

Legal Opinion: GMP-0088

Index: 7.340, 7.543
Subject: FOIA Appeal: Comparable Data from HUD Form 92264

June 19, 1992

Mr. Boaz Bar-Navon
Vice-President
Southgate Rockledge Associates
1356 Richwood Circle
Rockledge, Florida 32955

Dear Mr. Bar-Navon:

This responds to your letter of May 1, 1992, appealing the partial denial of information you requested under the Freedom of Information Act (FOIA) on April 2, 1992. Your request was for several items, all of which were furnished to you except comparable data omitted from HUD Form 92264, Rental Housing Project Income Analysis and Appraisal. This information was withheld by the Jacksonville, Florida Office under FOIA's Exemption 4, 5 U.S.C. 552(b)(4). You request an administrative review of the partial denial because the information is currently a part of the public record and should be made available to you.

I have decided to reverse the initial denial.

Exemption 4 of the FOIA exempts from mandatory disclosure "trade secrets and commercial or financial information obtained from a person and privileged or confidential." The courts have interpreted Exemption 4 as protecting confidential commercial or financial information the disclosure of which is likely to: (1) impair the Government's ability to obtain necessary information in the future or (2) cause substantial harm to the competitive position of the entity from whom the information was received. National Parks and Conservation Ass'n v. Morton, 498 F.2d 765, 770 (D.C. Cir. 1974).

Since the information is readily available to the public, I have concluded that release of comparable projects would not impair the Government's ability to obtain such routine information in the future nor cause substantial harm to the competitive position of the providers. Therefore, I have determined to release the information.

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I am providing the Jacksonville Office with a copy of this decision and instructing the immediate release of an unexpurgated copy of the HUD 92264 with the comparables included.

Very sincerely yours,

C. H. Albright, Jr.

Principal Deputy General Counsel

cc: Yvette Magruder
Raymond Buday, Jr., 4G
Gerald R. Wright, 4.6G