



United States Department of Agriculture

FAX COVER SHEET

To:

Fax #: 2025011836

Date: 03/23/15 01:54:25 PM

Re:

Pages (Including cover): 18

Attached is information sent per request of (b) (6) Privacy .

Glenda *Bommersbach*
Program Technician
Richland County FSA
1687 Bypass Rd
Wahpeton, ND 58075
Phone: 701-642-9231 ext 104
Fax: 855-813-7554
Email : Glenda.Bommersbach@nd.usda.gov

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RECEIVED
MAR 23 2015

March 23, 2015

To: U. S. / EPA
Office of Civil Rights (1201A)
1200 Pennsylvania Ave. NW
Attention Title 6
Washington, DC 20460

Attn: Ms Helena Aguilar

I was referred to Office of Civil Rights by Ms Darcy O'Connor of the Region 8 Office of the EPA. I visited with a Mr Daniel Pernell this morning and was told I could file my Complaint via fax.

Please consider this this letter and included packet as my complaint to be investigated and resolved.

Thank you.

Sincerely,

(b) (6) Privacy

(b) (6) Privacy

AD-3027
(1/19/12)

OMB Control Number 0508-0002



UNITED STATES DEPARTMENT OF AGRICULTURE (USDA)
Office of the Assistant Secretary for Civil Rights
USDA Program Discrimination Complaint Form

First Name: (b) (6) Privacy Middle Initial: (b) (6) Privacy

E-mail address (if you have one): (b) (6) Privacy

Last Name: (b) (6) Privacy

Telephone Number: (b) (6) Privacy Land line #

Mailing Address: (b) (6) Privacy
number and street, PO Box, or RD number

Alternate Telephone Number: (b) (6) Privacy Cell #

Moore town ND 58061
City State Zip code

Best Time of the Day to Reach You: 8:00 AM To 5:00 PM

Best Way to Reach You: (circle one) Mail Phone E-mail Other:

Do you have a representative (lawyer or other advocate) for this complaint? Yes ___ No

If yes, please provide the following information about your representative:

First Name: _____ Last Name: _____

Address: _____ City: _____ State: _____

Zip Code: _____ Telephone: (____) _____ E-mail: _____

1. Who do you believe discriminated against you? Use additional pages, if necessary. Including but NOT limited to ->

Name(s) of person(s) involved in the alleged discrimination (if known):
MR JAMES GRAY MR DOUGLAS GOERING MR DAVID PHILLIPS
~~MR KEVIN COSTA MR BYRKE SHAWN MR THOMAS~~

Please name the program you applied for (if known/if applicable):
ND Mediation Service SILBERMAGEL
MS. PAPANICA

Please check (✓) the USDA Agency below that conducts the program or provides Federal financial assistance for the program (if known):
MS. Cyndi BECK

- Farm Service Agency Food and Nutrition Service
- Rural Development Natural Resource Conservation Service
- Forest Service Other: USDA from Washington, DC

2. What happened to you? Use additional pages, if necessary, and please include any supporting documents that would help show what happened.

3. When did the discrimination occur?

Date: JUNE 24th 2011
month day year

If the discrimination occurred more than once, please provide the other dates:

THIS DISCRIMINATION IS ONE PART OF A LONG & CORRUPT SCHEM THAT INVOLVES A PESTICIDE VIOLATION.

4. Where did the discrimination occur?
Address of location where incident occurred:

CASS COUNTY ELECTRICAL CO-OP MEETING ROOM

Property Address (see Instructions on page 1 for explanation):

(b) (6) Privacy

number and street, PO Box, or RD number

number and street, PO Box, or RD number

FARGO ND 58104
City State Zip code

City State Zip code

5. It is a violation of the law to discriminate against you based on the following: race, color, national origin, religion, sex, disability, age, marital status, sexual orientation, family/parental status, income derived from a public assistance program, and political beliefs. (Not all bases apply to all programs. For further information, see Instructions on page 3.) Reprisal is prohibited based on prior civil rights activity.

I believe I was discriminated against based on my NOT BEING PART OF THE COMPLIANCE ASSISTANCE PROGRAM

6. Remedies: How would you like to see this complaint resolved?

I WOULD LIKE TO SEE THE RESULTS OF AN INVESTIGATION BEFORE I CAN ANSWER THIS QUESTION

(b) (6) Privacy

7. Have you filed a complaint about the incident(s) with another federal, state, or local agency or with a court?

Yes: _____ No: X *Not This Incident.*

If yes, with what agency or court did you file? _____

When did you file? _____
month day year

(b) (6) Privacy

Signature: _____

Date: 3-4-2015

Mail Completed Form To:

USDA
Office of the Assistant Secretary for Civil Rights
1400 Independence Ave, SW, Stop 9410
Washington, D.C. 20250-9410

Telephone Numbers:

(202) 260-1026 (Local)
(866) 632-9992 (Toll-free Customer Service)
(800) 877-8339 (Local or Federal relay)
(866) 377-6642 (Relay voice users)
(202) 619-6853 (Fax)

E-mail address: program.intake@usda.gov

PAPERWORK REDUCTION ACT AND PUBLIC BURDEN STATEMENTS:

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) requires us to inform you that this information is being collected to ensure that your complaint contains all the information required to file a complaint. The Office of the Assistant Secretary for Civil Rights will use the information to process your complaint of program discrimination. Response to this request is voluntary. The information you provide on this form will only be shared with persons who have an official need to know, and will be protected from public disclosure pursuant to the provisions of the Privacy Act, 5 U.S.C. § 552a(b). The estimated time required to complete this form is 60 minutes. You may send comments regarding the accuracy of this estimate and any suggestions for reducing the time for completion of the form to USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Ave, SW, Washington, DC 20250-9410.

An Agency may not conduct or sponsor, nor is a person required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Number for this form is 0508-0002.

March 3, 2015

This is my narrative on what I believe was a corruption of the mediation that was offered to (b) (6) Privacy, my wife, and myself in a pesticide dispute in 2011.

As a 20 plus year client of the ND Mediation Service, which is funded and supervised by the USDA out of Washington, DC, I asked when a conflict arose with the ND Pesticide Department that it be resolved using mediation.

I was assured that the mediation would be professional and unbiased.

(b) (6) Privacy and I, spent time, effort, and asked our lawyer for the pesticide dispute, to represent us. His preparation cost over \$3,000. He mentioned to us before the mediation that he was concerned that he had no real idea of what to expect because the communications that he was having with the ND Mediation Service were not what he was used to ---uninformative and not anything that he was used to in his working with mediation before in Minnesota or North Dakota.

On the day of the mediation we found out why.

After agreeing to mediate, Mr James Gray of the ND Pesticide Dept. came to the mediation 15 minutes late, sat down at the mediation table, and the first words out of his mouth were, and I quote " I'M HERE BUT I'M NOT HERE TO MEDIATE."

I've been told since, by professionals, that at that point a true unbiased Mediator would have stopped the proceedings and sited Mr. Gray as "Mediating in Bad Faith".

The two most irrational statements he made at the mediation were that the ariel spray applicator that killed my crop had and I quote " Did Everything Right " the day he killed my crop and that pesticide spray can, of it's own volition, " Drift Against the Prevailing Wind ". There was no documentation given to us at the time to support this because the Pesticide Department could not release any spray records because they could not find any violations. Seems convenient!

It has been just in the last few weeks that USDA Inspector Dan Hudson, after reviewing our case, referred us to the Office of Inspector General to have this case investigated because after a second Freedom of Information request to the State of North Dakota on the handling of our mediation, an E-mail showing Mr. James Gray did willfully and knowingly go to the Mediator of our case before the mediation to what seems to manipulate the proceedings.

This E-Mail communication shows that there appears to be an improper relationship between the ND Dept of AG Pesticide Dept, the ND Mediation Service and the UND Conflict Resolution Center before and after the mediation that (b) (6) Privacy, our Lawyer Zenas Baer and I were subjected to.

In looking back, after talking to professionals in the Mediation Field It turns out that the person that was picked by the ND Mediaton Service was not qualified to conduct mediation and was only an instructor with no credentials to do actual Mediations.

It has been told to us that it was not only unprofessional, but possibly criminal, that the ND Medaition Service hired a Mediator that was already on the State payroll.

It would also have been unprofessional and possibly criminal, that the mediator accept the roll from someone who she has a paid monetary relationship with.

Furthermore the only professional action to provide for a mediator in our case would have been to obtain the services of a Professional Mediator that would also be a expert in the Agricultural / Pesticide field and would have been from outside the State of North Dakota to preclude the question of impartiality.

She also had no background in the Agricultural / Pesticide Application field and seems to have only had a background in family / marital disputes.

The most damning unprofessional action by the mediator, was her not relaying the fact that she was having first party communications with Mr. James Gray on the case before the Mediation. Isn't this a breach of the most basic principle of Mediation and according to the rules, Mr. Gray calling the UND Conflict Resolution Center should have immediately been reported to our lawyer?

In support of my narrative I will be sending the E-mail that shows Mr. Gray was purposely and knowingly corrupting the mediation before the fact and that he was supported in this effort by the other people in the Ag Dept. including Ag Commissioner Douglas Goerhing.

The corruption of the mediation that (b) (6) Privacy — our lawyer and I were forced to endure is a cascade of corruption coming from the Pesticide Dept and their " Compliance Assistance Program " where they establish personal relationships with ariel and commercial pesticide applicators, and then when a citizen calls with a complaint, it is met with denial and in our case the production of false information by the Dept of Ag, Pesticide Dept.

This " Compliance Assistance Program " has in fact and performance produced a two tiered system of citizens in North Dakota —the ariel and commercial Applicators on top—and then everyone else— on the bottom— as second class citizens.

I will also be sending prove of payment to show that not only did the ND AG Dept, et al, provide a corrupted Mediation but that they made us pay for it.

In closing I would like to ask that this ordeal that (b) (6) Privacy and I have been subjected to by the ND AG Dept, the ND Mediation Service and the UND Conflict Resolution Center, be investigated and that remedies be found for ourselves and also the rest of the Citizens of North Dakota.

Thank You .

Sincerely,

(b) (6) Privacy

(b) (6) Privacy

(b) (6) Privacy

Date	Description	Hours	Charges
	Previous Balance		\$0.00
7/20/2011	Mediator Hour	3	\$75.00
Total Amount Due For Mediation			\$75.00

IF YOU CAN'T AFFORD TO PAY THE ENTIRE BILL THIS MONTH, PLEASE PAY WHAT YOU CAN. WE WILL BILL YOU AGAIN NEXT MONTH. THANK YOU

BALANCE DUE...PLEASE PAY THIS AMOUNT \$75.00

July 29, 2011

[Handwritten signature] 7-17-2011

Junkert, Ken S.

From: Gray, Jim A.
Sent: Monday, June 13, 2011 6:07 PM
To: Junkert, Ken S.; Christman, Bob J.; Silbernagel, Tom J.
Subject: RE: (b) (6) Privacy Concerns

No need for anybody to call (b) (6) Privacy. I visited with the UND conflict resolution center today to offer my input and to have them explain to (b) (6) Privacy the parameters of the discussions that I am willing to have next week. I will still go through with the mediation since I committed to do so.

Jim Gray
Pesticide, Feed and Fertilizer Division Director
North Dakota Department of Agriculture
600 E. Boulevard Ave., Dept. 602
Bismarck, ND 58505-0020
Office: 701-328-1505
Mobile: 701-220-1645
Fax: 701-328-4567

ex-parte
improvising
lead
with the findings

From: Junkert, Ken S.
Sent: Monday, June 13, 2011 3:46 PM
To: Christman, Bob J.; Silbernagel, Tom J.; Gray, Jim A.
Subject: RE: (b) (6) Privacy Concerns

Bob,

UND will handle all of the communication with (b) (6) Privacy. Your decision to allow or disallow will be made after UND contacts Jim. UND will deal with (b) (6) Privacy if he shows up and there isn't a mutual agreement for him to be there. Attorneys don't run our process. They show up and think they can and find out quickly that they are not in control. This is not a court process, this is a mediation process. We have to be strict in enforcing our rules, and, yes, this is a necessary bureaucratic process to protect confidentiality and to make sure the meeting doesn't turn into chaos. Do we run risk of making (b) (6) Privacy upset if he isn't part of our process? I am not sure. Tom and I are willing to call (b) (6) Privacy and explain the process.

Do you want us to call (b) (6) Privacy?

These concerns/fears are not new to our mediation process.

Kenneth S. Junkert

Administrative Services Division Director
North Dakota Department of Agriculture
Business phone: 701-328-4756
Business fax: 701-328-4567
kjunkert@nd.gov

From: Christman, Bob J.
Sent: Monday, June 13, 2011 3:00 PM
To: Junkert, Ken S.; Silbernagel, Tom J.; Gray, Jim A.
Subject: RE: (b) (6) Privacy Concerns

Junkert, Ken S.

From: Carvell, Charles M.
Sent: Tuesday, March 15, 2011 7:57 AM
To: Junkert, Ken S.
Subject: RE: Mediation Request

Ken,

See my comments below.

Charles

From: Junkert, Ken S.
Sent: Monday, March 14, 2011 11:10 AM
To: Carvell, Charles M.
Cc: Christman, Bob J.; Silbernagel, Tom J.
Subject: Mediation Request

Charles,

AMS received a request to mediate a dispute between the Department's pesticide enforcement program and an agriculture producer. I don't believe AMS has ever mediated an issue directly related to the department. It appears that the law provides AMS with the authority to mediate this issue? ~~Do you agree? I agree?~~

if the pesticide program or the producer is concerned about AMS preserving a neutral stance in these situations, we can contract with mediators outside of the department.

Do you have any other advice regarding moving forward? No. Thanks.

~~6-09-10-04~~ **Request for assistance - Negotiation - Mediation.** Any farmer, creditor, person dealing with a farmer, or other person eligible for mediation with an agency of the United States department of agriculture may request assistance from the administrator. Upon receipt of the request, and upon consent of all parties to mediation, the negotiator or mediator shall encourage and assist the parties in reaching a voluntary settlement.
Page No.

Kenneth S. Junkert
Administrative Services Division Director
North Dakota Department of Agriculture
Business phone: 701-328-4756
Business fax: 701-328-4587
kjunkert@nd.gov

Gray, Jim A.

From: Junkert, Ken S.
Sent: Wednesday, March 16, 2011 1:11 PM
To: Christman, Bob J.
Cc: Gray, Jim A.; Schaan, Blake J.
Subject: Mediation Request

Bob,

Charles Carvell indicated that AMS does have the authority to mediate pesticide regulatory cases. As the department enforcement supervisor, you will be receiving a request from AMS to mediate a pesticide enforcement case. The mediation request will also be copied to the pesticide enforcement program.

Kenneth S. Junkert

Administrative Services Division Director
North Dakota Department of Agriculture
Business phone: 701-328-4756
Business fax: 701-328-4567
kiunkert@nd.gov

Gray, Jim A.

From: Junkert, Ken S.
Sent: Wednesday, March 16, 2011 3:12 PM
To: Gray, Jim A.; Christman, Bob J.; Schaan, Blake J.
Subject: Mediation Request

Jim,

Charles responded in red text.

"Charles,

AMS received a request to mediate a dispute between the Department's pesticide enforcement program and an agriculture producer. I don't believe AMS has ever mediated an issue directly related to the department. It appears that the law provides AMS with the authority to mediate this issue? Do you agree? ~~no~~."

It doesn't matter if you have an enforcement issue or not, it only matters that the agriculture producer disagreed with your final decision regarding his complaint – creating a dispute. The AMS law allows agriculture producers to request assistance from the "administrator" – Tom Silbernagel. Tom is required by law to respond and isn't provided the opportunity to ignore this request, no matter how you feel about the mediation process.

Mediation is a voluntary process and Tom will be requesting that you participate on behalf of the Department. Our mediators are trained and would never request information that would put you or your staff in violation of the law. You also need to know that our process isn't subject to open meeting laws and all mediation records are confidential. The agriculture producer may have additional information that may impact your decision.

Kenneth S. Junkert

Administrative Services Division Director
North Dakota Department of Agriculture
Business phone: 701-328-4756
Business fax: 701-328-4567
kjunkert@nd.gov

From: Gray, Jim A.
Sent: Wednesday, March 16, 2011 2:00 PM
To: Junkert, Ken S.; Christman, Bob J.
Cc: Schaan, Blake J.
Subject: RE: Mediation Request

Ken:

Please provide a copy of your correspondence with Charles' in this matter so that I can better understand what question was asked and how it related to this particular case. Just so we all understand the situation, we do not have a pesticide enforcement case. We simply conducted a complaint investigation. We have not taken an enforcement action based on the lack evidence that anybody performed an illegal act. What exactly would AMS be mediating?

If we had taken enforcement action, the party receiving that action has several avenues to resolve the matter. They can take the case to an administrative hearing to have it heard in front of an administrative law judge or they can request an informal conference with the pesticide staff to dispute the facts of the case. If we have taken an enforcement action, I think that it would also be appropriate to use AMS in some cases to facilitate discussions and help determine mutually-acceptable payment schedules for civil penalties. A third option is for the party to sign a plea and waive their right to a hearing.

Mr. (b) (6) Privacy filed the complaint. There is nothing in the law or our policies to give the complainant an opportunity to dispute the findings of our investigation. I would be curious if anybody can find examples anywhere in the Century Code where a complainant can contest a regulatory agency not taking regulatory action in a case.

To reiterate, I strongly oppose involvement of AMS in this case since I don't think that there is an department action for them to mediate. Furthermore, our findings hinge on pesticide application records that are closed records under N.D.C.C. 4-35. Any public discussion on the specifics of the case creates an opportunity for pesticide enforcement staff members to inadvertently divulge confidential information. The individual who discloses confidential information is individually subject to penalty. Therefore, I am not comfortable allowing any of the pesticide enforcement staff to participate in additional public discussions on the specifics of the case. If Bob decides to participate in a mediation in this case, I would ask that Charles Carvell represent the pesticide enforcement program.

Mr. (b) (6) Privacy has received a copy of our case file with the closed records redacted. All public information relating to the case if found in that file. If we were brought to a mediation, our response would be to simply refer Mr. (b) (6) Privacy to the file we provided him in January.

I would suggest a short meeting in the near future to discuss the situation and plan for next steps.

Jim Gray
Pesticide, Feed and Fertilizer Division Director
North Dakota Department of Agriculture
600 E. Boulevard Ave., Dept 602
Bismarck, ND 58505-0020
Office: 701-328-1505
Mobile: 701-220-1645
Fax: 701-328-4567

From: Junkert, Ken S.
Sent: Wednesday, March 16, 2011 1:11 PM
To: Christman, Bob J.
Cc: Gray, Jim A.; Schaan, Blake J.
Subject: Mediation Request

Bob,

Charles Carvell indicated that AMS does have the authority to mediate pesticide regulatory cases. As the department enforcement supervisor, you will be receiving a request from AMS to mediate a pesticide enforcement case. The mediation request will also be copied to the pesticide enforcement program.

Kenneth S. Junkert
Administrative Services Division Director
North Dakota Department of Agriculture
Business phone: 701-328-4756
Business fax: 701-328-4567
kjunkert@nd.gov

Junkert, Ken S.

From: Carvell, Charles M.
Sent: Monday, March 28, 2011 2:46 PM
To: Junkert, Ken S.
Cc: Gray, Jim A.; Silbernagel, Tom J.
Subject: (b) (6) Privacy

Ken,

Last week I spoke with Jim Gray about AMS taking up the (b) (6) Privacy matter, a subject about which I have also had communications with you and Tom S. Jim asked me a question about the interplay between the confidentiality provision in the Pesticide Act, Section 4-35-24(5) and the confidentiality requirements surrounding a mediation. I'll probably get an answer to Jim on Wednesday.

This e-mail is to give you a heads-up that I'm looking at the issue.

Charles

Gray, Jim A.

From: Carvell, Charles M.
Sent: Wednesday, March 30, 2011 10:15 AM
To: Gray, Jim A.
Subject: Confidentiality: Pesticide Law and AMS

Jim,

AMS will conduct a mediation at the request of (b) (6) Privacy. (b) (6) Privacy property was damaged by a pesticide application. The Ag Department's pesticide division investigated the matter at (b) (6) Privacy request but could not identify a culpable party. (b) (6) Privacy, unhappy with that result, asked AMS to mediate his beef with the pesticide division.

I understand that because the ag dep't is going to mediate a dispute in which a division of the dep't is a party, that the dep't will hire an outside mediator.

You asked me about the interplay between the confidentiality provision governing the pesticide division and the confidentiality rules under which AMS operates.

Section 4-35-24(5)(a) of the Pesticide Act states that the comm'r "has access to records pertaining to the pesticide application" and that such "records are confidential." An exception to this confidentiality status arises where the pesticide division needs the info "to enforce this chapter." *Id.* It is ultimately up to you to decide what constitutes enforcement of the Pesticide Act, but the proposed mediation doesn't strike me as something the legislature had in mind by including in the statute this "enforcement exception."

Another exception to confidentiality is release under a court order. Section 44-04-18.11. No one here has sought a court order.

AMS itself has a confidentiality requirement, and a very broad one. "Information created, collected, and maintained by the agricultural mediation service in the course of any . . . mediation is confidential." Section 6-09.10-10.

If the pesticide division, while participating in the (b) (6) Privacy mediation, revealed confidential information acquired under Section 4-35-24(5)(a) it would probably violate the law and the person making the disclosure risks criminal prosecution. Releasing confidential information constitutes a Class C felony. Section 12.1-13-01. The risk of prosecution is there even though the mediator has some official state status within the agriculture dep't, the same agency that holds the confidential info.

One could argue that giving confidential info to other members of the agency that has custody of the info does not violate the confidentiality requirement. Even so, if the person receiving the info does not have responsibilities related to the acquisition of the information and uses it for a purpose unrelated to its acquisition, there is a risk that confidentiality is violated. More particularly, if the pesticide application information were given to the mediator but not to (b) (6) Privacy, and if the mediator did not divulge the info to (b) (6) Privacy, there is an argument that confidentiality has not been breached because the info is kept within the ag dep't; but given the fact that there are criminal penalties for a breach it would be more prudent not to provide the mediator with the information.

While I understand that the mediator himself would also be subject to confidentiality, there isn't an exception allowing disclosure to someone who is himself required to keep the info confidential.

In Opinion 2008-L-20 the Attorney General addressed the question whether confidential pesticide info could be released for a medical necessity. The A.G. ruled that while such a reason seem justifiable, "good cause" doesn't enter into the equation. "Thus, even if a person has a medical reason for requesting records acquired . . . under . . . 4-35-24(5), that request must be denied for so long as the information remains confidential. Any potential for harsh results is a matter for the Legislature to consider." (And in 2009 the legislature did add a "medical necessity exception" to the confidentiality statute. Section 4-35-24(5)(b)). Similarly here, even if public policy might be furthered by letting at least the mediator see the information, the law probably doesn't allow it.

In sum, there is nothing in the law governing an AMS mediation that modifies or dilutes confidentiality provisions under the Pesticide Act.

Charles

Junkert, Ken S.

From: Silbernagel, Tom J.
Sent: Tuesday, April 26, 2011 10:58 AM
To: Christman, Bob J.
Cc: Junkert, Ken S.; Nelson, Betty L.
Subject: Pesticide Mediation.

Bob,

We are preparing a letter to the Conflict Resolution Center asking them to assign a mediator (*under the terms of our new contract*) to the Pesticide Division **(b) (6) Privacy** mediation. Do we have the mediator contact you to set up the meeting or should we have him contact Jim Gray?

Tom

Tom Silbernagel, Administrator
ND AG Mediation Service
ND Dept. of Agriculture
Phone 701-328-2061
Fax 701-328-2240
tsilbern@nd.gov