

FOIA Appeal: Names/Info. on FHA Mortgagors

Legal Opinion: GMP-0066

Index: 7.360, 7.465

Subject: FOIA Appeal: Names/Info. on FHA Mortgagors

March 30, 1992

Mr. Robert Zitting
Republic Mortgage Corporation
4516 South 700 East, Suite 260
Salt Lake City, Utah 84107

Dear Mr. Zitting:

This is in response to your Freedom of Information Act (FOIA) appeal dated March 15, 1992. You appeal the decision by Richard P. Bell, Manager, Salt Lake City Office, dated March 2, 1992, denying your request for release of a list of FHA insured homeowners and their property addresses, FHA case numbers, original mortgage balances, dates closed, rates and the original mortgage term or maturity. Your letter states that you are requesting this information in order to contact the mortgagors about refinancing their home mortgages. The information was denied under Exemption 6.

I have determined to affirm the initial denial under Exemption 6, 5 U.S.C. 552(b)(6).

Exemption 6 protects information in medical, personnel and "similar files." If requested records are personnel, medical, or similar files under Exemption 6, the information can be withheld under the FOIA if disclosure would constitute "a clearly unwarranted invasion of personal privacy." Whether release of information constitutes a clearly unwarranted invasion of personal privacy is determined by balancing the public interest in disclosure against the potential invasion of an individual's privacy. *Wine Hobby, USA, Inc. v. U.S. Internal Revenue Service*, 502 F.2d 133 (3rd Cir. 1974).

Disclosure of the information you requested to facilitate your contact with mortgagors for the purpose of refinancing mortgages does not provide a sufficient public purpose to warrant release of the information. Any stated purpose for release of personal privacy information must satisfy the new public interest determination of *United States Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989) (hereinafter "Reporters Committee"). Reporters Committee establishes a new framework for analyzing the public interest under Exemptions 6 and 7(C) by establishing that only the furtherance of FOIA's core purpose of informing citizens about "what their government is up to" can warrant the release of information implicating individual privacy interests. Reporters

Committee, 489 U.S. at 772-73. In addition, courts have traditionally found no public benefit in disclosure for commercial purposes. *Minnis v. U.S. Department of Agriculture*, 737 F.2d 784, 786 (9th Cir. 1984), cert. denied, 105 S. Ct. 2112

(1985); *HMG Marketing Associates v. Freeman*, 523 F. Supp. 11, 14 (S.D. N.Y. 1980).

On the basis of the reasons stated above, I have determined the information you requested is protected under Exemption 6 of the FOIA. Moreover, because the information is contained in a Privacy Act System of Records (HUD/Dept. 46-Single Family Case Files, Federal Register Privacy Act Issuance: 1987 Compilation), the Privacy Act at 5 U.S.C. 552a(b) and the Department's regulations at 24 C.F.R. 16.1(e)(3) compel withholding of the requested records.

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
Michal Stover, Regional Counsel
Richard Bell, Manager, Salt Lake City Office