

FOIA Appeal: Architectural Fees/Construction Costs

Legal Opinion: GMP-0038

Index: 7.340

Subject: FOIA Appeal: Architectural Fees/Construction Costs

January 13, 1992

Mr. Anthony Orefice, A.I.A.
RMO Architects
1125 Grand Avenue
Grover City, California 93433

Mr. Orefice:

This letter is in response to your Freedom of Information Act (FOIA) appeal dated August 29, 1991. You appeal the partial denial dated August 2, 1991 from Reagan E. Reed, Public Affairs Officer, Los Angeles Area Office, Region IX. Mr. Reed withheld the architectural fees and construction costs of other projects in the region under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4). In your appeal, you assert that the information about the other projects' architectural fees is necessary to show that the additional costs you incurred are eligible for reimbursement.

I have determined to affirm 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).

The documents at issue contain details regarding the finances, costs, equipment, materials and pricing strategy of each company submitting the information. Disclosure of this information could cause substantial harm to the companys' competitive position in future projects.

Courts have recognized the competitive harm resulting from release of a business' financial information and have withheld documents such as those you have requested. See, e.g., *Gulf & Western Industries, Inc. v. U.S.*, 615 F.2d 527 (D.C. Cir. 1979) (protecting from disclosure financial information including profit and loss data, expense rates, and break-even point calculations); *Timken Co. v. United States Customs Service*, 531 F. Supp. 194 (D.D.C. 1981) (protecting financial and commercial information on pricing and marketing); *Braintree Electric Light Dep't. v. Department of Energy*, 494 F. Supp. 287 (D.D.C. 1980)

(withholding financial information including selling price,

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inventory balance, profit margins, purchasing activity, and cost of goods sold).

Accordingly, I have determined that the withheld information is confidential commercial and financial information and that Exemption 4 is a proper basis for its being withheld. Charles River Park "A", Inc. v. Department of Housing and Urban Development, 519 F.2d 935 (D.C. Cir. 1975).

I have also determined, pursuant to HUD's regulations at 24 C.F.R. 15.21, that the public interest in protecting confidential commercial and financial information militates against release of the withheld information.

You are 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

cc: Yvette Magruder
Beverly Agee, Regional Counsel, 9G