

FOIA Appeal: Information from HUD Form 92013

Legal Opinion: GMP-0033

Index: 7.340, 7.430

Subject: FOIA Appeal: Information from HUD Form 92013

December 23, 1991

Mr. Karl Zimm
6101 34th Street West, 19-B
Bradenton, Florida 34210

Dear Mr. Zimm:

This responds to your letter of October 21, 1991 appealing the denial of your initial FOIA request of August 20, 1991. Your request was for ten items of information concerning the River Club Apartments in Bradenton, Florida (HUD Project No. 067-35300). Jim Chaplin, Manager, Jacksonville Office, denied your request under Exemption 4 of the FOIA on September 30, 1991.

After careful consideration of your appeal, I have decided to affirm, in part, and reverse, in part, the initial denial.

The information on seven of the items you requested from the River Club Apartment's HUD 92013, Application for Multifamily Housing Project, is furnished as follows:

1. Centennial Mortgage, Inc., 3206 Sugar Maple Business Court, South Bend, Indiana 46628.
2. \$4,508,500 - Forty Years.
4. 7,412 Acres.
5. All of the units will be apartments. The term is unknown except for the term of the loan.
6. None of the units have been reserved for subsidized income families.
8. We have no information regarding the length of the leases.
10. The mortgage has not been approved; therefore, there is no date for construction to start.

I am withholding the information sought in items 3, 7, and 9 of your request from the River Club Apartment's HUD 92013 which constitutes confidential commercial information which may be withheld under Exemption 4. Cf. Charles River Park "A", Inc. v. Department of Housing and Urban Development, 519 F.2d 935 (D.C. Cir. 1975). This information pertains to the number and breakdown of the units, the amount of the rent, and the facilities to be provided with the units. Furnishing you this information has been objected to by the owners because it would affect their competitive position.

Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4), exempts from mandatory disclosure "trade secrets and commercial or financial information obtained from a person and privileged or confidential." The courts have interpreted Exemption 4 as protecting confidential commercial or financial information the disclosure of which is likely to: (1) impair the Government's ability to obtain necessary information in the future or (2) cause substantial harm to the competitive position of the entity from whom the information was received. National Parks and Conservation Ass'n v. Morton, 498 F.2d 765, 770 (D.C. Cir. 1974).

In addition to the constraints provided within Exemption 4, the Trade Secrets Act, 18 U.S.C. 1905, makes it a criminal offense for any employee of the United States, or one of its agencies, to release trade secrets and certain other forms of confidential commercial or financial information except when disclosure is authorized by law. The statute classifies as confidential commercial or financial information, the "identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation or association." Thus, HUD is prohibited from releasing commercial information of the type that you requested unless authorized to do so by law.

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

Very sincerely yours,

Shelley A. Longmuir
Deputy General Counsel

cc: Yvette Magruder
Raymond Buday Jr.