

FOIA Appeal: Info. on Default of Single Family Mortgage

Legal Opinion: GMP-0059

Index: 7.350, 7.360, 7.465

Subject: FOIA Appeal: Info. on Default of Single Family Mortgage  
FOIA Exemption 6: Name/Address Withheld

February 26, 1992

Mr.

Denver, Colorado 80210

Dear Mr. :

This is in response to your letter of February 5, 1992, requesting administrative review under the Freedom of Information Act (FOIA) of the partial denial issued by the Executive Secretariat. By letter dated December 17, 1991, you requested information on the default of your mortgage and the denial of your application for assignment of the loan to HUD. In a letter to you dated January 8, 1992 (FOIA Control No.: FI-280651E), Gail Lively, former Director, Executive Secretariat, supplied you with 143 pages of documentation and withheld, under FOIA Exemption 5, three pages of handwritten staff reviews and recommendations. She also withheld under FOIA Exemption 6 part of a computer printout pertaining to an unrelated individual's mortgage information.

I have decided to affirm, in part, and reverse, in part, the initial denial.

Exemption 5 exempts from mandatory disclosure "inter-agency or intra-agency memorandums or letters which would not be available by law to a party . . . in litigation with the agency." There are two requirements for invocation of the deliberative process privilege. First, the communication must be predecisional, i.e., antecedent to the adoption of an agency policy, *Renegotiation Board v. Grumman Aircraft Engineering Corp.*, 421 U.S. 168, 184, 95 S.Ct. 1491, 1500 (1975). Second, the document must be "deliberative," that is, "actually . . . related to the process by which policies are formulated." *Jordan v. Dept. of Justice*, 591 F.2d 753, 774 (D.C. Cir. 1978).

The documentation withheld under Exemption 5 consists of: (1) HUD Form 92209, Analysis and Documentation of Assignment Eligibility Criteria, with a handwritten attachment, and (2) a handwritten "memorandum of call" slip. The HUD Form 92209 contains the staff review of eligibility criteria for mortgage assignment, as well as staff comments and recommendations. The handwritten attachment to the HUD Form 92209 contains handwritten comments and conclusions on your case. Since this documentation contains predecisional staff comments, conclusions and recommendations, it is exempt from disclosure under the

deliberative process privilege of Exemption 5, 5 U.S.C.  
552(b)(5).

I have determined to reverse the denial with respect to the "memorandum of call" slip. This document contains information on the arrangement of an appointment and does not involve predecisional advice or recommendations. Thus, it is not exempt from disclosure under Exemption 5. A copy of this document is enclosed.

The deleted information on the copy of the Single Family Insured System computer printout provided to you pertains to mortgage information regarding an individual not part of, or related to, your request. This information was properly withheld under Exemption 6, 5 U.S.C. 552(b)(6), which protects an individual's personal privacy.

Pursuant to 24 C.F.R. 15.21, I have determined that the protection of the deliberative process militates against disclosure of HUD staff handwritten comments, reviews and recommendations. I have also determined that the privacy interests of mortgagors militates against release of the unrelated mortgage information withheld under Exemption 6.

You have a right to judicial review of this determination under 5 U.S.C. Sec. 552(a)(4).

Very sincerely yours,

C. H. Albright, Jr.  
Principal Deputy General Counsel

Enclosure

cc: Yvette Magruder  
Michal Stover, 8G