

Legal Opinion: GMP-0116

Index: 7.350, 7.370, 7.411
Subject: FOIA Appeal: Title VI Compliance Review

August 28, 1992

Carole M. Fruman, Esq.
Legal Services of Greater Miami, Inc.
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Miami, Florida 33137

Dear Ms. Fruman:

This is in response to your Freedom of Information (FOIA) appeal dated August 9, 1991. You appeal the July 3, 1991 denial by Raymond A. Harris, Regional Administrator, Atlanta Regional Office, withholding a Compliance Review of the Dade County Housing Authority conducted under Title VI of the Civil Rights Act of 1964. The Compliance Review was withheld under Exemption 7(A) of the FOIA. You also advise that the Regional Administrator failed to address your request for copies of any compliance agreements that may have resulted from the review.

I have determined to affirm the initial denial of the Compliance Review under Exemptions 5 and 7(A). I have determined to release the Voluntary Agreement between HUD and the Dade County Housing Authority.

Exemption 7(A) of the FOIA, 5 U.S.C. Section 552(b)(7)(A), protects from disclosure:

records or information compiled for law enforcement purposes but only to the extent that the production of such law enforcement records or information . . . could reasonably be expected to interfere with enforcement proceedings.

The Compliance Review of the Dade County Housing Authority was conducted under the authority of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq. Documents pertaining to an ongoing compliance review can be characterized as "records or information compiled for law enforcement purposes," because they are generated by HUD in connection with investigating possible violations of law. See *Center for National Policy Review on Race and Urban Issues v. Weinberger*, 502 F.2d 370, 372 (D.C. Cir. 1974) where the court held that a Title VI administrative determination of ineligibility for governmental benefit is a governmental action that has the salient characteristics of "law enforcement" contemplated by the wording of Exemption 7. See also *Amolsch and Madden Inc. v. FTC*, 591 F.2d 809 (D.C. Cir. 1978); *Brinkerhoff v. Montoya, et al.*, 3 GDS 82,421 (N.D. Tex. 1981).

The Department and the Dade County Housing Authority entered

into a Voluntary Agreement on July 9, 1992 under the Public Housing Affirmative Compliance Actions Program (PHACA). Under the Agreement the Housing Authority must undertake a self-assessment of its operations for compliance with Title VI and submit the results to HUD along with proposed actions to enhance its efforts to achieve the objectives of Title VI. In the event the Authority's assessment reveals policies or practices which HUD finds are not in compliance with Title VI or its implementing regulations, HUD will provide the Authority the opportunity to agree with the remedies necessary to correct these practices or policies.

The Department's enforcement efforts, therefore, are ongoing until the Department determines whether the Housing Authority is in compliance with Title VI under the terms of the voluntary agreement. See e.e., *ABC Home Health Servs., Inc. v. HHS*, 548 F. Supp. 555, 556, 559 (N.D. Ga. 1982); *Zeller v. United States*, 467 F. Supp. 487, 501 (S.D. N.Y. 1979), Exemption 7(A) may be invoked when an investigation has terminated but an agency retains oversight or some other continuing enforcement-related responsibility. Premature disclosure of information relating to the Compliance Review would interfere with the Department's efforts to effectuate compliance with Title VI. See 24 C.F.R. Section 1.8.

I have also determined to withhold the Compliance Review under Exemption 5 of the FOIA, 5 U.S.C. Section 552(b)(5). Exemption 5 exempts from mandatory disclosure "inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the agency." The Compliance Review is an intra-agency document containing deliberations and recommendations of the Regional Office submitted for Headquarters review. As such, it is a predecisional document exempt from disclosure under Exemption 5.

At the time of your request, the Department had not entered into a compliance agreement with the Dade County Housing Authority. However, the Voluntary Agreement now in effect with the Dade County Housing Authority is a releasable document under the FOIA and I am enclosing a copy for you.

I have also determined, pursuant to 24 C.F.R. Section 15.21, that the public interest in effective law enforcement and in protecting the agency's deliberative process necessitates withholding the Compliance Review.

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

Very sincerely yours,

George L. Weidenfeller
Deputy General Counsel (Operations)

Enclosure

cc: Yvette Magruder

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