

Legal Opinion: GMP-0124

Index: 7.350, 7.524
Subject: FOIA Appeal: Panel Member Rankings

October 26, 1992

Mr. Kemeth W. Garza
3119 Apple Drive
Missouri City, Texas 77459

Dear Mr. Garza:

This is in response to your Freedom of Information Act ("FOIA") appeal dated November 26, 1991. You appeal the November 8, 1991 denial by Tom Peeler, Director, Office of Administration, Fort Worth Regional Office. Mr. Peeler withheld under Exemption 5 of the FOIA: (1) the intra-office evaluation of your proposal and (2) the results of the local office panel evaluation, indicating the competitive rankings of all proposals and recommendations for award of the contract.

I have determined to affirm the initial denial.

Exemption 5 of the FOIA, 5 U.S.C. Section 552(b)(5), exempts from mandatory disclosure inter- or intra-agency memoranda or letters. Exemption 5 incorporates the deliberative process privilege, which protects the "decision making processes of government agencies." *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 150 (1975).

The withheld intra-office documents are not final opinions, but represent internal agency advice and evaluations for the contracting officer in his or her decision making process in awarding the contract. Accordingly, Exemption 5 was properly invoked to withhold the panel members' predecisional evaluations, recommendations and competitive rankings to protect the deliberative process of selecting the proposals. See, *Professional Review Organization of Florida, Inc. v. U.S. Department of Health and Human Services*, 607 F. Supp. 423 (D.D.C. 1985), panel members' point scores, evaluations, opinions and recommendations on proposals submitted for a competitive procurement exempt from disclosure under Exemption 5; See also, *Audio Technical Services Ltd, v. Department of the Army*, 487 F. Supp. 779 (D.D.C. 1979); *Orion Research Inc. v. Environmental Protection Agency*, 615 F.2d 551 (1st Cir. 1980).

I have also determined, pursuant to 24 C.F.R. Section 15.21, that the public interest to protect the agency's deliberative process militates against disclosure of the above identified information.

Judicial review of my action on this appeal is available to you in the United States District Court for the judicial district in which you reside or have your principal place of business, or

in the District of Columbia, or in the judicial district where
the records you seek are located.

Very sincerely yours,

George L. Weidenfeller
Deputy General Counsel

cc: Yvette Magruder
William Daley, 6G