

Legal Opinion: GMP-0143

Index: 7.330, 7.350, 7.370, 7.413  
Subject: FOIA Appeal: Title VIII Files

January 26, 1993

Robert Shaiman, Esq.  
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Dear Mr. Shaiman:

This is in response to your Freedom of Information Act (FOIA) appeal dated September 24, 1992. You appeal the partial denial dated August 28, 1992 from Kenneth L. Roland, Acting Deputy Regional Counsel, Denver Regional Office. The Office of Fair Housing and Equal Opportunity (FHEO) previously provided you the Final Investigative Reports in two cases brought under Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601. Mr. Roland released additional documents from the investigative files but withheld certain documents under Exemptions 3, 5, and 7(D),(E) of the FOIA, 5 U.S.C. Section 552(b)(3), (5), (7)(D),(E).

You state that your request for the withheld documents, on behalf of your clients, the respondents, is no different than any other discovery request made in pending litigation. You also state that, to the extent that any documents are not released pursuant to the FOIA, you intend to raise the matter with the Administrative Law Judge and cause all such documents to be excluded from trial.

I have determined to affirm the initial denial. Mr. Roland withheld the following documents in his August 28, 1992 partial denial. Under Exemption 5 the Denver Regional Office withheld all of the investigators' notes of interviews with witnesses and various memoranda by HUD employees which are listed in the table of contents of both investigative files as falling under Tabs B1\*, B2, B3, B4 and B5\*; Tabs C1\*, C2, and C5; Tabs D1-D22, D27-28, and D-30 (\*portions of these tabs are provided); and some investigators' notes appearing on the deliberative side of the files. Also withheld under Exemption 5 were research, conversational and deliberative notes and memoranda by an attorney in the Denver Regional Counsel's Office, and correspondence and memoranda between HUD attorneys and the Department of Justice.

Under Exemption 3 the Denver Regional Office withheld all documents that revealed the contents of conciliation discussions under Title VIII. Under Exemption 7(D) the Denver Regional Office withheld all of the investigators' notes concerning interviews with confidential sources. Under Exemption 7(E) the Denver Regional Office withheld all documents that reveal FHEO's

investigative process, including the investigative plans for the cases and several memoranda between HUD personnel.

Our review confirms that the withholding of these documents under Exemptions 3, 5 and 7(D),(E) was legally correct. Further, we are advised that, since your appeal, a hearing on these cases was held on October 29 and 30, 1992 and that the Denver Regional Office supplied additional documents pursuant to your discovery requests. We are also informed that no issue was raised at the hearing concerning the nondisclosure of documents.

I have also determined, pursuant to 24 C.F.R. Section 15.21, that the public interest in protecting: (1) the deliberative process; (2) the attorney-client relationship; (3) attorney's work product; (4) confidential investigative sources; and (5) FHEO's investigative process, militates against disclosure of the withheld information.

You are advised that you are entitled to judicial review of my decision under 5 U.S.C. Section 552(a)(4). 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