

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF ALBANY

Application of THE AMERICAN SOCIETY FOR THE
 PREVENTION OF CRUELTY TO ANIMALS and the
 ANIMAL LEGAL DEFENSE FUND,

Petitioners,

For a judgment pursuant to Article 78
 of the CPLR

-against-

NEW YORK STATE DEPARTMENT OF AGRICULTURE
 AND MARKETS; DONALD G. BUTCHER,
 Commissioner of the New York State
 Department of Agriculture and Markets,
 STUART R. PREECE, Records Access
 Officer of the New York State
 Department of Agriculture and Markets,
 and JAMES L. BURNES, Appeals Officer of
 the New York State Department of
 Agriculture and Markets,

Respondents.

SUPREME COURT, ALB.CO.SPECIAL TERM, 10/21/88, CAL. #4

JUSTICE VINCENT G. BRADLEY, PRESIDING

APPEARANCES:

LEGAL ACTION FOR ANIMALS
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 MICHAEL McCORMICK, ESQ., of Counsel

BRADLEY, J:

In this Article 78 proceeding, petitioners seek judicial review of the determinations of the Records Access Appeals Officer of the Department of Agriculture and Markets which upheld the Department's denial of petitioners' Freedom of Information Law (FOIL) requests for the names and addresses of mink and ranch fox farms in New York State. In denying the requests, the Officer relied on Public Officers Law Section 89(2)(b)(iv) which defines an "unwarranted invasion of personal privacy" as "disclosure of information of a personal nature when disclosure would result in economic or personal hardship to the subject party and such information is not relevant to the work of the agency requesting or maintaining it."

Petitioners argue that the information they seek relates to business entities which are not entitled to FOIL protection. They further argue that even if the persons or entities engaged in the business of mink farming are entitled to FOIL protection, the release of the information requested would not be an unwarranted invasion of privacy because the information is related to the work of the department, the information is not private and the Department has made no

factual showing that its release would result in economic or other hardship to the persons or entities whose names and addresses the petitioners seek. Petitioners point out that they do not intend to use the information for commercial or fundraising purposes.

In reviewing a FOIL-related determination, a court must start by recognizing that agency records are presumptively available (Capital Newspapers v. Burns, 67 NY2d 562 [1986]), that to avoid disclosure the material requested must fall squarely within one of the exempt categories (Id., at 566), and that FOIL exemptions are to be narrowly construed (Matter of Washington Post v. NYS Insurance Dept., 61 NY2d 557 [1984]). The burden is on the agency to prove that the material is exempt and the agency must show a specific and factually-based justification for the exemption (Farbman v. NYC Health and Hospital Corp., 62 NY2d 75 [1984]). In addition, where, as here, the Committee on Open Government has already interpreted the application of FOIL to petitioners' requests, its interpretation should be upheld if not irrational or unreasonable (see, Sheehan v. City of Binghamton, 59 AD2d 808 [Third Department 1977]).

Applying these standards to the issues at hand, the

Court finds that the petition must be granted. First, apparently all of the persons or entities contained on the list, which the Court has reviewed in camera, are engaged in mink and ranch fox farming as a business. Respondents do not contend otherwise. Accordingly, the Court agrees with the advisory opinion of the Committee on Open Government dated May 18, 1988 which states that "the provisions concerning privacy in the Freedom of Information Law are intended to be asserted only with respect to 'personal' information relating to natural persons" (Marion affirmation 9/13/88, exhibit O, p. 2) and concludes that the information is subject to disclosure. In this Court's opinion, the names and business addresses of individuals or entities engaged in animal farming for profit do not constitute information of a private nature, and this conclusion is not changed by the fact that a person's business address may also be the address of his or her residence. In interpreting the Federal Freedom of Information Act (5 USC 552), the Federal Courts have already drawn a distinction between information of a "private" nature which may not be disclosed, and information of a "business" nature which may be disclosed (see, e. g. Cohen v. Environmental Protection Agency, 575 F Supp. 425 (D.C.D.C.

1983). The Court of Appeals has held that because the New York State FOIL is patterned after its Federal counterpart, New York State Courts may look to Federal decisions for guidance in deciding FOIL cases (see, e. g. Fink v. Lefkowitz, 47 NY2d 567 [1979]).

In holding for petitioners, the Court rejects the argument that the information sought is not relevant to the work of respondents. First, Agricultural and Markets Law Section 127-a provides that "the breeding, raising and producing in captivity, and the marketing by the producer of mink and ranch fox, as live animals, pelts or carcasses, shall be deemed an agricultural pursuit . . ." It further provides that "[a]ll mink and ranch fox raised in captivity shall be deemed domestic animals subject to all laws relative to possession, ownership and taxation applicable to domestic animals, except for the purposes of disease control and indemnification under articles five and seven of this chapter." Second, Section 127-b transferred to Agriculture and Markets effective July 1, 1962, all of the functions of the former Conservation Department affecting "the breeding, raising, producing, marketing, or any other phase of the production or distribution, of domestically raised mink and

ranch fox, or products thereof. . ." It is clear from the language of these statutes that mink and fox farms fall squarely within the Department's responsibilities and that the Department has the power to regulate these pursuits, if it chooses to do so.

Finally, even if the Court concluded that a personal privacy exemption is available to a business entity, the Court would still conclude that the alleged invasion of privacy here is not "unwarranted" since respondents' contention that disclosure of the names and addresses sought here would result in embarrassment or hardship for the individuals involved is conclusory only and is unsupported by any evidence submitted by respondents.

In summary, therefore, the Court grants all the relief requested in the petition with the exception of petitioners' request for attorney's fees made pursuant to Public Officers Law Section 89(4)(c). The Court denies this request as it cannot say that the agency lacked a reasonable basis in law for withholding the records sought by petitioners. Petitioners' attorney shall submit a single order consistent herewith.

Date: Kingston, New York
May 10, 1989

All papers to attorney for petitioners upon execution of the order entered hereon.