

Legal Opinion: GMP-0101

Index: 7.351, 7.363
Subject: FOIA Appeal: Personal Financial Information

July 24, 1992

Michael E. Jarrett, Esq.
Tobolowsky, Prager & Schlinger
300 Crescent Court
Suite 950
Dallas, Texas 75201

Dear Mr. Jarrett:

This is in response to your Freedom of Information Act (FOIA) appeal dated October 8, 1991. Ronald L. McKinney, of your law firm, requested information from the Fort Worth Office pertaining to the Limited Denial of Participation (LDP) issued to your firm's client, Chad A. Norcross. On September 23, 1991, Jack T. Stark, Associate Regional Counsel, Fort Worth Regional Office, in a letter to Mr. McKinney, provided copies of the documents that were used as evidence to issue the LDP. These documents included information concerning a house sold to a Mr. and Mrs. Small. Personal information concerning the Smalls and the name of the Lender Activities Monitoring Division's interviewer on the LDP action were withheld under Exemption 6. You appeal the partial denial from the Fort Worth Office and also assert that the Fort Worth Office failed to provide all of the documents responsive to your request.

I am advised that, at the October 4, 1991 conference mentioned in your appeal letter, copies of all of the documents used as evidence in the LDP action against Mr. Norcross were provided to your firm's counsel representing Mr. Norcross. I have determined to affirm the initial denial by the Fort Worth Office and to withhold the personal information pertaining to Mr. and Mrs. Small under Exemption 6, and the name of the interviewer under Exemption 5.

Exemption 6 protects information in medical, personnel and similar files. The decision in *United States Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989) (hereinafter "Reporters Committee") establishes a 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.

Personal financial information lies near the core of the privacy interests protected by Exemption 6. *Aronson v. HUD*, C.A. No. 86-0333-S (D. Mass. 1986), *aff'd in part, rev'd in part*, 822 F.2d 182 (1st Cir. 1987). The personal information involving Mr. and Mrs. Small includes their ages, years of schooling, bank

account and credit account numbers, names of creditors, payments and balances, and assets and salaries. In our opinion, release of this personal information constitutes an unwarranted invasion of personal privacy and, as such, is exempted from disclosure under Exemption 6.

I am also withholding the name of the Departmental interviewer pursuant to FOIA's Exemption 5. The deliberative process privilege of Exemption 5 is employed to protect information which, if disclosed, would harm the agency's internal deliberations. It is also available to protect the identity of agency employees who have either authored, contributed or provided internal advice regarding the agency's decision-making process. Hence, the application of Exemption 5 preserves the open and candid internal discussions in the agency's deliberative process. See *Brinton v. Department of State*, 636 F.2d 600, 604 (D.C. Cir. 1980), cert. denied, 452 U.S. 905 (1981); *Tax Reform Research Group v. IRS*, 419 F. Supp. 415, 423-24 (D.D.C. 1976).

I have also determined, pursuant to 24 C.F.R. Section 15.21, that the public interest in protecting the deliberative process and assuring the personal privacy of individuals 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
William Daley, 6G