

Legal Opinion: GMP-0099

Index: 7.265, 7.360, 7.413

Subject: FOIA Appeal: Rejected Applicants--Housing Loans

July 16, 1992

Ms. Constance Harris
31 Lincoln Ave.
Catonsville, Maryland 21228

Dear Ms. Harris:

This is in response to your Freedom of Information Act (FOIA) appeal dated May 14, 1992 requesting the information under the Tab sections to HUD's Final Investigative Report (FIR) in your complaint, *Harris v. Prudential/Margaretten and Co.*, HUD Case No. 03-90-0362-1, which was investigated by the Department under Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601. The Department determined there was no reasonable cause of discrimination and dismissed your complaint. You were provided a copy of the FIR on January 8, 1992.

On April 15, 1992, Barry C. Anderson, Director, Fair Housing and Equal Opportunity, Philadelphia Regional Office, denied your request for the identifying information on rejected applicants for housing loans, contained under Tab C18 of the FIR. This information was denied under Exemption 6 of the FOIA, 5 U.S.C. Section 552(b)(6). I am advised that the Philadelphia Office is still processing your request for information under the other tabs to the FIR and you should receive a determination from them shortly.

I have determined to affirm the initial denial under Exemption 6 of the FOIA and the Privacy Act.

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).

The names, addresses and telephone numbers of the rejected applicants comprises information concerning the personal residences and financial dealings of the individuals. You state you need this information to pursue your rights under the law. However, I do not believe the interest you assert outweighs the strong privacy interest in withholding this 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 provides 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.

The Department conducted an investigation of your complaint under Title VIII and determined there was no reasonable cause of discrimination. Though public oversight of government operations is the essence of public interest under the FOIA, a requester must show that the personal information in question is "of sufficient importance to warrant such" oversight. *Miller v. Bell*, 661 F.2d 623, 630 (7th Cir. 1981), cert. denied, 456 U.S. 960 (1982) and he must show how the public interest would be served by disclosure in the particular case. *Halloran v. Veterans Administration*, 874 F.2d 315, 323 (5th Cir. 1989) The Department released a copy of the FIR, an expurgated copy of the information under Tab C18, and is processing your request for the information contained under the other tabs. In my opinion, the disclosed information satisfies the interest you assert while protecting the personal privacy interests of the individuals involved.

Therefore, I have determined to affirm the initial denial under Exemption 6 of the FOIA. In addition, the Privacy Act of 1974, at 5 U.S.C. Section 552a(k)(2), exempts certain investigatory records from mandatory disclosure. The records you have requested are contained in a system of records which is exempt under subsection (k)(2). See Privacy Act Issuances, 1989 Compilation, HUD/Dept.-15, Equal Opportunity Housing Complaints.

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
Peter Campanella, 3G