

FOIA Appeal: Tenant Information

Legal Opinion: GMP-0056

Index: 7.360, 7.364

Subject: FOIA Appeal: Tenant Information

February 13, 1992

Linda C. Drake, Esq.
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Towson, Maryland 21204-5201

Dear Ms. Drake:

This is in response to your December 2, 1991 Freedom of Information Act (FOIA) appeal. Your initial request was for information pertaining to the Lakecrest Apartments. Specifically, you requested the racial composition of the subsidized units and the racial composition of the Lakecrest complex. On October 31, 1991, Mr. James S. Kelly, Acting Freedom of Information Liaison Officer, Baltimore Office, provided you with information describing the Department's subsidy to Lakecrest Apartments and information pertaining to the number and location of subsidized units. Mr. Kelly further indicated that his office did not have any current figures pertaining to the racial composition of the apartment complex or the subsidized units. Your appeal asserts that this information is contained in paragraph 9(a) of HUD Form 50059, Owner's Certification of Compliance with HUD's Tenant Eligibility and Rent Procedures. Your appeal does not specify the purpose of your request.

I have determined to withhold HUD Form 50059 under Exemption 6 of the FOIA.

Under the FOIA and our implementing regulations, HUD will make available, subject to certain limitations, identifiable records and documents. However, the information which you seek is not included in the Agency's computerized system of records, from which the information could be extracted. Obtaining this information would require a manual search, manually extracting information from approximately 200 forms and documents, and then development of a separate record. This action is not mandated by the FOIA and the Agency is not required to create or make such records in response to a FOIA request.

Pursuant to Exemption 6 of the FOIA, 5 U.S.C. 552 (b)(6), I have also determined not to release HUD Form 50059 for each subsidized unit occupant of the Lakecrest Apartments. Exemption 6 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. See United States Department of State v.

Washington Post Co., 456 U.S. 595, 598 (1982). The U.S. Supreme Court in Washington Post Co. held that the term "similar files"

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would be interpreted broadly to encompass any information "which applies to a particular individual" regardless of the label of the file in which the information is contained. 456 U.S. at 601-602. Information contained in personnel, medical or similar files may be withheld if its disclosure would violate the individual's personal privacy. This determination requires a balancing of the public interest in disclosure of the information, if any, against the invasion of privacy resulting from disclosure. See *Washington Post v. Department of Health and Human Services*, 690 F.2d 252, 258 (D.C. Cir. 1982); *Department of the Air Force v. Rose*, 425 U.S. 352, 372-373 (1976).

HUD Form 50059, Owner's Certification of Compliance with HUD's Tenant Eligibility and Rent Procedures, contains considerable personal information about the tenant, including Social Security number, sex, race, age, place of birth, family composition, total family net assets and income and type of financial relief received. Release of this personal information would constitute a substantial invasion of privacy.

It is well established that an individual's name and address are protectable private 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. U.S. Internal Revenue Service*, 502 F.2d 122 (3rd Cir. 1974). Furthermore, given the highly personal nature of information that can be obtained by a Social Security number, it has been consistently held by courts that release of Social Security numbers constitutes a clearly unwarranted invasion of personal privacy within the meaning of Exemption 6. See *Swisher v. Department of the Air Force*, 495 F. Supp. 337 (W.D. Mo., 1980); *E.I. duPont de Nemours and Co., v. Finklea*, 442 F. Supp. 321 (S.D. W.Va. 1977). See also, *Rural Housing Alliance v. Department of Agriculture*, 498 F.2d 73, 77 (D.C. Cir. 1974) which pertains to files containing "information regarding marital status, legitimacy of children, medical condition, welfare payments, etc." determined as "similar files" within the meaning of Exemption 6.

It is my determination under the balancing test that the above described personal privacy information should be withheld. Moreover, I do not find an overriding public interest for disclosure of the tenants' personal information. See *United States Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989) (hereinafter "Reporters Committee"), which establishes a framework for analyzing the public interest under Exemption 6. According to that framework, only the furtherance of FOIA's core purpose of informing citizens

about "what their government is up to" can warrant the release of information over and above protection of individual's privacy interests. *Reporters Committee*, 489 U.S. at 772-772.

Accordingly, I have determined to affirm the withholding of the information under Exemption 6 in order to protect individuals' right to personal privacy. I have also determined, pursuant to 24 C.F.R. 15.21, that the public interest in assuring the personal privacy of individuals militates against release of the information.

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

Very sincerely yours,

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

cc: Peter Campanella, 3G
Yvette Magruder