FOIA Appeal: HUD Instructional Video Tape

Legal Opinion: GMP-0061

Index: 7.350, 7.450
Subject: FOIA Appeal: HUD Instructional Video Tape

March 13, 1992

Mr. Richard P. Cook
Owner/Manager
Yellowbird, Ltd.
352 W. Church St.
Xenia, Ohio 45385

Dear Mr. Cook:

This is in response to your Freedom of Information Act (FOIA) appeal received by the Department on January 17, 1992. You appeal the denial dated December 31, 1991 by William J. Harris, Manager of the Cincinnati, Ohio Office, of a video tape prepared by HUD Headquarters entitled "Procedures for Processing Section 8 Annual Rent Adjustments," withheld under Exemption 5.

I have decided to reverse the initial denial and release the video tape.

Exemption 5 of the FOIA, 5 U.S.C. 552(b)(5), exempts from disclosure "interagency or intra-agency memorand a or letters which would not be available by law to a party other than an agency in litigation with the agency." Exemption 5 incorporates a number of civil discovery privileges, including the deliberative process privilege. The test for inclusion under the deliberative process privilege is whether a document is predecisional and deliberative. The video tape which you requested explains procedures for processing Section 8 Annual Rent Adjustments. Written instructions from the tape have been previously disclosed to you as well as to other owners and agents. Therefore, I have determined that the video tape is not a predecisional and deliberative document.

I am forwarding a copy of this decision to the Cincinnati Office and instructing that they release a copy of the video tape to you. The Cincinnati Office will advise you regarding the cost for reproduction of the tape or you may make arrangements to view the tape at their facilities.

Very sincerely yours,

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

cc: Lewis Nixon, 5G
Earl Cox, Area Manager