

Legal Opinion: GMP-0109

Index: 7.265, 7.370, 7.413

Subject: FOIA Appeal: Disclosing Congressional Correspondence

August 17, 1992

Joan Jonkel, Esq.  
250 Station Drive  
Box 8687  
Missoula, Montana 59807

Dear Ms. Jonkel:

This is in response to your Freedom of Information Act (FOIA) January 8, 1992 appeal requesting all correspondence from individuals, and organizations or other outside parties, including correspondence from members of Congress or their staff, contained in HUD's case files on four cases entitled Concerned Citizens v. Lee, HUD Case Nos. 08-91-0317-1, 08-91-0318-1, 08-91-0322-1, 08-91-0343-1. These cases are active housing discrimination cases brought under Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601. Michael R. Chitwood, Regional Administrator, Denver Regional Office, in a letter to you dated December 16, 1991, denied your request for the information under Exemption 7(A) of the FOIA, 5 U.S.C. Section 552(b)(7)(A), and the Privacy Act, 5 U.S.C. Section 552a.

I have determined to affirm, in part, and reverse, in part, the initial denial.

Exemption 7(A) of the FOIA protects from disclosure:

records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings ....

The Department is conducting an investigation into the complaints brought in the Concerned Citizens v. Lee cases. The materials that you have requested are part of an ongoing investigation conducted under Title VIII by the Department in connection with possible violations of law. Premature disclosure of these documents would interfere with the Department's investigation and with possible conciliation and enforcement activities. By revealing evidence, which is not otherwise publicly available early in the Title VIII process, conciliation efforts become difficult and the Government is handicapped in presenting its case in formal enforcement proceedings should that eventuality become necessary. Therefore, release of the information to you at this time would interfere with ongoing enforcement proceedings and hence the information may be withheld under Exemption 7(A). See Center for National Policy Review on Race and Urban Issues v. Weinberger, 502 F.2d 370 (D.C. Cir.

1974)

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.

I have determined to reverse the initial denial and disclose copies of Congressional correspondence involving these cases. Disclosure of this information would not interfere with the Department's ongoing enforcement proceedings. Accordingly, I am releasing the following documents:

1. Privacy Act release dated October 16, 1991 to Senator Conrad Burns from Donald and Richard Lee authorizing inquiries on their behalf, with attached request. The Lees' Social Security Numbers, address and home telephone numbers are being withheld under Exemption 6 of the FOIA, 5 U.S.C. Section 552(b)(6), to protect their personal privacy;

2. A letter to Senator Burns from Donald Lee dated December 23, 1991, with six pages of attachments;

3. A letter to Lloyd Miller, Director, Office of Fair Housing and Equal Opportunity, Denver Regional Office, from Senator Burns dated January 6, 1992;

4. A letter to Senator Burns from Michael Chitwood, Regional Administrator, Denver Regional Office, dated January 29, 1992.

You have the right to judicial review of this determination under 5 U.S.C. Section 552(a)(4).

Very sincerely yours,

George L. Weidenfeller,  
Deputy General Counsel (Operations)

Enclosure

cc: Yvette Magruder  
Michal Stover, 8G