

Legal Opinion: GMP-0130

Index: 7.360, 7.370
Subject: FOIA Appeal: Source of Information

November 12, 1992

John F. Morrow, Esq.
Morrow, Alexander, Tash, Long & Black
3890 Vest Mill Road
Winston-Salem, North Carolina 27103-1302

Dear Mr. Morrow:

This is in response to your Freedom of Information Act (FOIA) appeal of September 8, 1992. Your client, Sharron H. Daniels, by letter dated August 20, 1992, requested the name of the individual who supplied information that she did not occupy 5722 Sentinel Drive, Raleigh, North Carolina as her personal residence. Ms. Daniel's request was denied under Exemption 5 by Barbara P. Nichols, Freedom of Information Officer, Greensboro, North Carolina Office, in a letter dated August 25, 1992. The withheld information consisted of handwritten notes which were recorded at the time the allegation was verbally received in the Greensboro Office.

I have determined to affirm the initial denial under Exemptions 6 and 7(C),(D).

Exemption 7(D) authorizes withholding records or information compiled for law enforcement purposes if the production of such records or information could reasonably be expected to disclose the identity of a confidential source. Entities which have been found to qualify as confidential sources include citizens providing unsolicited allegations of misconduct. *Pope v. United States*, 599 F.2d 1383, 1386-87, (5th Cir. 1979).

In this instance, information has been brought to the attention of the Department concerning certifications in your client's loan application and closing under the FHA program. Revealing the identity of the person would be contrary to a major purpose of the exemption to encourage private citizens to furnish controversial information to government agencies. *Id.* at 1387. I have therefore determined to withhold the identity of the individual under Exemption 7(D).

Exemptions 6 and 7(C) also apply to this case. Exemption 7(C) provides for the exemption of "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement record or information . . . could reasonably be expected to constitute an unwarranted invasion of personal privacy" Exemption 6 provides for the exemption of "personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."

To determine whether information is exempt from disclosure under Exemption 6 as a "clearly unwarranted invasion of personal privacy" and under Exemption 7(C) as an "unwarranted invasion of personal privacy," the interest of the general public in disclosure must be balanced against the privacy rights of the individual involved. *Washington Post v. Department of Health and Human Services*, 690 F.2d 252, 258 (D.C. Cir. 1982); *Common Cause v. Ruff*, 467 F. Supp. 941 (D.D.C. 1979). The public interest, in the context of Exemptions 6 and 7(C), is the interest of the overall public, not the interest of the individual seeking records for his own benefit. *Washington Post v. Department of Health and Human Services*, 690 F.2d 252, 258 (D.C. Cir. 1982). See also, *Wine Hobby USA, Inc. v. IRS*, 502 F.2d 133 (3rd Cir. 1974).

Individuals who provide information to the Government have a strong interest in assuring that their identities are kept private. Such individuals risk retaliation or violation of their personal privacy if their identities are released. Moreover, the public interest is served by the reporting of possible violations of law. These considerations lead me to conclude that, under the balancing tests of Exemptions 6 and 7(C), the personal privacy interest of the individual is paramount in this case.

I have also determined, pursuant to 24 C.F.R. Section 15.21, that the public interest in protecting confidential source information and in assuring the personal privacy of individuals militates against release of the withheld information at this time.

Please be advised that 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)