

Legal Opinion: GMP-0142

Index: 7.340, 7.475

Subject: FOIA Appeal: Release to Successor Company

January 26, 1993

Lisa L. Oberg, Esq.
Haight, Brown & Bonesteel
1620 26th Street
Suite 4000 North
Santa Monica, California 90404

Dear Ms. Oberg:

This is in response to your Freedom of Information Act (FOIA) appeal dated August 14, 1992. You request review of the July 31, 1992 denial by the Executive Secretariat (FOIA Control No.: FI-299387I) withholding under Exemption 4 of the FOIA the inspection reports, plans and specifications for the "Buckingham" mobile home, manufactured by Silvercrest Industries in southern California. This information was requested because your client, Western Homes Corporation, is a defendant in a lawsuit for wrongful death, personal injuries and property damage arising out of a fire in a mobile home in Arizona. You assert that your client purchased certain assets of Silvercrest Homes and is the successor in interest to Silvercrest's liabilities arising out of the design and manufacture of the home.

I have determined to reverse the initial denial.

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).

In this instance, you advised office staff that your client had purchased certain assets of Silvercrest, which included the "Buckingham" mobile home line. You also provided additional information on the May 17, 1989 Purchase and Sale Agreement between Western Homes Corporation and Silvercrest Industries. You advise that Western Homes had been unable to locate records in its own files on the floor plan and specifications of the Silvercrest "Buckingham" mobile home. Thus, you are requesting this information from the Department's records.

I have determined that, as the successor to the business assets of Silvercrest, there is no breach of business

confidentiality by disclosure of the plans, specifications and inspections reports pertaining to the manufacture of the "Buckingham" mobile home. Therefore, I am reversing the initial denial under Exemption 4 and will make information available to you from the Department's records.

The Department's contractor, the National Conference of States on Building Codes and Standards (NCSBCS), is the repository for manufacturers' plans and specifications submitted to the Department to comply with HUD's Manufactured Home Construction and Safety Standards, 24 C.F.R. Part 3280. The models of the different manufacturers are designated by floor plan and we are advised that NCSBCS may have the entire design package for the model in which you are interested. We have enclosed six 1976/1977 floor plans that come closest to the specifications in your request. If you need additional specifications or design detail, you should contact Stuart Margulies, Chief of the Consumer and Liaison Branch of the Department's Manufactured Housing Program, at (202) 708-0584. Concerning the inspection reports, the State of California was the plant inspection agency during the mid-1970's. Therefore, you should contact California concerning inspection reports involving Silvercrest.

Pursuant to 5 U.S.C. Section 552(a)(4)(A), a charge of \$74.00 has been incurred in processing your request. This amount is based on a charge of \$18.50 per hour for four hours of professional search time. Payment should be remitted within thirty days from the date of this letter, by certified check or money order made payable to the U.S. Treasury and sent to:

Department of Housing and Urban Development
Executive Secretariat\FOIA
451 Seventh Street, SW, Room 10139
Washington, D.C. 20410-0001

Please refer to the FOIA control number, FI-299387I, on your payment to ensure its proper application.

Very sincerely yours,

George L. Weidenfeller
Deputy General Counsel (Operations)

Enclosure

cc: Yvette Magruder
Gary Nemec
Stuart Margulies