

Legal Opinion: GMP-0011

Index: 7.265, 7.362, 7.562
Subject: FOIA Appeal: SF-171

October 31, 1991

Mr. George Jackman
P.O. Box 836041
Richardson, Texas 75083-6041

Dear Mr. Jackman:

This is in response to your two Freedom of Information Act (FOIA) appeals. In your first appeal, postmarked June 3, 1991, you appeal the partial denial dated May 28 1991 by Mr. James C. Farrington, Acting Director, Office of Administration, Fort Worth Regional Office, withholding certain information under Exemption 6 of the FOIA from the SF-171, Application for Federal Employment, of the selectee for Vacancy Announcement No. 06-ML-90-010. In your appeal dated September 2, 1991, you appeal the partial denial received by you on August 31, 1991 from Tom Peeler, Director, Office of Administration, Fort Worth Regional Office, withholding certain information under Exemption 6 of the FOIA from the SF-171's of the four selectees for Vacancy Announcement No. 06-MSR-90-0026z.

I have determined to affirm the initial denials.

Exemption (6) of the FOIA, 5 U.S.C. 552(b)(6), authorizes the withholding of information contained in "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. To disclose the withheld information, the Department must determine that the public interest in disclosure outweighs the privacy interest under the balancing test of Exemption 6. *Wine Hobby, USA, Inc. v. U.S. Internal Revenue Service*, 502 F.2d 133 3rd Cir. 1974); *Department of the Air Force v. Rose*, 425 U.S. 352, 373 (1976); *Rural Housing Alliance v. United States Department of Agriculture*, 498 F.2d 73, 77 (D.C. Cir. 1974).

United States Department of Justice v. Reporters Committee for Freedom of the Press, 489 U.S. 749 (1989) (hereinafter "Reporters Committee") establishes a framework for analyzing the public interest under Exemptions 6 and 7(C) by establishing that only the furtherance of FOIA's core purpose of informing citizens about "what their government is up to" can warrant the release of information implicating individual privacy interests. *Reporters Committee*, 489 U.S. at 772-73.

The Office of Personnel Management regulations at 5 C.F.R. 293.311 (1988) requires the release of federal employees' names, present and past position titles, grades, salaries and duty stations. Further, the Department of Justice recommends the release of additional information, particularly pertaining to the

professional qualifications of federal employees. Such information includes post-graduate or technical education in preparation for the employee's profession, prior government employment and private sector employment relating to an employee's duties. See Department of Justice, Office of Information and Privacy, FOIA Update, Vol. III, No. 4 (Sept. 1982), p. 3. The guidelines state that a federal employee's home address and telephone number, medical records, prior employment not related to the employee's occupation, and primary, secondary and college education should be withheld. Id.

In both of the agency's denials, personal information concerning the selectees contained in their SF-171's, including their home addresses and telephone numbers, social security numbers, birthdates, military service information and references, were properly withheld under Exemption 6. In the partial denial dated May 28, 1991, the Fort Worth Office partially released information on the selectee's prior jobs for Vacancy Announcement No. 06-ML-90-010 which were relevant to the qualifications for the position. The names and phone numbers of the supervisors and the selectee's salary on those jobs were withheld under Exemption 6. In the second denial from the Fort Worth Regional Office, the SF-171's of the four selectees contained information on the selectees' prior jobs which were not relevant to the position advertised in the vacancy announcement. All of the information on these jobs, therefore, was withheld under Exemption 6.

Concerning the public interest determination, HUD's regulations at 24 C.F.R. 16.1(e)(3) states that

A Freedom of Information Act request from an individual for records about another individual contained in a Privacy Act Records System shall be processed as follows: When an exemption under subsection (b) of FOIA is available, the Privacy Act governs the public interest determination under HUD FOIA Regulations (24 C.F.R. 15.21) and compels the withholding of such documents . . .

HUD maintains under the Privacy Act Systems of Records a system entitled "General Personnel Records," OPM/GOVT.-1, which includes Federal employees' official personnel records. See 55 F.R. 3838 (February 5, 1990).

Since the information you seek is part of the OPM's Privacy Act System of Records maintained by HUD and can be withheld under Exemption 6 of the FOIA, then under the regulations at 24 C.F.R. Section 16.1(e)(3), the Privacy Act governs the public interest determination and compels the withholding of the information.

You have the right to judicial review of this determination under 5 U.S.C. Section 552(a)(4).

Very sincerely yours,

Shelley A. Longmuir
Deputy General Counsel