

§ 15.107

Office are authorized to release copies of any HUD records unless disclosure is clearly not appropriate under FOIA.

(2) The FOIA Division in HUD Headquarters and the FOIA liaisons in each HUD Field Office may deny a request for a record in accordance with the provisions of FOIA and this part.

(b) *What type of a response will I receive?* Within the time limit described in § 15.103, HUD will either:

(1) Agree to give you all the records you requested;

(2) Advise you that HUD will not give you some or all of the records you requested. Any denial or partial denial of a requested record must be concurred in by the FOIA Division in Headquarters, by counsel in the Field Offices, or by counsel in HUD's Departmental Enforcement Center Satellite Offices. In this case, HUD will:

(i) Explain why it has decided not to comply fully with your request, citing specific exemptions where applicable;

(ii) Describe the records denied or, if there are fewer than 21 records denied, list them specifically;

(iii) Estimate the volume of the records denied unless doing so would harm a protected interest; and

(iv) Explain how to appeal that decision, and provide the name and address of the HUD official to whom you should submit your appeal.

(3) Tell you that HUD's estimate of the fee is more than you have agreed to pay and ask to confer within 10 days to see if you can reformulate your request so that HUD can meet your request at a fee that is acceptable to you; or

(4) Tell you that you will not receive a response until you have either paid your fee or committed to the amount of fee you will pay, as applicable, and will provide you 10 days to pay, or commit to pay, the fee.

(5) If you requested expedited processing, advise you whether your request is granted or denied and, if your request is denied, advise you of your right to appeal.

(c) *What action may HUD take if I fail to respond?* If you fail to respond within a period specified in this subpart, HUD may consider your request for records withdrawn and may terminate processing of your request.

24 CFR Subtitle A (4-1-04 Edition)

§ 15.107 How does HUD handle requests that involve classified records?

If your request involves the release of documents that are classified under Executive Order 12958, HUD will refer your request and the pertinent documents to the originating agency for processing according to the requirements of § 15.104(a). HUD may refuse to confirm or deny the existence of the requested information if the originating agency determines that the fact of its existence is itself classified.

§ 15.108 What are HUD's policies concerning designating confidential commercial or financial information under Exemption 4 of the FOIA and responding to requests for business information?

(a) *HUD's general policy concerning business information which may be considered as confidential commercial or financial information.* Except as provided in this section or otherwise required by law, HUD officers and employees may not disclose business information which is considered as confidential commercial or financial information to anyone other than to HUD officers or employees who are properly entitled to the information to perform their official duties.

(b) *How does a submitter make a claim that business information is confidential commercial or financial information?* (1) If you are a submitter, you may request confidential treatment of business information at the time the information is submitted to HUD or within a reasonable time after it is submitted.

(2) To obtain a designation of confidentiality, you must:

(i) Support your request with an authorized statement or a certification giving the facts and the legal justification for your request and stating that the information has not been made public; and

(ii) Clearly designate the information that you consider confidential.

(3) Your designation of confidentiality will expire 10 years after the date the information was submitted to HUD, unless you have provided a reasonable explanation for a later expiration date.

(c) *How will HUD respond to a request for business information?* If the information requested has been designated in good faith by the submitter as information to be protected under 5 U.S.C. 552(b)(4) ("Exemption 4") or if HUD has reason to believe that the information may be protected by Exemption 4, HUD shall:

(1) Unless an exception in paragraph (c)(2) of this section applies, promptly notify the submitter about the request or the administrative appeal and give the submitter 10 working days to submit a written objection to disclosure. HUD will describe the requested business information or will provide copies of all or a portion of the records;

(2) If any of the following circumstances apply, HUD will not notify the submitter:

(i) HUD determines that the information should not be disclosed;

(ii) The information has been published lawfully or has been made available officially to the public;

(3) A law other than FOIA requires HUD to disclose the information;

(4) A HUD regulation requires HUD to disclose the information. The regulation must:

(i) Have been adopted pursuant to notice and public comment; and

(ii) Specify narrow classes of records submitted to HUD that are to be released under the FOIA.

(d) *Notice to requester.* At the same time HUD notifies the submitter, HUD will also notify the requester that the request is subject to the provisions of this section and that the submitter is being afforded an opportunity to object to disclosure of the information.

(e) *Opportunity to object to disclosure.* If the submitter timely objects to disclosure, HUD will consider the submitter's objections, but will not be bound by them. HUD generally will not consider conclusory statements that particular information would be useful to competitors or would impair sales, or other similar statements, sufficient to justify confidential treatment. Information provided by a submitter or its designee may itself be subject to disclosure under the FOIA.

(f) *Notice of intent to disclose.* If after considering the submitter's objections, HUD decides to disclose business information

over the objection of a submitter, HUD will send a written notice of intent to disclose to both the submitter and the requester. HUD will send these notices at least 10 working days before the specified disclosure date. The notices will include:

(1) A statement of the reasons why HUD rejected the submitter's disclosure objections;

(2) A description of the business information to be disclosed; and

(3) A disclosure date.

(g) *What other policies apply to a submitter?*

(1) *HUD notice of FOIA lawsuit.* HUD will promptly notify the submitter of any suit to compel HUD to disclose business information.

(2) *Determination of confidentiality.* HUD will not determine the validity of any request for confidentiality until HUD receives a request for disclosure of the information.

(3) *Current mailing address for the submitter.* Each submitter must give HUD a mailing address for receipt of any notices under this section, and must notify HUD of any change of address.

§ 15.109 How will HUD respond to a request for information from Form HUD-92410 (Statement of Profit and Loss)?

(a) *To whom will HUD disclose the information?* HUD will release information from Form HUD-92410 (or a HUD approved substitute form that the mortgagor may have submitted) only to eligible potential purchasers and only during the period specified by HUD for the mortgage sale.

(b) *Under what conditions will HUD release such information?* HUD will release the information only if all of the following three conditions are met:

(1) The information concerns a project that is subject to a HUD-held mortgage which HUD is selling under the authority of sections 207 (k) and (l) of the National Housing Act (12 U.S.C. 1713 (k) and (l)) or section 7(i)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(i)(3)).

(2) The eligible potential purchasers have agreed to:

(i) Keep the information confidential;

(ii) Disclose the information only to potential investors in the mortgage and only for the period specified by