

Legal Opinion: GMP-0025

Index: 7.360, 7.363, 7.630

Subject: FOIA/Privacy Act: Mortgagors w/Forbearance Agreements

November 26, 1991

MEMORANDUM TO: Bruce S. Albright, Assistant General Counsel,  
Home Mortgage Division, GHH

FROM: Carole W. Wilson, Associate General Counsel for  
Equal Opportunity and Administrative Law, GM

SUBJECT: Applicability of Exemption 6 of the Freedom of  
Information Act and the Privacy Act to the Names of  
Mortgagors With Forbearance Agreements

This is in response to your memorandum dated October 31, 1991 pertaining to a portion of a request from Senator Quentin Burdick. Senator Burdick is requesting a legal opinion as to whether his constituent can obtain the names of mortgagors with forbearance agreements for the purpose of contacting them to discover the details of these agreements.

In my opinion the names of the mortgagors are protected from public disclosure under Exemption 6 of the Freedom of Information Act (FOIA) and the Privacy Act.

Exemption 6 of the FOIA, 5 U.S.C. 552(b)(6), exempts from disclosure information which (1) is contained in personnel, medical and similar files<sup>1</sup> and (2) would constitute a clearly unwarranted invasion of personal privacy. The degree to which disclosure would constitute a "clearly unwarranted" invasion of personal privacy is determined by balancing the public interest in the release of the information against the privacy interests of the individual.

Disclosure of the information requested here, i.e., the names of mortgagors with forbearance agreements, would reveal personal information concerning the financial situation of these individuals, which could be highly embarrassing. The agreements

<sup>1</sup>The U.S. Supreme Court in *United States Department of State v. Washington Post Co.* has held that the term "similar files" should be interpreted broadly to encompass any information "which applies to a particular individual" regardless of the label of the file in which the information is contained. 456 U.S. 595, 601-602 (1982).

themselves are not available to the public and are contained in a Privacy Act system of records.

I do not believe the disclosure of the names of mortgagors with forbearance agreements is a sufficient "public interest" under *United States Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989) (hereinafter "Reporters Committee") to warrant balancing against the personal privacy interests of the mortgagors.

Reporters Committee establishes a new framework for analyzing the public interest under Exemptions 6 and 7(C) by establishing that only the furtherance of FOIA's core purpose of informing citizens about "what their government is up to" can warrant the release of information implicating individual privacy interests. *Reporters Committee*, 489 U.S. at 772-773. The public interest that the FOIA was enacted to serve concerns disclosure of records that shed light on the activities of a "Government agency or official," showing something "about an agency's own conduct." *Id.* at 773. In this instance, release of the names of mortgagors would tell little, if anything, about HUD's performance of its statutory duties in administering the single family mortgage insurance program.

A second reason for nondisclosure of the information requested pertains to compliance with the Privacy Act. The information requested by Senator Burdick's constituent is contained in HUD's Privacy Act System of Records (HUD/Dept. 32-Delinquent/Default/Assigned/Temporary Mortgage Assistance Payments (TMAP) Program, Federal Register Privacy Act Issuance: 1989 Compilation). Therefore, the records are also withholdable under 5 U.S.C. 552a(b) and the Department's regulations at 24 C.F.R. 16.1(e)(3), which safeguard the release of privacy information, without the express written consent of the person(s) involved.

For these reasons, it is our opinion that the names of mortgagors with forbearance agreements, is not releasable under the FOIA. If you have further questions regarding this matter, please contact Jeff Rock or Sam Hutchinson, Assistant General Counsel for Personnel and Ethics Law at 708-2088.