeal. If the government entity 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 for executive branch entities, to the Legislative Management Committee for legislative branch entities, and to the Judicial Council for judicial branch agencies' entities.

Entered this 24th day of November 2014.

BY THE STATE RECORDS COMMITTEE



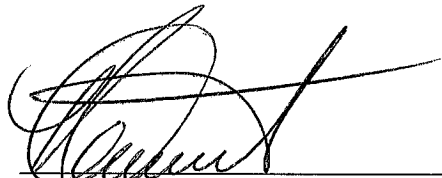
PATRICIA SMITH-MANSFIELD,  
Chairperson, State Records Committee

**CERTIFICATE OF MAILING**

I hereby certify that I mailed a true and correct copy of the foregoing Order of Continuance, postage prepaid, this 24th day of November 2014, to the following:

Laura Smith  
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Counsel for Petitioner, Truth in Advertising, Inc.

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Commercial Enforcement Division  
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Counsel for Respondent, Utah Division of  
Consumer Protection



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Nova Dubovik  
Executive Secretary