

Legal Opinion: GMP-0114

Index: 7.331, 7.413

Subject: FOIA Appeal: Exemption 3 Statute--42 U.S.C. 3610(d)

August 27, 1992

Nancy Grim, Esq.  
D'Andrea & DiGiantonio  
697 W. Market Street  
Suite 200  
Akron, Ohio 44303-1407

Dear Ms. Grim:

This is in response to your Freedom of Information Act (FOIA) appeal dated June 22, 1992. You appeal the partial denial dated May 29, 1992 from Ted L. Brown, Freedom of Information Officer, Chicago Regional Office, who withheld information pertaining to the Department's attempts at conciliation of the Title VIII complaint involving your client under 42 U.S.C. Section 3610(d)(1).

I have determined to affirm the initial denial under 42 U.S.C. Section 3610(d)(1), as an Exemption 3 statute.

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 Fair Housing Amendments Act of 1988, P.L. 100-430, amends Title VIII of the Civil Rights Act of 1968 to prohibit disclosure of information obtained in the course of conciliation. 42 U.S.C. Section 3610(d)(1). See also, 24 C.F.R. Section 103.330. The reports and notes of discussions pertaining to matters involving conciliation of your client's case, therefore, are exempt from disclosure by the disclosure prohibitions of Title VIII, as amended, as an Exemption 3 statute.

The Secretary is authorized under 42 U.S.C. Section 3610(d)(2) to disclose to the parties to the complaint "information derived from an investigation and any final investigative report relating to that investigation." However, information pertaining to conciliation efforts does not constitute such "investigative" information and is not covered by

the disclosure provision at Section 3610(d)(2).

Please be advised that you are entitled 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)

cc: Yvette Magruder  
Lewis Nixon, 5G