

FOIA Appeal: Records on Disiplinary Actions and Awards

Legal Opinion: GMP-0049

Index: 7.360, 7.560

Subject: FOIA Appeal: Records on Disiplinary Actions and Awards
FOIA Exemption 6: Information Withheld

January 29, 1992

Ms. Dorothy T. Pleasant
P.O. Box 50413
New Orleans, Louisiana 70150

Dear Ms. Pleasant:

This is in response to your Freedom of Information Act (FOIA) appeal dated November 28, 1991, regarding the partial denial of your request for information by Mr. Robert J. Vasquez, Manager, New Orleans Office in a letter to you dated October 29, 1991. Your initial request, dated October 16, 1991, was for six categories of documents pertaining to

in the Department's New Orleans Office. In response to your request, Mr. Vasquez redacted and withheld personnel and personal information under Exemption 6 of the FOIA, 5 U.S.C. 552(b)(6).

In consideration of your appeal, I have determined to affirm, in part, and reverse, in part, the initial denial of this information. My determination with respect to each category is as follows:

1. Copy of the Certificate of Appointment, SF-1402. Although an extensive search has been conducted within the New Orleans Office and the Fort Worth Regional Office, this document cannot be located and is, therefore, unavailable.
2. Copy of all disciplinary actions proposed by Mr. during his tenure at HUD. These documents were properly withheld under Exemption 6. We find no legitimate public interest which would sustain disclosure of these records and, thereby, violate the personal privacy of the employees who were subject to these respective actions.
3. Copy of Forms 840, SF-52 and SF-50 which were completed to issue award(s) for Mr. . When these records were released to you, certain blocks were deleted from these forms. I have determined that the deleted blocks from the Form 840 pertaining to the date of the last regular within-grade, the date of last promotion, any promotion pending, time in present position, and the recommended amount of award, can be released. I have

also determined that the deleted blocks in the SF-50's and SF-52's pertaining to salary, supervisory status, bargaining unit status, coverage under the Fair Labor

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Standards Act, and Comparative or Excepted Service status, can be released. This determination is consistent with Office of Personnel Management regulations governing the availability of information which can be released from a Federal employee's Official Personnel File. The Fort Worth Regional Office will be instructed to provide you with this information in compliance with this determination.

Other deleted blocks from the SF-50's and SF-52's pertaining to Social Security number, date of birth, citizenship, Veterans Preference, Veterans Preference for reduction-in-force, Vietnam Era Veteran, service computation date, and retirement and FEGLI blocks, was properly withheld under Exemption 6. Therefore, I have determined to affirm the initial denial of this information.

4. In response to your request for information regarding waivers issued by the Department, the Fort Worth Regional Office has indicated that no waivers were issued to
to participate in the bidding and selling of HUD repossessed homes which were under the supervision of . However, in 1984, Mr. did inform the Department that his had been recently licensed to sell real estate in Louisiana and that may have some dealings with the New Orleans Office through her clients. Mr. further requested guidance in order to avoid what might be construed as a possible conflict of interest. I have enclosed a copy of the response to Mr. directing recusal from any action, proposal or activity involving the business of his .
5. Copies of travel orders and travel vouchers were provided to you in accordance with FOIA regulations.
6. The New Orleans Office referred your request for Inspector General records pertaining to Mr. during his tenure at HUD, to the Office of Inspector General for Investigation in the Department's Headquarters Office. The Office of Inspector General will respond directly to your request.

Exemption 6 of the FOIA authorizes the withholding of information contained in "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The disclosure of information withheld under Exemption 6 requires a determination that the public interest regarding disclosure outweighs an

individual's privacy interest under the balancing test of

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Exemption 6. *Wine Hobby, USA, Inc. v. U.S. Internal Revenue Service*, 502 F.2d 133 (3rd Cir. 1974); *Department of the Air Force v. Rose*, 425 U.S. 352, 373 (1976); *Rural Housing Alliance v. United States Department of Agriculture*, 498 F.2d 73, 77 (D.C. Cir. 1974).

I have determined that there is no overriding public interest which outweighs the personal privacy rights regarding the information withheld under items number 3 and 6. Accordingly, I have determined to affirm the withholding of this information under Exemption 6 of the FOIA. I have also determined, pursuant to 24 C.F.R. 15.21, that the public interest to protect personal privacy militates against disclosure of this personal privacy information.

Please be advised that you have the right to judicial review of this determination under 5 U.S.C. 552(a)(4).

You should also be aware that I am sending a copy of your November 28, 1991 letter in which you appear to allege ethical violations by both _____ and HUD management for failing to obtain "waiver s " to the Office of Inspector General for investigation as they deem appropriate. While I know of no provision for a waiver in the context you present, certain obligations do obtain for _____ to assure compliance with legal guidance given to him in 1984. The Inspector General may deem it appropriate to investigate whether or not this guidance was followed.

Very sincerely yours,

C.H. Albright, Jr.
Principal Deputy General Counsel

Enclosure

CC: William J. Daley, 5G
Yvette Magruder