

Legal Opinion: GMP-0131

Index: 7.351
Subject: FOIA Appeal: Staff Field Notes

November 12, 1992

Scott D. Albertson, Esq.
Holly, Albertson & Polk, P.C.
Denver West Office Park
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Suite 100, Building 19
Golden, Colorado 80401

Dear Mr. Albertson:

This is in response to your Freedom of information Act (FOIA) appeal dated October 20, 1992. You appeal the partial denial by Kenneth Lange, Manager, St. Louis Office, dated September 30, 1992. Mr. Lange withheld intra-agency handwritten notes of the Architectural and Engineering staff of their visits to the Green Jade Estates Subdivision under Exemption 5 of the FOIA. You have advanced two reasons as to why the decision of the St. Louis Office should be reversed. First, you state that the request was not answered in the allotted time and, second, you state that the field notes are not predecisional since HUD issued individual letters to homeowners regarding their home inspections.

I have decided to affirm the initial denial.

The agency did comply with its regulatory procedures in responding to your request. Your request of July 16, 1992 was sent to the Kansas City Office, instead of to the St. Louis Office. Under 24 C.F.R. Section 15.42(b) the time requirement for responding to a request does not begin to run until the request is received by the proper office. The referral of your request was received by the St. Louis Office on July 28, 1992 and they provided you an interim response on September 1, 1992. The final response, denying your request for the staff notes, was issued on September 30, 1992. I am also advised that the Kansas City Regional Office preliminarily had advised you on June 30, 1992 that the individual notes of the team members who made inspections of the homes at the Green Jade subdivision could not be released to you.

The second basis for your appeal is that the individual notes of the HUD staff are not predecisional since the St. Louis Office has released information to the individual homeowners regarding the Department's onsite inspections. The onsite staff notes were made in preparation for a final report. At this time such a report has not been produced. The fact that homeowners have been notified of the observations of the team members does not mean that HUD is precluded from issuing a final agency report nor does it mean that a final report must be limited to the

content of the letters to the homeowners. Under these circumstances, the notes are predecisional observations and recommendations of office staff for use by the Department in its deliberative process of producing a final agency report. The notes, therefore, are withholdable under Exemption 5 of the FOIA, 5 U.S.C. Section 552(b)(5).

I have further determined, pursuant to 24 C.F.R. Section 15.21, that the public interest in protecting the deliberative process, militates against disclosure of the predecisional information.

You have the right to seek judicial review of this determination pursuant to 5 U.S.C. 552(a)(4).

Very sincerely yours,

George L. Weidenfeller
Deputy General Counsel (Operations)

cc: Yvette Magruder
Joseph James, 7G