

FOIA Appeal: Investigation Docs. of Fair Hsg. Complaint

Legal Opinion: GMP-0060

Index: 7.330, 7.350, 7.360, 7.370, 7.413
Subject: FOIA Appeal: Investigation Docs. of Fair Hsg. Complaint

March 11, 1992

Mr. Dan E. Briggs
3544 Jamison Way
Castro Valley, California 94546

Dear Mr. Briggs:

This is in response to your Freedom of Information Act (FOIA) appeal dated October 14, 1991. On June 11, 1991 you requested access to investigative materials and correspondence regarding the Fair Housing complaint filed against you in Ford vs. Briggs, Case No. 09-90-1531-1. In a letter dated October 7, 1991 LaVera Gillespie, Director, Office of Fair Housing and Equal Opportunity, San Francisco Regional Office, provided you a copy of the Final Investigation Report (FIR). In a follow-up letter dated November 1, 1991 Robert J. De Monte, Regional Administrator, advised that the FIR was all the information which was available for release by the Department. Neither letter mentioned the existence of additional information from the investigation file nor provided you with your appeal rights under the FOIA. The San Francisco Regional Office advises that, since you were the respondent in the case, they were treating your request for information under Title VIII of the Civil Rights Act of 1968 and not as a FOIA request.

I have determined under the FOIA to release 107 pages of documentation from the investigation file. Certain documents are being withheld under applicable exemptions of the FOIA as follows.

The following documents are being withheld under Exemptions 6 and 7(C), 5 U.S.C. 552(b)(6),(7)(C), which exempt personal privacy information from disclosure: (1) the complainant's notes under Tab B, which contain numerous references to other individuals; (2) information on the composition of the complainant's family, from the complainant's interview under Tab B; (3) a police report under Tab B4; and (4) the HUD investigator's notes on the police report under Tab B6.

The following documents are being withheld under the deliberative process privilege of Exemption 5, 5 U.S.C.

552(b)(5), which protects predecisional information involved in the decision-making process: (1) a Memorandum to the File dated August 7, 1990 from Lynne Coleman, Investigator, Office of Fair Housing and Equal Opportunity, San Francisco Regional Office,

under Tab IIIA; (2) Lynne Coleman's handwritten notes on phone calls, under Tab IIIB; (3) handwritten Notes to the File on the investigator's discussions, by Lynne Coleman, under Tab IIIB;

(4) Completeness Checklist-Title VIII Cases, by Lynne Coleman, dated August 1, 1990, under Tab IIIC; (5) Complaint Intake Checklist for Title VIII Cases, dated May 31, 1990, with handwritten notes, under Tab IIIC; (6) Complaint Status Sheet under Tab IIIC; and (7) handwritten notes of the investigator on conducting the investigation of the case, under Tab IIID.

In addition, the investigator's handwritten notes on phone calls and discussions in the case, under Tab IIIB, are being withheld under Exemption 3, 5 U.S.C. 552(b)(3). Exemption 3 incorporates the disclosure prohibitions that are contained in various other federal statutes. The Fair Housing Amendments Act of 1988, P.L. 100-430, amends Title VIII of the Civil Rights Act of 1968 to prohibit disclosure of information obtained in the course of conciliation. 42 U.S.C. 3610(d). See also, 24 C.F.R. 103.330. The investigator's handwritten notes and discussions pertain to matters involving conciliation of the case and, thus, are exempt from disclosure by the disclosure prohibitions of Title VIII, as amended, as an Exemption 3 statute.

Pursuant to 24 C.F.R. 15.21 I have determined that the public interest in protecting the deliberative process and personal privacy militates against disclosure of the information listed above.

Please be advised that you are entitled 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

Enclosures