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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	HPA Docket No. 17-0119
	)	HPA Docket No. 17-0120
Beth Beasley, an individual;	)	HPA Docket No. 17-0121
Jarrett Bradley, an individual;	)	HPA Docket No. 17-0122
Jeffrey Page Bronnenberg, an individual;	)	HPA Docket No. 17-0123
Dr. Michael Coleman, an individual;	)	HPA Docket No. 17-0124
Joe Fleming, an individual doing	)	HPA Docket No. 17-0125
business as Joe Fleming Stables;	)	HPA Docket No. 17-0126
Shawn Fulton, an individual;	)	HPA Docket No. 17-0127
Jimmy Grant, an individual;	)	HPA Docket No. 17-0128
Justin Harris, an individual;	)	HPA Docket No. 17-0129
Amelia Haselden, an individual;	)	HPA Docket No. 17-0130
Sam Perkins, an individual;	)	HPA Docket No. 17-0131
Amanda Wright, an individual;)	
G. Russell Wright, an individual;)	
and Charles Yoder, an individual,)	
)	
Respondents)	

Rulings: (1) Dismissing Mr. Fulton’s Request for Privacy Act Relief, (2) Denying the Administrator’s Motion to Strike Mr. Fulton’s Request for Privacy Act Relief, And (3) Denying Mr. Fulton’s Motion to Strike the Administrator’s Response to Appeal Petitions

On June 16, 2017, Shawn Fulton filed a motion seeking relief under the Privacy Act of 1974, as amended (5 U.S.C. § 552a) [Privacy Act].¹ On June 28, 2017, Kevin Shea, Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture

¹ “Respondent Shawn Fulton’s Motion for Relief Under the Privacy Act and Supporting Brief” [Request for Privacy Act Relief]. On June 28, 2017, Mr. Fulton filed “Respondent’s Supplement to Request for Relief Under the Privacy Act.”

[Administrator], filed a motion to strike Mr. Fulton's Request for Privacy Act Relief.² On June 28, 2017, Mr. Fulton filed a response to the Administrator's Motion to Strike Mr. Fulton's Request for Privacy Act Relief.³ On June 30, 2017, the Administrator filed a single response to three appeal petitions - one of which was filed by Mr. Bradley, one of which was filed by Mr. Fulton, and one of which was filed by Mr. Perkins.⁴ On July 6, 2017, Mr. Fulton filed a motion to strike the Administrator's Response to Appeal Petitions.⁵ On August 4, 2017, the Administrator filed a response to Mr. Fulton's Motion to Strike the Administrator's Response to Appeal Petitions.⁶

On August 7, 2017, the Hearing Clerk, Office of Administrative Law Judges, United States Department of Agriculture [Hearing Clerk], transmitted the record to the Office of the Judicial Officer for rulings on Mr. Fulton's Request for Privacy Act Relief, the Administrator's Motion to Strike Mr. Fulton's Request for Privacy Act Relief, and Mr. Fulton's Motion to Strike the Administrator's Response to Appeal Petitions.

The Administrator's Motion to Strike Mr. Fulton's Request for Privacy Act Relief

The Administrator contends Mr. Fulton's Request for Privacy Act Relief must be stricken for two reasons. First, the Administrator contends Mr. Fulton's Request for Privacy Act Relief is

² "Complainant's Motion to Strike 'Motion for Relief' Filed by Shawn Fulton" [Motion to Strike Mr. Fulton's Request for Privacy Act Relief].

³ "Respondent Shawn Fulton's Response to 'Complainant's Motion to Strike' and 'Request to Extend Time.'"

⁴ "Complainant's Response to Petitions for Appeal Filed by Jarrett Bradley, Shawn Fulton, and Sam Perkins" [Response to Appeal Petitions].

⁵ "Respondent Shawn Fulton's Motion to Strike 'Complainant's Response to Petitions for Appeal Filed by Jarrett Bradley, Shawn Fulton and Sam Perkins' and Supplement to Request for Relief Under the Privacy Act" [Motion to Strike the Administrator's Response to Appeal Petitions].

⁶ "Complainant's Response to Motions to Strike Complainant's Response to Petitions for Appeal."

an untimely request concerning the Complaint (Mot. to Strike Mr. Fulton's Request for Privacy Act Relief ¶ IIA at 4-5).

The rules of practice applicable to this proceeding⁷ provide that all motions and requests concerning the complaint must be made within the time allowed for filing an answer.⁸ On January 26, 2017, the Hearing Clerk, by certified mail, served Mr. Fulton with the Complaint.⁹ The Rules of Practice require that an answer must be filed with the Hearing Clerk within twenty days after the Hearing Clerk serves a respondent with the complaint.¹⁰ Therefore, Mr. Fulton was required to file an answer and any motion or request concerning the Complaint with the Hearing Clerk no later than February 15, 2017. Mr. Fulton did not file his Request for Privacy Act Relief until June 16, 2017. However, I do not find that Mr. Fulton's Request for Privacy Act Relief constitutes a motion or request concerning the Complaint. Therefore, I reject the Administrator's contention that Mr. Fulton's Request for Privacy Act Relief must be stricken because it is an untimely request concerning the Complaint.

Second, the Administrator contends Mr. Fulton's Request for Privacy Act Relief must be stricken because it is, in part, a supplemental appeal (Mot. to Strike Mr. Fulton's Request for Privacy Act Relief ¶ IIB at 5-6).

The Administrator correctly states that a supplemental appeal petition is stricken unless the

⁷ The rules of practice applicable to this proceeding are the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151) [Rules of Practice].

⁸ 7 C.F.R. § 1.143(b)(2).

⁹ United States Postal Service domestic return receipt for article number 7015 3010 0001 5187 4894.

¹⁰ 7 C.F.R. § 1.136(a).

Judicial Officer has granted the party filing the supplemental appeal petition the opportunity to supplement his or her appeal petition.¹¹ However, while not without doubt, I find Mr. Fulton's Request for Privacy Act Relief is not a supplemental appeal. Therefore, I reject the Administrator's contention that Mr. Fulton's Request for Privacy Act Relief must be stricken because it is, in part, a supplemental appeal.

Mr. Fulton's Request for Privacy Act Relief

Mr. Fulton contends the institution and conduct of this proceeding violate his rights under the Privacy Act and he seeks relief under the Privacy Act.

This proceeding is a disciplinary administrative proceeding to determine whether Mr. Fulton has violated the Horse Protection Act, as alleged in the Complaint; it is not a proceeding to determine whether the Secretary of Agriculture has violated the Privacy Act. Moreover, I do not have jurisdiction to entertain Mr. Fulton's Privacy Act claims.¹² Therefore, I dismiss Mr. Fulton's Request for Privacy Act Relief.

Mr. Fulton's Motion to Strike the Administrator's Response to Appeal Petitions

Mr. Fulton contends the Administrator's Response to Appeal Petitions must be stricken for three reasons. First, Mr. Fulton contends that the Administrator's response to three appeal petitions

¹¹ See *Coastal Bend Zoological Association* (Decision as to Robert Brock and Michelle Brock), 67 Agric. Dec. 154, 172 (U.S.D.A. 2008), *aff'd per curiam sub nom.* Brock v. U.S. Dep't of Agric., 335 Fed. App'x 436 (5th Cir. 2009); *Octagon Sequence of Eight, Inc.* (Decision as to Ramos), 66 Agric. Dec. 1093, 1100-01 (U.S.D.A. 2007), *aff'd sub nom.* Ramos v. U.S. Dep't of Agric., 322 Fed. App'x 814 (11th Cir. 2009); *Mitchell*, 60 Agric. Dec. 91, 94 n.5 (U.S.D.A. 2001), *aff'd*, 42 Fed. App'x 991 (9th Cir. 2002).

¹² See 7 U.S.C. §§ 450c-450g which authorizes the Secretary of Agriculture to delegate regulatory functions to the Judicial Officer and 7 C.F.R. § 2.35 which lists the regulatory functions which the Secretary of Agriculture has delegated to the Judicial Officer. See also *Black*, 71 Agric. Dec. 1087, 1092 (U.S.D.A. 2012) (stating the Judicial Officer does not have jurisdiction to entertain Privacy Act claims).

each of which was filed by a different respondent in this proceeding, is improper. I find nothing in the Rules of Practice which prohibits a party from filing a single response to multiple petitions for appeal. Therefore, I reject Mr. Fulton's contention that the Administrator's Response to Appeal Petitions must be stricken because it addresses three appeal petitions each of which was filed by a different respondent in this proceeding.

Second, Mr. Fulton contends the Administrator's Response to Appeal Petitions must be stricken because it prejudices Mr. Fulton's right to have his case decided solely on its merits.

Mr. Fulton offers no support for his speculation that the Administrator's Response to Appeal Petitions will result in my issuing a decision that is not based on the merits of Mr. Fulton's appeal petition.

Third, Mr. Fulton contends the Administrator's Response to Appeal Petitions must be stricken because it violates the Privacy Act.

This proceeding is a disciplinary administrative proceeding to determine whether Mr. Fulton has violated the Horse Protection Act, as alleged in the Complaint; it is not a proceeding to determine whether the Administrator's filing the Response to Appeal Petitions violates the Privacy Act. Moreover, I do not have jurisdiction to entertain Mr. Fulton's Privacy Act claim.¹³ Therefore, I decline to address Mr. Fulton's contention that the Administrator's filing the Response to Appeal Petitions violates the Privacy Act.

For the forgoing reasons, the following Rulings are issued.

RULINGS

1. Mr. Fulton's June 16, 2017 Request for Privacy Act Relief, is dismissed.


¹³ Black, 71 Agric. Dec. 1087, 1092 (U.S.D.A. 2012) (stating the Judicial Officer does not have jurisdiction to entertain Privacy Act claims).

2. The Administrator's June 28, 2017 Motion to Strike Mr. Fulton's Request for Privacy Act Relief, is denied.

3. Mr. Fulton's July 6, 2017 Motion to Strike the Administrator's Response to Appeal Petitions, is denied.

Done at Washington, DC

October 26, 2017

A black rectangular redaction box covering the signature of William G. Jenson.

William G. Jenson
Judicial Officer