

Legal Opinion: GMP-0016

Index: 7.360, 7.370, 7.525

Subject: FOIA Appeal: Personal Info. in Payroll Records

November 7, 1991

Gordon Thames, Esq.  
2600 Spruce Street, Suite A  
Montgomery, Alabama 36107

Dear Mr. Thames:

This is in response to your Freedom of Information Act (FOIA) appeal dated August 23, 1991. You appeal the denial dated August 12, 1991 from Raymond A. Harris, Regional Administrator, Atlanta Regional Office, withholding personal identifiers from certified payroll records under Exemptions 6 and 7(C) of the FOIA, 5 U.S.C. 552(b)(6),(7)(C). In a letter dated July 24, 1991 you had requested the subcontractor payroll records for the Arbor Station Apartments, Ltd., in Montgomery, Alabama, Proj. No. 062-35412-PM. Mr. Harris advised in his letter to you that information pertaining to individual workers, such as names, addresses, and other information identifying the workers on the project is exempt from disclosure.

You state that the information you seek on behalf of your client is the list of laborers who physically installed the vinyl siding and performed the painting on the project. You advise that your client is currently involved in litigation against the general contractor that constructed the project and a central issue in the litigation involves what happened to the siding that has caused its discoloration and deterioration. You further assert that there is no right of privacy here since the names of the workers would be listed in the telephone book and that, further, individuals who work on government insured multifamily apartment projects would not have a recognized right of privacy in their identities as long as their salary information was protected.

I have determined to affirm the initial denial under Exemptions 6 and 7(C), 5 U.S.C. 552(b)(6) and 7(C), of the names and addresses of the employees who worked on the project.

Established case law under Exemption 6 authorizes the withholding of "personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." See United States Department of State v. Washington Post Co., 456 U.S. 595, 598 (1982). The U.S. Supreme Court in Washington Post Co. held that the term "similar files" should be interpreted broadly to encompass any information "which applies to a particular individual" regardless of the label of the file in which the information is contained. 456 U.S. at 601-602.

Exemption 7(C), as amended, protects "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information ... could reasonably be expected to constitute an unwarranted invasion of personal privacy." 5 U.S.C. 552(b)(7)(C).

Once it is determined that documents constitute personnel, medical or similar files under Exemption 6 or records or information compiled for law enforcement purposes under Exemption 7, the information may be withheld if its disclosure would violate individuals' personal privacy.<sup>1</sup> As you have been advised, the decision whether to withhold the names and addresses of the employees requires a balancing of the public interest if any, against the invasion of privacy resulting from disclosure. See *Washington Post v. Department of Health and Human Services*, 690 F.2d 252, 258 (D.C. Cir. 1982); *Department of the Air Force v. Rose*, 425 U.S. 352, 372-373 (1976).

It is my determination under the balancing test that the personal privacy information at issue here should be withheld. *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). According to that framework, 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 772-773.

You state that your purpose in requesting the names and addresses of employees from the payroll records is to assist you in your litigation. You also state that the public interest is served by this litigation because, if your client succeeds, the value of HUD's collateral will be protected and possibly enhanced. This assertion does not satisfy the public interest requirement to warrant release of personal information as established in *Reporters Committee*. That public interest, as related to FOIA, concerns disclosure of records that shed light on the activities of a "Government agency or official," showing something "about an agency's own conduct." *Id.* at 773. Release of the personal identifiers from the payroll records would reveal

<sup>1</sup> The Second Circuit Court of Appeals has unequivocally held that Exemption 7(C) protects employees' names, addresses and social security numbers on the certified payroll records that federal contractors submit to enable agencies to determine compliance with the prevailing wage provisions of the Davis-Bacon Act. *Hopkins v. HUD*, 929 F.2d 81 (2d Cir. 1991). *Accord*, *Painting and Drywall Work Preservation Fund, Inc. v. HUD, C.A. No. 88-5076* (D.D.C. 1991).

little, if anything, about HUD's performance of its statutory duties.

Accordingly, I have determined to affirm the withholding of personal identifiers from the payroll records in order to protect individuals' personal privacy under both Exemptions 6 and 7(C). I have also determined pursuant to 24 C.F.R. 15.21 that the public interest in assuring the personal privacy of individuals militates against release of the withheld information.

Please be advised that you have the right to judicial review of this determination under 5 U.S.C. 552(a)(4).

Very sincerely yours,

Shelley A. Longmuir  
Deputy General Counsel