

FOIA Appeal: Lists of Applications for Funding

Legal Opinion: GMP-0039

Index: 7.330

Subject: FOIA Appeal: Lists of Applications for Funding

January 13, 1992

Mr. Lester A. Wagner
P. O. Box 14755
Richmond, Virginia 23221

Dear Mr. Wagner:

This responds to your Freedom of Information Act (FOIA) appeal of October 15, 1991 appealing the denial by the Greensboro, North Carolina Office. Barbara P. Nichols, Freedom of Information Officer, denied your request under Exemption 3 for lists of the Section 202 Supportive Housing for the Elderly and Section 811 Supportive Housing for Persons with Disabilities applications submitted to the Greensboro Office by September 30 in response to the Notification of Fund Availability.

After careful consideration of your appeal, I have decided to affirm the initial denial in this case.

Exemption 3 of the FOIA, 5 U.S.C. 552(b)(3), incorporates the disclosure prohibitions that are contained in various other federal statutes. Exemption 3 allows the withholding of information prohibited from disclosure by another statute only if that statute "(A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld." A statute thus falls within the exemption's coverage if it satisfies any one of its disjunctive requirements. See *Irons & Sears v. Dann*, 606 F.2d 1215, 1220 (D.C. Cir. 1979), cert. denied, 444 U.S. 1075 (1980).

The lists of applications for funding you have requested are prohibited from disclosure by Section 103 of the Department of Housing and Urban Development Reform Act of 1989, 42 U.S.C.

3537a, which meets the requirements of subpart (A) of Exemption 3. Section 103 proscribes the disclosure of information during the selection process for the award of assistance from the Department. The information prohibited from disclosure during the selection process includes the identity of applicants and information contained in the applications or requests for assistance.

The selection process for the Section 202 and Section 811 applications is still open. Thus, HUD is prohibited from releasing information of the type contained in the lists that you

requested. Accordingly, I have decided to affirm the initial denial pursuant to Exemption 3 of the FOIA and the HUD Reform Act of 1989.

The selection process should be completed by the end of February. After termination of the selection process, the information can be disclosed to you under Section 102 of the HUD Reform Act. You should direct your request for the information at that time to the Greensboro Office.

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

Very sincerely yours,

Shelley A. Longmuir
Deputy General Counsel

cc: Yvette Magruder
Raymond C. Buday, Jr.