

Legal Opinion: GMP-0017

Index: 7.340, 7.465
Subject: FOIA Appeal: HUD Form 92206

November 7, 1991

Mr. Alan J. Kappeler
Director of Governmental Affairs
The Logs Group
1201 New York Avenue N.W., Suite 530
Washington, D.C. 20005

Dear Mr. Kappeler:

This is in response to your Freedom of Information Act (FOIA) appeal dated August 27, 1991. You appeal the denial of information previously withheld by the Washington, D.C. field office in a letter to Joe Wheeler, dated August 15, 1991. Your letter requests an administrative review of the partial denial of records withheld under Exemption 4, 5 U.S.C. 552(b)(4), namely, HUD Form 92206, Background Data on Request for Assignment of Mortgage to HUD. Your letter also clarifies the initial request and notes that HUD Form 92206 was originally submitted to the Department by your client, America's Mortgage Company. America's Mortgage Company is now a subsidiary of Standard Federal Savings Bank, the servicing mortgagee on this transaction, who has authorized release of the information to you.

Therefore, I have determined to reverse the initial denial.

Exemption 4 of the FOIA exempts from mandatory disclosure "trade secrets and commercial or financial information obtained from a person and privileged or confidential." Information may be withheld under Exemption 4 if disclosure of the information is likely to have either of the following effects: "(1) to impair the Government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained." *National Parks and Conservation Association v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974).

You indicate that your client's file on this mortgage cannot be located. Therefore, you are requesting release of the information America's previously submitted to HUD in order to reconstruct your client's records. On this basis, I have determined that no substantial competitive harm would result from release of the information. I am directing that a copy of HUD Form 92206 be released to you by the Washington, D.C. Field Office by November 13, 1991. If the information is not timely received, please contact Sam Hutchinson, Assistant General Counsel for Personnel and Ethics Law at (202) 708-2088.

Very sincerely yours,

Shelley A. Longmuir
Deputy General Counsel

cc: Gail Lively
Peter Campanella, Regional Counsel
Henry Czauski, Area Counsel