

FOIA Appeal: Fee Waiver--Cost Constraints

Legal Opinion: GMP-0057

Index: 7.220

Subject: FOIA Appeal: Fee Waiver--Cost Constraints

February 18, 1992

Ms. Diana E. Dibble  
Marketing Analyst  
Shepard-Patterson  
1010 Wayne Avenue, Suite 440  
Silver Spring, Maryland 20910

Dear Ms. Dibble:

This is in response to your December 31, 1991 Freedom of Information Act (FOIA) appeal. You appeal the imposition of a \$9.85 FOIA fee charged for your FOIA request by Gail L. Lively, former Director, Executive Secretariat, in a letter to you dated December 20, 1991. You advise that Shepard-Patterson is a small contracting company and such \$9.85 fee would pose cost constraints on business.

I have determined to deny your request for a waiver of the FOIA fee.

The FOIA provides that documents shall be furnished without any charge or a reduced charge "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. 552(a)(4)(iii).

Pursuant to HUD's regulations, 24 C.F.R. 15.16(c), six factors are used to determine whether the requirements for a fee waiver are met:

- (1) whether the subject of the requested records concerns the "operations or activities of the government;"
- (2) whether disclosure is "likely to contribute" to an understanding of government operations or activities;
- (3) whether disclosure of the requested information will contribute to "public understanding;"
- (4) whether disclosure is likely to contribute "significantly" to the public understanding of government operations or activities;

- (5) whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

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- (6) whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

Id.

A review of your appeal letter indicates that your request is predicated primarily for commercial purposes. Therefore, based upon the information submitted to us, I cannot conclude that your request has met the standards for a fee waiver set forth in our regulations. In view of the factors set out above, I have determined that the requirements for waiver of the \$9.85 fee have not been met.

Please be advised that you have the 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: Yvette Magruder