

FOIA Appeal: 20 Year Old Files on Foreclosed Projects

Legal Opinion: GMP-0063

Index: 7.340, 7.350, 7.360, 7.430

Subject: FOIA Appeal: 20 Year Old Files on Foreclosed Projects

March 25, 1992

Mr. Robert L. Elliott
923 East 221st Street, PH-B
Bronx, New York 10469-1014

Dear Mr. Elliott:

We are in receipt of your original Freedom of Information Act requests and subsequent FOIA appeal from 1988. We also received the related background materials which you submitted on December 4, 1991. As indicated in your December 3, 1991 telephone conversation with Carol Bernstein, staff attorney in the Personnel and Ethics Law Division, since the correspondence files for Triangle H.D.F. Corporation and Chambers H.D.F. Corporation had been stored on microfiche and retired to the Government Archives, it was necessary to recall this information before responding to your requests.

Background

On May 16, 1988 you requested information from the Office of the Assistant Secretary for Housing regarding the merger of Triangle Corporation and Chambers Corporation into the Chamtri Corporation. You also requested the qualification guidelines for participation in HUD programs by principals who were in default and the Financial Disclosure Statements for the Chamtri Corp. You submitted a separate FOIA request, dated May 16, 1988, to the Department's New York Regional Office. Items in that request included:

1. HUD Form 92266, transfer of physical assets application
2. Replacement Reserve Fund request
3. Closing file on each of the two entities that were merged into Chamtri
4. Transferee's questionnaire
5. All New York State records relating to the two corporations that were merged into Chamtri

On May 17, 1988, you forwarded an addendum to your May 16 request to the New York Regional Office. Your addendum requested the Regional Office of Inspector General's disposition files regarding the Triangle Apartments Project No. 012-44062 and Chambers Housing Project No. 012-44155 . This information was

referenced in material you sent us regarding a memorandum to Kenneth Stroud, former Regional Inspector General for Investigations, dated April 1, 1983. You also requested a

2

computer print-out of Section 8 authorizations for the Triangle and Chambers Housing Development Fund Corporations from January 1980 through December 1983.

According to our records, your May 16, 1988 letter to the Office of Housing was responded to on June 1, 1988 by Susan Zagame, former Deputy Assistant Secretary for Policy, Financial Management and Administration in the Office of Housing. Ms. Zagame's response included the release of several Previous Participation Certificates executed by the principals of the Triangle and Chambers Corporations. She also explained the criteria which the Department used regarding participation in HUD programs by principals whose projects were in default. Finally, she advised that you contact the New York Regional Office regarding your request for the Financial Disclosure Statements.

On July 15, 1988, Francine Kellman, Special Assistant to the Regional Administrator in the New York Office, provided a response to your May 16 and 17, 1988 FOIA requests. This response denied your requests because the documents contained confidential, commercial and financial business information which was protected from disclosure under Exemption 4. On July 18, 1988, you appealed the New York Regional Office's denial of your requests. In a letter to Secretary Kemp, dated November 18, 1991, you indicated that you had not received a response to your FOIA appeal. Ms. Bernstein subsequently contacted you on December 3, 1991.

Determination

In response to your appeal, we have reviewed the files dating back to 1967 which were obtained from the Government Archives. Based on this review, I have determined to release the information we have available. Specifically, I have determined to reverse the initial denial with respect to item 3 of your request and release 637 documents. Copies of this information are enclosed. In regard to your request for "closing files" on the foreclosed projects, please note that the Department does not maintain "closing files." However, I am releasing information from our correspondence files relating to the operations, default and foreclosure sales for the Triangle and Chambers Corporations. Much of this material was previously denied under Exemption 4.

Although some of this material contains commercial and financial information protected from disclosure under Exemption 4, I have determined that disclosure would not cause substantial harm to the competitive position of either the Triangle or Chambers Corporation since many of the records are more than twenty years old and the related projects have been foreclosed. Likewise, with respect to the intra-office memoranda and notes enclosed, I have concluded that disclosure would not

harm the Agency's deliberative process under Exemption 5. We

3

also redacted the Social Security numbers and names of tenants and apartment staff employees from eleven (11) of these documents. This information is protected under the FOIA's Exemption 6 regarding personal privacy information. I have also determined pursuant to 24 C.F.R. 15.21 that the public interest in protecting personal privacy militates against release of this information.

We have no further information in our files which responds to items 1, 2, 4, and 5 of your FOIA requests. We were also unable to locate a computer print-out of Section 8 authorizations pertaining to the Triangle and Chambers projects from 1980-1983. Pursuant to 24 C.F.R. Part 2002, your FOIA request for the Triangle Apartments and Chamber Housing disposition report files should be submitted to G. L. Isdell, New York Regional Office of Inspector General, 26 Federal Plaza, New York, New York 10278-0068.

Again, we apologize for our inordinate delay in responding to your initial request for an appeal determination. However, as previously indicated in our correspondence of November 21 and December 6, 1991, your request was inadvertently misplaced in the Headquarters Office.

Appeal Rights

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

Enclosures