

FOIA Appeal: Tenant Information

Legal Opinion: GMP-0041

Index: 7.360

Subject: FOIA Appeal: Tenant Information

January 15, 1992

Mr. Britt K. Davis
Fulbright & Jaworski
1301 McKinney, Suite 5100
Houston, Texas 77010-3095

Dear Mr. Davis:

This is in response to your Freedom of Information Act (FOIA) appeal dated August 12, 1991 and postmarked in our office on September 16, 1991, of a denial of information by HUD's Houston Office. Mr. William Robertson, Jr., Manager, withheld copies of form HUD-50059, Owner's Certification of Compliance with HUD's Tenant Eligibility and Rent Procedures, pertaining to Mr. Gilden Gauthier under Exemption 6 of the FOIA, 5 U.S.C. 552(b)(6).

I have determined to affirm the initial denial.

Exemption 6 protects information in medical and personnel files and information in "similar files." The Supreme Court in *United States Department of State v. Washington Post*, 456 U.S. 595, 602 (1982) gave "similar files" a broad rather than a narrow meaning, reading Exemption 6 to cover detailed Government records and files on an individual which can be identified as applying to that individual. Whether release of information constitutes a clearly unwarranted invasion of personal privacy is determined by balancing the public interest in disclosure against the potential invasion of individual privacy. *Washington Post v. Department of Health and Human Services*, 690 F.2d 252, 258 (D.C. Cir. 1982).

Disclosure of form HUD-50059 would reveal personal information about the tenant, including the sex, race, age, place of birth and family composition of individuals residing at the location, their total family net assets and income and type of financial relief received. Disclosure of this information would constitute a substantial invasion of privacy. There is a strong privacy interest in withholding this personal information. See *American Federation of Government Employees, AFL-CIO, Local 1923 v. United States Department of Health and Human Services*, 712 F.2d 931, 932 (4th Cir. 1983); *Wine Hobby, USA, Inc. v. United States Internal Revenue Service*, 502 F.2d 133 (3rd Cir. 1974); (individual's name and address are protectible privacy information); *Aronson v. HUD*, C.A. No. 86-0333-S (D. Mass. 1986), *aff'd in part, rev'd in part*, 822 F.2d 182 (1st Cir. 1987) (personal financial information lies near the core of the privacy

interests protected by Exemption 6).

HUD's regulation, 24 CFR Section 15.21, states that a "requested record shall not be withheld from inspection or copying unless it both (1) comes within one of the classes of records exempted by 5 USC Section 552, and (2) there is a need in the public interest to withhold it."

I have determined that the information falls within Exemption 6 of the FOIA. It is my determination that the substantial privacy interest in withholding this broad range of personal information outweighs the public interest you assert for disclosure of this information. Your reasons for wanting to obtain copies of these documents are understandable. However, assisted housing tenants also have a compelling interest in protecting the confidentiality of their personal information. Release of this information based on a credibility issue concerning Mr. Gauthier in his litigation with your client is not sufficient to outweigh his personal privacy interest in the information.

Concerning the public interest determination, HUD's regulations at 24 CFR Section 16.1(e)(3) state that:

"A Freedom of Information Act request from an individual for records about another individual contained in a Privacy Act Records System shall be processed as follows: when an exemption under subsection (b) of FOIA is available, the Privacy Act governs the public interest determination under HUD FOIA regulations (24 CFR Section 15.21) and compels the withholding of such documents

Since the information you have requested is contained in a Privacy Act System of Records (HUD/H-11, Multifamily Tenant Certification, Privacy Act Issuances: 1989 Compilation) and the information can be withheld under Exemption 6 of the FOIA, then under the regulations at 24 CFR Section 16.1(e)(3), the Privacy Act governs the public interest determination and compels withholding of the information.

You have a right to judicial review of this determination under 5 USC Section 552(a)(4).

Very sincerely yours,

Shelley A. Longmuir
Deputy General Counsel

cc: Yvette Magruder
William Daley, Regional Counsel, 6G