

FOIA Appeal: Denial of Fee Waiver--Legal Serv. Firm

Legal Opinion: GMP-0044

Index: 7.220, 7.430

Subject: FOIA Appeal: Denial of Fee Waiver--Legal Serv. Firm

January 17, 1992

Gregory Tasker, Esq.
Southeastern Ohio Legal Services
27-29 North Sixth St., Suite B
Zanesville, Ohio 43701-3601

Dear Mr. Tasker:

This is in response to your Freedom of Information Act (FOIA) appeal of November 25, 1991 in which you appeal a denial of a waiver of FOIA fees for certain information requested by Robert R. Romaker, Esq., a member of your staff. On October 21, 1991 Mr. Romaker requested a list of all multifamily housing units "subsidized by, or otherwise associated with," HUD in three named Ohio counties, the names and addresses of the owners of the developments, and the addresses of the developments.

Mr. Romaker requested a waiver of fees because he was, "attempting to delineate the causes of the shortage of adequate affordable housing in my service area," and stated that he was requesting the information for "personal rather than commercial use." William Cusack, Information Officer, Columbus, Ohio Office, denied Mr. Romaker's request on November 19, 1991, precipitating your appeal. In your letter, you state that "the reason for our request is to make this information available to all persons who call in or stop into our office."

I have determined to affirm the initial denial.

The FOIA provides that documents shall be furnished without any charge or a reduced charge "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. 552(a)(4)(iii).

Your request for a fee waiver fails to satisfy the public interest requirement of 552(a)(4)(iii) for the following reasons. First, Mr. Romaker's letter asserts that the request will benefit some subset of the public at large, namely individuals who qualify for low income housing. However, courts have stated that providing information to a subset of the public at large does not make a request "likely to contribute significantly to public understanding of the operations or activities of the government . . ." The request must benefit the public at large. *Crooker v. Dept. of the Army*, 577 F. Supp. 1220, 1223 (D.D.C. 1984); *National Treasury Employees Union v.*

Griffin, 811 F.2d 644, 648 (D.C. Cir. 1987).¹ Second, your intention to provide the information to your clients does not meet the fee waiver criteria of effective dissemination to the general public to qualify for a fee waiver.²

The Department's regulations provide that a requester, other than a commercial requester, is entitled to two hours of free search time and 100 pages of free duplication. 24 C.F.R. Part 15. You state that Southeastern Ohio Legal Services "is a non-profit organization funded primarily by federal money in the form of Legal Services Corporation grant money." While an entity's non-profit status is not determinative of whether it has a commercial interest in the information or not, it appears from the facts stated in Mr. Romaker's letter that he was an "other requester" within the meaning of the Department's regulations. Therefore, Southeastern Ohio Legal Services is entitled to two free hours of search time and 100 free pages of duplication. However, Southeastern, is not entitled to a fee waiver for charges above the free level of charges provided to "other requesters" because the disclosure will benefit a limited segment of the public and not the public at large.

You have a 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

¹ Moreover, the fact that the individuals who obtain this information would tend to be low-income individuals would not be grounds for granting a fee waiver, because indigence alone is not a ground for waiving fees. *Crooker v. Dept. of the Army*, 577 F. Supp. at 1224.

² See, e.g., *Larson v. CIA*, 843 F.2d 1481, at 1483 & n.5 (D.C. Cir. 1988) (inability to disseminate information alone is sufficient basis for denying fee waiver request); *Fazzini v. Department of Justice*, C.A. No. 90-C-3303, slip op. at 12 (N.D. Ill. May 2, 1991) (plaintiff's intention to share requested information with members of media not evidence of ability to disseminate information to the public); *National Treasury Employees Union v. Griffin*, 811 F.2d at 648 (rejecting "union's suggestion that its size insures that any benefit to it amounts to a public benefit").