

Legal Opinion: GMP-0082

Index: 7.340, 7.420

Subject: FOIA Appeal: Names--GNMA Security Holders for GNMA Pool

June 4, 1992

Mr. James J. Moore, III
President
Moore Financial Group, Inc.
P.O. Box 967
Worcester, Pennsylvania 19490

Dear Mr. Moore:

This is in response to your August 8, 1991 Freedom of Information Act (FOIA) appeal. You appeal the decision dated July 17, 1991 from Gail L. Lively, former Director, Executive Secretariat, to withhold under Exemption 4 a list of the names of Government National Mortgage Association (GNMA) security holders for GNMA Pool #207914.

I have determined to affirm the initial denial.

Exemption 4 of FOIA, 5 U.S.C. 552(b)(4), exempts from mandatory disclosure "trade secrets and commercial or financial information obtained from a person and 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). Lists of owners of securities is proprietary information owned by the issuers and access to the identities of the investors could cause substantial competitive harm. It is a recognized practice in the securities industry to consider such investor information confidential. Disclosure of such investor information could adversely affect the pricing of the securities because other investment securities would retain confidentiality and, thus, become more attractive to the investment community.

Courts have recognized the competitive harm to a submitter by release of business information. See, e.g., *Gulf & Western Industries, Inc. v. U.S.*, 615 F.2d 527 (D.C. Cir. 1979), protecting from disclosure financial information including profit and loss data, expense rates, and break-even point calculations; *Timken Co. v. United States Customs Service*, 531 F. Supp. 194 (D.D.C. 1981), protecting financial and commercial information on pricing and marketing.

Accordingly, I have determined that the withheld information is confidential commercial and financial information and that Exemption 4 is a proper basis for its being withheld. I have

also determined, pursuant to 24 C.F.R. 15.21, that the public interest in protecting confidential business information militates against disclosure of the withheld 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