

Legal Opinion: GMP-0138

Index: 7.340
Subject: FOIA Appeal: Management Agreements

January 15, 1993

Mr. Robert R. Campbell
Campbell Group, Ltd.
P. O. Box 91176
Long Beach, California 90809-1176

Dear Mr. Campbell:

This is in response to your Freedom of Information Act (FOIA) appeal dated September 14, 1992. Marjorie S. Campbell, in her initial requests dated June 5 and July 17, 1992, requested HUD's Certifications of Managers from 1982 through 1992 for the Royal Palms Cooperative Apartments, Inc. (Project No: 170-23080) and information regarding HUD's consent to secondary financing on the project. In a letter dated August 19, 1992, Reagan E. Reed, Freedom of Information Liaison Officer, Los Angeles Office, provided information regarding the secondary financing. However, he withheld the Management Agreements under Exemption 4 of the FOIA.

I have determined to reverse the initial denial and release redacted copies of the Management Agreements. Certain information from the Management Agreements, pertaining to the compensation of the Management Agent and limitations on spending and liability, will continue to be withheld under Exemption 4.

Exemption 4 of the FOIA, 5 U.S.C. Section 552(b)(4), exempts from mandatory disclosure "trade secrets and commercial or financial information obtained from a person and privileged or confidential." Information may be withheld under Exemption 4 if disclosure of the information is likely to have either of the following effects: "(1) to impair the Government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained." *National Parks and Conservation Association v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974).

The redacted information from the Management Agreements, described above, comprises commercial and financial information which, if released, could cause substantial competitive harm. Disclosure of the amount of compensation and the other withheld information could reveal to competitors the Management Agent's pricing strategy and would enable competitors to solicit and undercut other customers of the Management Agent. See, e.g., *Gulf & Western Industries, Inc. v. U.S.*, 615 F.2d 527 (D.C. Cir. 1979) (protecting from disclosure financial information including profit and loss data, expense rates, and break-even point calculations); *Timken Co. v. United States Customs Service*,

531 F. Supp. 194 (D.D.C. 1981) (protecting financial and commercial information on pricing and marketing).

Your claim that Ms. Campbell is a shareholder and not a competitor of the Management Agent does not preclude a finding that disclosure of the withheld information would cause competitive harm. The issue is whether public disclosure of the information would likely cause competitive harm to the business submitter, regardless of the willingness of the requester to restrict circulation of the information or a claim by the requester that it is not a competitor. See generally, *Burke Energy Corporation v. Department of Energy*, 583 F. Supp. 507 (D. Kan. 1984).

Four Management Agreements in the time period specified in your requests are available for your review in the Los Angeles Office. Two were executed by Merle G. Capps in 1982 and 1986; one was executed by Edna Mae Olsen, as Manager of an unnamed entity in 1990, and one was executed by Bruce Steinbaum, on behalf of SK Management Company in 1992. There was no record in the file of a Management Agreement executed by Campbell Property Services, Inc. You may contact Janine Dolezel, Chief Counsel, Los Angeles Office, at (213) 251-7100, to inspect the four redacted Management Agreements.

In your appeal, you also requested a copy of the HUD waiver/consent on secondary financing, referred to in an April 16, 1991 letter from National Cooperative Bank. In response to your request, I am enclosing a December 10, 1991 letter from HUD to Helen M. Zazulak, Esq., of McKittrick, Jackson, DeMarco & Peckenpaugh.

I have also determined, pursuant to 24 C.F.R. Section 15.21, that the public interest in protecting confidential commercial and financial information militates against release of the withheld information.

You are advised that you have the right to judicial review of this determination under 5 U.S.C. Section 552(a)(4). Judicial review 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)

Enclosure

cc: Yvette Magruder
Beverly Agee, 9G
Janine Dolezel, 9.4G