

FOIA Appeal: Title I Home Improvement Loan Files

Legal Opinion: GMP-0031

Index: 7.360

Subject: FOIA Appeal: Title I Home Improvement Loan Files

December 12, 1991

Mr. Jon Hunt
628 Stokes Street, Box 281
Riverside, New Jersey 08075-0281

Dear Mr. Hunt:

This is in response to your Freedom of Information Act (FOIA) appeal dated April 25, 1991. You appeal the partial denial by John Petricco, Manager of HUD's Albany Office, of your request for certain documents relating to a HUD insured Title I loan. By letter of April 2, 1991, Mr. Petricco partially granted your request for documents relating to a Title I Loan obtained by William Edwards, Augustus Hunt and Emilee Hunt. Two documents were withheld pursuant to Exemption 5 of the FOIA, 5 U.S.C.

552 (b)(5), and seven categories of documents were withheld in part or full under Exemptions 4 and 6, 5 U.S.C. 552(b)(4),(6).

I have determined to affirm in part under Exemptions 5 and 6 and to reverse in part the initial decision.

Exemption 5 of the FOIA exempts from mandatory disclosure "inter-agency or intra-agency memorandums or letters which would not be available by law to a party . . . in litigation with the agency." 5 U.S.C. 552(b)(5). The documents involved here were intra-agency records and Exemption 5 was properly invoked to protect the Department's predecisional recommendations regarding collection of the loan.

Exemption 6 protects information in medical, personnel and similar files. The decision in *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 Exemption 6 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.

I have determined under the balancing test of Exemption 6 to affirm the withholding of documents listed in Items 1, 2, 4, 5, 6, and 7 of Mr. Petricco's letter of April 2, 1991. The Title I collection file contains personal and financial information relating to individuals' home improvement loans insured by HUD pursuant to Title I of the National Housing Act, 12 U.S.C. 1703.

Item No. 3 of Mr. Petricco's letter withheld four Rapid Reply letters under Exemptions 4 and 6. The date of one of these

letters was incorrectly listed as 1-20-90. The correct date is 1-2-90. There was also a fifth Rapid Reply letter dated 4-9-91 which was mistakenly not listed.

I have concluded, with respect to three of the Rapid Reply letters dated 1-2-90, 4-30-90 and 10-16-90 that, with proper redaction, a partial release of the information will not subject the individuals to injury or embarrassment and the borrowers' right to privacy in these letters can be maintained. Therefore, I am reversing the initial denial with respect to these Rapid Reply letters and releasing copies of these documents with any private or personal financial information redacted. I am affirming the withholding of the other Rapid Reply letters and the redacted personal information from the partially released letters under Exemption 6.

I can appreciate your interest in determining possible fraud on the part of one of the co-signers of this Title I loan but your allegations with respect to fraud and past scandals within this agency do not bear upon the release or denial of information contained within our files pursuant to FOIA. It is the nature of the information that determines whether it is releasable, not the use to which a particular requester intends to put it. See, *Seawell, Dalton, Hughes & Timms v. Export-Import Bank*, Civil No. 84-241, slip op. at 2 (E.D. Va. July 27, 1984). However, please be advised that any evidence that you may have regarding possible fraud in this Title I loan should be submitted to the Regional Office of Inspector General, which will conduct a review and investigation.

I have also determined pursuant to 24 C.F.R. 15.21 that the public interest in protecting the deliberative process and 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

Enclosure