

FOIA Appeal: Financial Statements, Client Lists, etc.

Legal Opinion: GMP-0080

Index: 7.340, 7.360

Subject: FOIA Appeal: Financial Statements, Client Lists, etc.

June 3, 1992

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Dear Mr. Greenbaum:

This is in response to your January 20, 1992 Freedom of Information Act (FOIA) appeal. You requested records relating to Gershman Investment Corporation and Solon Gershman Inc., Realtors, including documents they submitted to HUD to qualify for processing loan applications. You appeal the partial denial (FOIA Control No.: FI-279370T) by Gail L. Lively, former Director, Executive Secretariat. Ms. Lively withheld company financial statements and their nonfederal client lists under Exemption 4. She also withheld personal resumes and social security numbers under Exemption 6 and the identification of key personnel under Exemptions 4 and 6.

I have determined to affirm the initial denial.

Exemption 4 exempts from mandatory disclosure "trade secrets and commercial or financial information obtained from a person which is 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).

The financial information you requested pertains to the financial operations of the companies and release of this information could permit competitors to gain "valuable insights into the operational strengths and weaknesses of the supplier of the information." See *Comstock International USA, Inc. v. Export-Import Bank*, 464 F. Supp. 804, 810 (D.D.C. 1979). Courts have recognized the competitive harm under Exemption 4 by release of company financial statements. See *Gulf and Western Industries, Inc., v. U.S.*, 615 F.2d 527 (D.C. Cir. 1979), protecting financial information, including profit rate, actual loss data, and general and administrative expense rates. Consistent with the application of existing case law on this issue, I am affirming the denial of the financial statements under FOIA's Exemption 4.

I have also determined to affirm the denial under Exemption 4 of the companies' nonfederal client lists and the identification of their key personnel. See *Audio Technical Services Ltd. v. Department of the Army*, 487 F. Supp. 779, 782 (D.D.C. 1980), protecting winning bidder's customer list; and *Burroughs Corp. v. Brown*, 501 F. Supp. 375, 381 (E.D. Va. 1980), withholding identities and other important information about employees to protect against employee raiding.

I am also affirming the nondisclosure of individuals' social security numbers and personal resumes under FOIA's Exemption 6. Courts have consistently held that release of social security numbers constitutes a clearly unwarranted invasion of personal privacy. See *Swisher v. Department of the Air Force*, 495 F. Supp. 337 (W.D. Mo. 1980). Moreover, the personal background information included in resumes is regarded as private and highly personal information. There is no public interest served by release of this information. Exemption 6 protects information in medical, personnel and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

In your letter you assert that you represent the Resolution Trust Corporation (RTC) and that the requested information is pertinent to your activities relating to the failure of Missouri Savings Association in Clayton, Missouri. You request that the Department release the information in its discretion. However, I have determined, pursuant to 24 C.F.R. 15.21, that the public interest in protecting confidential client lists and identification of company employees, and in preserving personal privacy militates against release of the withheld information.

In addition, since the companies' financial statements contain confidential commercial and financial information, release of this information is further prohibited by the Trade Secrets Act, 18 U.S.C. 1905. The Trade Secrets Act makes it a criminal offense for any employee of the United States, or one of its agencies, to release trade secrets and certain other forms of confidential commercial or financial information except when disclosure is authorized by law. The statute classifies as confidential commercial or financial information, the "amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation or association."

The Trade Secrets Act does provide for disclosure of information in accordance with a validly enacted statute or agency regulation. See *Westchester General Hospital, Inc. v. Department of Health, Education & Welfare*, 464 F. Supp. 236, 249 (M.D. Fla. 1979). As previously indicated in your conversations with Jeff Rock, staff attorney in my office, HUD would consider release of the companies' financial statements if the RTC

requests this information and it has the legal authority to require sensitive business information.

You are advised that you have the right to judicial review of this determination under 5 U.S.C. 552(a)(4).

Very sincerely yours,

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

cc: Yvette Magruder