

The Washington Post

1150 15TH STREET N. W.
WASHINGTON, D.C. 20071-7403
(202) 334-6000

Feb. 5, 2007

Ms. Dorothy Hinden
FOIA & Privacy Act Officer
U.S. Dept of Agriculture, Rural Development
1400 Independence Ave., S.W. Stop 0742
Washington, DC 20250-0742
202.692.0031
Via fax: 202.692.0013

Dear Ms. Hinden

This is a request under the Freedom of Information Act, 5 U.S.C. § 552, for the following records:

1. A database of rural development Multi-family projects, including, but not limited to: the name of the complex, its address and any other geographical identifiers such as county, name and address of the management company or owner, number of units, number of subsidized units, current occupancy, current subsidy paid (to the building), any classifications made of the property, the amount of the rural development mortgage and the amount outstanding, the date of the completion of the project and any other details of the project, the loan, or the subsidies paid that are held in the Multi-Family Information System. We are not asking for the names of tenants or individuals' rental assistance details.

Find document
to tell you
what it holds

Name of
record system!

2. If not included in the above, any results from the routine monitoring of properties, including annual physical inspections and findings from annual financial reviews held in the MFIS. I am not requesting the paper case files. - try to avoid delays.
3. Any record layouts, code sheets or other information needed to interpret the data.

Any data request
needs
this.

Please provide the databases in any standard data format, such as plain ASCII text, dbf or any other common data format.

Avoid
pdf
printouts,
Excel.

If you regard any of these records as exempt from disclosure under the Act, please exercise your discretion and disclose them nonetheless. If you deny this request in whole or in part, please justify any deletions by reference to specific exemptions of the Act, while providing all non-exempt portions that are reasonably segregable. Please provide the data as they become available without waiting until all of the material has been assembled.

I am making this request on behalf of The Washington Post, a newspaper of general circulation in the Washington, D.C. metropolitan area. The records disclosed by this request will be used in the preparation of news articles for dissemination to the public and are likely to contribute to the public's understanding of the operation of government. For purposes of FOIA fee assessments, I ask that you waive all fees in the public interest. If, however, you decline to waive all fees, I am prepared to pay your normal fees for news media requesters. Please notify me if you expect the processing fees to exceed \$250.

] Also
avail
for
research.

I am eager to work with you and your information technology staff to make this request as efficient as possible. I am happy to talk with you regarding specific data elements, formats or other details that can simplify this request. I would appreciate you communicating with me via e-mail or telephone rather than fax or U.S. mail.

Sincerely,

Sarah Cohen
Database Editor
(202) 334.6259
cohensh@washpost.com



Response #1

United States Department of Agriculture
Rural Development

April 12, 2007

I received response via snail mail in May. This is common. Make sure they know when you got it if there is a big difference

Sarah Cohen
Database Editor
The Washington Post
1150 15th Street, NW
Washington, DC 20071-7403

Re: Case No. H07-16a

Dear Ms. Cohen:

This letter is being sent in response to your Freedom of Information Act (FOIA) request, dated February 5, 2007, requesting computerized data for the Rural Development Multi-Family projects.

I am forwarding the responsive data to your e-mail address at: cohensh@washpost.com.

I have determined that the current subsidy paid to the complex, the amount outstanding, and the findings from financial reviews should be protected under 5 U.S.C. 552(b)(4). This provision pertains to trade secrets and commercial or financial information obtained from a person that is privileged or confidential. In addition, I have determined that the classifications made of the properties should be protected under 5 U.S.C. 552(b)(5). This provision pertains to certain inter- and intra-agency communications protected by the deliberative process privilege.

If you are dissatisfied with the action on this request, you may appeal this partial denial by writing to the Administrator, Rural Housing Service, USDA, 1400 Independence Avenue, SW, STOP 0742, Washington, DC 20250-0742, within 45 days from the date of this letter. The phrase **FOIA APPEAL** should be placed in capital letters on the front of the envelope containing the appeal.

Sincerely,

/s/ Dorothy Hinden

DOROTHY HINDEN
Freedom of Information Officer

Enclosure

1400 Independence Ave, SW • Washington, DC 20250-0700
Web: <http://www.rurdev.usda.gov>

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To file a complaint of discrimination write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, DC 20250-9410 or call (800) 795-3272 (voice) or (202) 720-6382 (TDD).

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Mr. Russell T. Davis
Administrator
Rural Development Housing and Community Facilities Programs
U.S. Department of Agriculture
1400 Independence Ave. SW
Mail Stop 0742
Washington, D.C. 20250-0742

May 28, 2007

FOIA APPEAL Case number H07-16a

Dear Mr. Davis:

On Feb. 5, 2007, I requested a copy of the Multi-Family Information System database containing information on rural development multi-family projects. I requested all information on the complex, its management, any geographic identifiers, subsidized units, and subsidies currently paid. In addition, I requested the amount of the outstanding loans, date of completion and other details of the project. I also requested any results from routine monitoring activities, including annual physical inspections and findings from annual financial reviews.

On April 12, I was provided a partial release of the data under case number H07-16a.

I am appealing the withheld information in this response.

1. Confidential financial information exemption claimed:

Ms. Dorothy Hinden withheld the current status of loans, the amount of subsidy provided to the complex and the financial review results under 5 USC 522(b) (4), trade secrets and commercial information exemptions.

I am not appealing the withholding of the financial condition review. However, the other two elements – the amount of taxpayer funds committed to the project – cannot be considered confidential financial information. These elements fall under none of the criteria for using Exemption 4.

The status the loans and the amount of subsidy is information about a government benefit to a commercial or other government entity. As such, it cannot be considered a trade secret or highly confidential financial information as required in the law.

Use
its
own
rules.

According to the U.S. Department of Justice's *Freedom of Information Act Guide, June 2004*, to qualify as an exemption under this section of the law, the exemption can be used when all of these criteria are met: "the information must be commercial or financial, obtained from a person,

and privileged or confidential.” Information about the current status of a government loan meets none of these criteria. It certainly cannot meet all three.

To qualify as business or commercial information, the DOJ give the following examples: “business sales statistics; research data; technical designs; customer and supplier lists; profit and loss data; overhead and operating costs; and information on financial condition” We are not requesting information on the borrowers’ financial condition. We have asked for no supporting documents that went into granting the loan. We are simply requesting the status of the loan and the amount still outstanding.

In the same guidance, the DOJ says that information is not obtained from a “person” if it is generated by the federal government itself. The records requested are the government’s accounting of its own loans or its guarantees, not the records of a private entity.

To meet the “confidential” test, information must have 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.” Again, these tests are not met in the failure to disclose the basic status of a government or government-backed loan.

2. Internal deliberations exemption

Ms. Hinden also denied our request for the score held in the database as a result of the annual physical inspection of the property, under 5 USC 552(b)(5), deliberative process exemption.

These annual physical inspections are required under regulation, at 7 CFR 3560.351 Section H. As a result, it cannot be considered confidential intra-agency deliberative process. In addition, the goal of this exemption is to protect the integrity and quality of government decision-making. If we were requesting notes of meeting at which scores were assigned, it could be conceivable that the exemption might apply. But in this case, the scores are already assigned. They do not denote a deliberative process, nor does the release of those records hamper the quality or integrity of government decision-making. As such, they should be released.

Thank you for your consideration of this appeal. I would appreciate you communicating with me via e-mail or telephone to avoid the delays caused by security concerns using the mail.

Sincerely,

Sarah Cohen
Database Editor
The Washington Post
(202) 334-6259
cohensh@washpost.com



United States Department of Agriculture
Rural Development

Ms. Sarah Cohen
Database Editor
The Washington Post
1150 15th Street, NW
Washington, DC 20071-7403

NOV 27 2007

Re: Case No. H07-8A

Dear Ms. Cohen:

This letter responds to your Freedom of Information Act (FOIA) appeal dated May 28, 2007, that was received in our FOIA unit on June 18, 2007. You are appealing our April 12, 2007, decision to deny in part your initial FOIA request seeking information pertaining to multi-family housing loans. You also requested any results from routine monitoring activities, including annual physical inspections and findings from annual financial reviews. In your appeal letter, you stated that you are not appealing the withholding of the financial condition review. Therefore, this response addresses the data withheld pertaining to the multi-family housing loans.

The specific columns withheld from you pursuant to FOIA Exemption 4 (5 U.S.C. § 552(b)(4)), contain the following: (1) remaining [loan] balance, (2) occupied units, (3) project delinquent amount, and (4) rental assistance subsidy amount. The column containing the project score was withheld pursuant to FOIA Exemption 5 (5 U.S.C. § 552(b)(5)).

After reviewing the documents responsive to your appeal, and after consultation with the Office of the General Counsel, we have determined that all of the information previously withheld can be released to you in full. Enclosed is the responsive information.

Accordingly, your FOIA appeal is hereby granted in full.

Sincerely,

RUSSELL T. DAVIS
Administrator
Rural Housing Service

Enclosures

★!
Data dance!
(ps - story had
already been
published,
ed was
corrupted !)

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