
BEFORE THE STATE RECORDS COMMITTEE OF THE

STATE OF UTAH

TRUTH IN ADVERTISING, INC.,

Petitioner,

v.

UTAH DEPARTMENT OF COMMERCE,
DIVISION OF CONSUMER
PROTECTION,

Respondent.

DECISION AND ORDER

Case No. 14-20

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 28, 2014, Fran Silverman, Editor of Truth in Advertising, Inc. (“Petitioner”) requested from the Utah Department of Commerce, Division of Consumer Protection (“Division”), records pursuant to the Government Records Access and Management Act (“GRAMA”). Petitioner requested “copies of consumer complaints filed” concerning certain named companies. Petitioner also stated that the names of the complainants may be redacted from the complaints. In a letter dated September 3, 2014, the Records Officer for the Division denied Petitioner’s request stating that the “Division has classified records of complaints received against a

particular entity as protected records under Utah Code §63G-2-305(10), and as private records under Utah Code §63G-2-302(2)(d).”

Laura Smith, Legal Director for Petitioner, filed an appeal on behalf of Petitioner, with Francine A. Giani, Executive Director of the Utah Department of Commerce (“Commerce”). In a letter dated October 7, 2014, Commerce denied Petitioner’s appeal through Masuda Medcalf, an Administrative Law Judge. Judge Medcalf found that the Division’s denial of the request for consumer complaints was appropriate, and added that “[t]wo of the matters [were] still pending enforcement proceedings, and releasing the complaints, even if the name of the complainant is redacted, could reasonably be expected to interfere with enforcement proceedings” See, Utah Code § 63G-2-305(10).

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 December 11, 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).
2. Records to which access is restricted pursuant to another state statute, federal statute, or

federal regulation, including records for which access is governed or restricted as a condition of participation in a state or federal program or for receiving state or federal funds, are not public records. Utah Code § 63G-2-201(3)(b). The disclosure of a record to which access is governed or limited pursuant to another state statute, federal statute, or federal regulation, is governed by the specific provisions of that statute or regulation. Utah Code § 63G-2-201(6)(a). GRAMA applies to those records insofar as the provisions of GRAMA are not inconsistent with the statute, rule, or regulation. Utah Code § 63G-2-201(6)(b).

3. Counsel for the Division argued that the Division is obligated to follow the Utah Consumer Sale Practices Act (“Act”). Utah Code § 13-11-7(1)(d) requires the Division to “receive and act on complaints.” Utah Code § 13-11-7(1)(e) requires the Division to:

[M]aintain a public file of final judgments rendered under this chapter that have been either reported officially or made available for public dissemination under Subsection (1)(c), final consent judgments, and to the extent the [Division] considers appropriate, assurances of voluntary compliance.

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). Additionally, the Division believes the release of information from the complaints would reasonably be expected to interfere with investigations undertaken for enforcement purposes. See, Utah Code § 63G-2-305(10)(a)

4. Counsel for the Division also argued that the Division is required to comply with regulations in the Federal Trade Commission Act, which allow for the exchange of information through an automated database, but requires “all information available on [a restricted website], be kept confidential.” Counsel stated that the Federal Trade Commission reserves the right to limit or revoke access to such information by any participating agency or other entity that breaches any of the terms of the agreement to keep the information confidential. See, Section 6(f) of the Federal Trade Commission Act; 15 U.S.C. § 46(f); and the Privacy Act of 1974, as amended, 5 U.S.C. § 552a.
5. Counsel for the Division further argued that it is required to not release the names of complainants because release of their names would be “a clearly unwarranted invasion of personal privacy.” See, Utah § 63G-2-301(2)(d).
6. Laura Smith, on behalf of Petitioner, rebutted the Division’s arguments by claiming that since the investigations had now been completed and the company names have already been released to the public, the Division should be able to release copies of the consumer complaints and still comply with the Act and Federal Law by simply redacting the complainant names.
7. After reviewing the arguments submitted by the parties, and hearing oral arguments and testimony, the Committee finds that the Utah Consumer Sale Practices Act requires the Division to maintain a “public file” of final judgments rendered that have been either

reported officially or made available for public dissemination. It is logical to conclude that the “public file” of final judgments also includes copies of the original complaints. The requested records involve records of complaints for companies whose names have already been released to the public, and final judgments that have been rendered concerning the complaints. Therefore, copies of the complaints should be considered public records.

8. However, the Division is required to keep confidential information received from the Federal Trade Commission database pursuant to Federal Statute. Further, as also argued by Petitioner, the release of the names of complainants on the consumer complaints would be a clearly unwarranted invasion of personal privacy pursuant to Utah Code § 63G-2-301(2)(d). Accordingly, access to this information by the public should be restricted.

ORDER

THEREFORE, IT IS ORDERED THAT the appeal of Petitioner, Truth in Advertising is **GRANTED** subject to redactions based upon the restrictions found in Utah Code §63G-2-302(2)(d) and Federal Statute as previously stated in this decision.

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*.

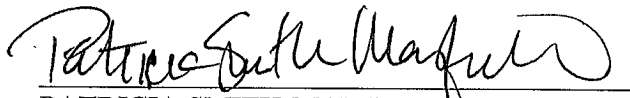
In order to protect its rights on appeal, a party may wish to seek advice from an attorney.¹

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 22nd day of December 2014.

BY THE STATE RECORDS COMMITTEE



PATRICIA SMITH-MANSFIELD
Chairperson, State Records Committee

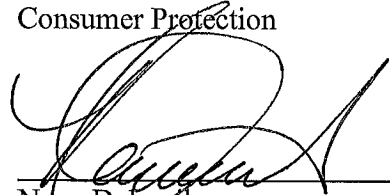
¹This notice is required by Utah Code § 63G-2-403(12)(d).

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing Decision and Order, postage prepaid, this 22nd day of December 2014, to the following:

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Nova Dubovik
Executive Secretary