

Legal Opinion: GMP-0129

Index: 7.340, 7.433
Subject: FOIA Appeal: Section 236 Project

November 12, 1992

Ms. Secky Fascione
HERE
208 E. Main St.
Missoula, Montana 59802

Dear Ms. Fascione:

This is in response to your Freedom of Information Act (FOIA) appeal dated September 16, 1992. You appeal the August 17, 1992 partial denial by Ron Bailey, Director, Office of Housing, Denver Regional Office. Mr. Bailey withheld the following business information of the Hearthstone Apartments, Proj. No. 093-44060, a Section 236 elderly project, under Exemption 4 of the FOIA: (1) financial reports for 1989-1991; (2) material pertaining to rent or food increases for 1989-91; and (3) the current 1992 operating budget.

I have determined to affirm the initial denial under Exemption 4 of the FOIA, 5 U.S.C. Section 552(b)(4) and the Trade Secrets Act, 18 U.S.C. Section 1905.

The information in the financial reports, operating budgets, and other material is detailed commercial and financial information on the operation of the business which was properly withheld from you pursuant to Exemption 4 of the FOIA. Exemption 4 exempts from mandatory disclosure "trade secrets and commercial or financial information obtained from a person and privileged or confidential."

Since the withheld documents contain confidential commercial and financial information, discretionary release is further prohibited by the Trade Secrets Act, 18 U.S.C. Section 1905. The Trade Secrets Act makes it a criminal offense for any employee of the United States, or one of its agencies, to release trade secrets and certain other forms of confidential commercial or financial information except when disclosure is authorized by law. The statute classifies as confidential commercial or financial information, the "amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation or association."

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 (Operations)

cc: Yvette Magruder
Michal Stover, 8G