

Legal Opinion: GMP-0096

Index: 7.320, 7.350, 7.360, 7.563
Subject: FOIA Appeal: Unsuccessful Job Applications

July 10, 1992

Ms. Mary Jewell
2280 West 66th Street
Indianapolis, Indiana 46260

Dear Ms. Jewell:

This is in response to your Freedom of Information Act (FOIA) appeal dated April 8, 1992. You requested various documents in regard to Vacancy Announcements 05-MSR-92-0022 and 05-SLR-92-0001 for the Housing Development Director position in the Indianapolis Office. You appeal the partial denial of information by Ted L. Brown, Freedom of Information Officer, Chicago Regional Office. On April 2, 1992, Mr. Brown provided you with information provided by the Indianapolis Office regarding the merit staffing request; the SF-52 Request for Personnel Action; the qualification sheet of the subject matter expert for the position; and a copy of the X-118 position classification standards. Mr. Brown withheld the "applications" submitted for the two vacancy announcements, the crediting plans, workpapers and other documents not releasable under FOIA Exemptions 2, 5 and 6. He also offered to provide you, for the applicable FOIA fee, copies of documents relating to the staffing of a previous Housing Director's position that was staffed in the Chicago Office. A copy of 5 C.F.R. Section 1200 was also offered for your review. It is our understanding that you did not agree to remit the fee assessed for the records pertaining to the Chicago position.

I have determined to affirm the initial denial.

Specifically, I have determined to affirm the withholding of the following information under Exemption 6: (1) applications submitted for the vacancy announcements; (2) the qualification analysis sheets; (3) the initial screening work sheets; (4) application acknowledgments; (5) copies of telephone records pertaining to one of the applicants; (6) merit staffing close-out lists; (7) correspondence objecting to non-selection regarding the best qualified lists; and (8) the best qualified lists and selection rosters.

Exemption 6 protects information in medical and personnel files and similar files. In determining whether information can be withheld within Exemption 6, the public interest purpose for disclosure of personal information must be balanced against the potential invasion of privacy to determine whether release would constitute a clearly unwarranted invasion of privacy. *Wine Hobby, USA, Inc., v. U.S. Internal Revenue Service*, 502 F.2d 133 (3rd Cir. 1974). *United States Department of Justice v.*

Reporters Committee for Freedom of the Press, 489 U.S. 749 (1989) hereinafter "Reporters Committee") establishes a new framework for analyzing the public interest under Exemption 6 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.

All releasable FOIA information has been made available to you in accordance with the Office of Personnel and Management guidelines. Moreover, unsuccessful applicants for Federal employment have a protected right to privacy regarding disclosure of their identities or the release of information which may be embarrassing or adversely affect their future employment or promotion prospects. Conversely, the public interest in learning the qualifications of people not selected for a Federal position, in our opinion, is minimal. See *Core v. United States Postal Service*, 730 F.2d 946, 948-49 (4th Cir. 1984), where the court held that qualifications of unsuccessful applicants for Federal employment held withholdable under Exemption 6. Therefore, I have determined to affirm the initial decision regarding the above-identified information.

I have also determined to withhold under Exemption 5 a September 23, 1991 memorandum to the Manager, Indianapolis Office, from the former Director of the Housing Development Division, justifying filling the position in Indianapolis. This is a predecisional document exempt from disclosure under the exemption's deliberative process privilege.

Further, I have determined to affirm the withholding of the crediting plans under the "high 2" prong of FOIA's Exemption 2. Exemption 2 exempts from mandatory disclosure records "related solely to the internal personnel rules and practices of an agency." Under the "high 2" prong of the exemption, information may be withheld if its disclosure would risk the circumvention of a statute or agency regulation. We anticipate that the crediting plans will be used in future staffing actions. Therefore, the Department's reliance on Exemption 2 to withhold them from disclosure was proper. See *National Treasury Employees Union v. Customs Service*, 802 F.2d 525, 530-31 (D.C. Cir. 1986), which held that the disclosure of the crediting plan would either render the document obsolete for its intended purpose, make the plan's criteria "operationally useless" or compromise the utility of the selection program.

I have also determined pursuant to 24 C.F.R. Section 15.21 that the public interest in assuring the personal privacy of individuals, protecting the deliberative process, and preventing the circumvention of the agency's hiring program, militates against release of the withheld information.

Please be advised that you have the right to judicial review of this determination under 5 U.S.C. Section 552(a)(4).

Very sincerely yours,

C.H. Albright, Jr.
Principal Deputy General Counsel

cc: Yvette Magruder
Lewis Nixon, 5G