

FOIA Appeal: HUD Form 92273; Comparable Properties

Legal Opinion r: GMP-0054

Index: 7.340

Subject: FOIA Appeal: HUD Form 92273; Comparable Properties

February 13, 1992

Harold R. Berk, Esq.  
Pepper, Hamilton & Scheetz  
3000 Two Logan Square  
Eighteenth & Arch Streets  
Philadelphia, Pennsylvania 19103-2799

Dear Mr. Berk:

This is in response to your December 12, 1991 Freedom of Information Act (FOIA) appeal. You appeal the partial denial, dated November 22, 1991, from Peter Campanella, Regional Counsel, Philadelphia Regional Office, who withheld the names and addresses of the comparable properties from HUD Form 92273, "Estimates of Market Rent by Comparison", for the Locust Tower Apartments under Exemption 4 of the FOIA.

I have determined to reverse the initial denial.

Exemption 4 of 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." 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).

I have determined to reverse the denial under Exemption 4 of the identities of projects in HUD Form 92273 used as "comparables" for rent comparability. HUD relies on the voluntary cooperation of private project owners and managers of comparable properties to provide project information necessary for HUD appraisal of rent comparability. The project information reported on the HUD 92273 includes data relating to the size of apartments, amenities, garage and storage space, utilities, laundry facilities, rent, and other standard facts about rental projects. The above described information is readily available to members of the public, and prospective tenants are routinely provided with this type of information. Therefore, I do not view release of the identities of comparable projects as impairing the Government's ability to obtain such routine project information for appraisal purposes, nor can release of the identities be

considered as causing substantial harm to the competitive positions of these projects.

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I am providing the Philadelphia Regional Office with a copy of this decision and requesting that they immediately release to you an unexpurgated copy of the HUD 92273 for Locust Tower Apartments with the names and addresses of the comparable properties.

Very sincerely yours,

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

cc: Yvette Magruder  
Peter Campanella, 3G