

Legal Opinion: GMP-0111

Index: 7.330, 7.455

Subject: FOIA Appeal: Section 103 of HUD Reform Act

August 20, 1992

Ms. Susan D. Finisdore  
Rockland Independent Living Center  
235 North Main Street  
Spring Valley, New York 10977

Dear Ms. Finisdore:

This responds to your Freedom of Information Act (FOIA) appeal of August 3, 1992 appealing the denial by the New York Regional Office. Michael G. Carlson, Freedom of Information Liaison, denied your request under Exemption 3 for the Section 202 Supportive Housing for the Elderly and Section 811 Supportive Housing for Persons with Disabilities applications submitted by Help Me, A Respite House.

After careful consideration of your appeal, I have decided to affirm the initial denial in this case.

Exemption 3 of the FOIA, 5 U.S.C. Section 552(b)(3), incorporates the disclosure prohibitions that are contained in various other federal statutes. Exemption 3 allows the withholding of information prohibited from disclosure by another statute only if that statute "(A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld." A statute thus falls within the exemption's coverage if it satisfies any one of its disjunctive requirements. See *Irons & Sears v. Dann*, 606 F.2d 1215, 1220 (D.C. Cir. 1979), cert. denied, 444 U.S. 1075 (1980).

The applications for funding you have requested are prohibited from disclosure by Section 103 of the Department of Housing and Urban Development Reform Act of 1989, 42 U.S.C. Section 3537a, which meets the requirements of subpart (A) of Exemption 3. Section 103 proscribes the disclosure of information during the selection process for the award of assistance from the Department. The information prohibited from disclosure during the selection process includes the identity of applicants and information contained in the applications or requests for assistance.

The selection process for the Section 202 and Section 811 applications in question is still open. Therefore, HUD is prohibited from releasing the application information you requested. Accordingly, I have decided to affirm the initial denial pursuant to Exemption 3 of the FOIA and the HUD Reform Act of 1989.

The New York Regional Office advised you that the Fiscal Year 1992 application funding decisions for the Section 202/811 program should be completed by the end of September. After termination of the selection process, the information can be disclosed to you under Section 102 of the HUD Reform Act. You should direct your request for the information at that time to the New York Office.

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

Very sincerely yours,

George L. Weidenfeller  
Deputy General Counsel (Operations)

cc: Yvette Magruder  
John Dellera, 2G