

FFIEC FOIA APPEAL LOG

FFIEC Tracking #	Requestor	Date R'cd	Appeal Determination (Exemptions Applied if Applicable)
012-003	Thomas Popik, Geosegment Systems	4/2/2012	A request was made for disclosure of "2011 Loan Application Register (LAR)" submitted by United Guaranty Corporation. The 2011 LAR data is currently under review for public posting in September 2012. As noted on the FFIEC Website the previous year's LAR data is released annually each September on the FFIEC Website. LAR data is not released prior to the public release. Information about LAR data, including the 2008-2010 data, on the FFIEC Website at this URL: http://www.ffiec.gov/hmda/hmdaproducts.htm . The requested data record is still in the creation process and will be available to the public in September 2012 through the FFIEC Website.
012-003-APPEAL	Scott A. Hodes, Esq., PO Box 42002, Washington, DC	5/8/2012	Denied. Appeal filed on behalf of Mr. Popik and Geosegment Systems Corporation, by Attorney Scott Hodes, challenging whether the response that the requested information will be incorporated into another record slated for release at a future time is sufficient under FOIA to warrant withholding the document. The appeal is denied based on the applicability of exemption 4 of FOIA. 5 U.S.C. §552(b)(4). Exemption 4 protects commercial or financial information obtained from a person that is privileged or confidential. 5 U.S.C. §552(b)(4). The term "commercial" has been broadly interpreted to include anything "pertaining or relating to or dealing with commerce." American Airlines, Inc. v. National Mediation Board, 588 F.2d 863, 870 (2d cir. 1978). United's LAR, comprised of information about applications submitted by consumers for private mortgage insurance, easily fits within this definition. Information "obtained from a person" has been held to include information obtained from a wide range of entities including individuals, associations, corporations and public and private entities, other than agencies. See Nadler v. FDIC, 92 F.3d 93, 95 (2d Cir. 1996). United's LAR meets the standard of having been "obtained from a person" under Nadler. Case law has developed along two different tracks in providing guidance for making the determination as to whether commercial or financial information submitted to an agency is "confidential" for purposes of the exemption. The leading case is Critical Mass Energy Project v. NRC, 975 F. 2d 871 (D.C. Cir. 1992), cert. denied, 507 U.S. 984 (1993). In that case, the court of appeals for the D.C. Circuit held that information voluntarily submitted to an agency is categorically protected, provided that "it is of a kind that the provider would not customarily release to the public." Id. at 879-880. United is in the business of providing private mortgage insurance; it is not a depository institution, is not engaged in the lending business, and does not fund mortgages. As such, United is not required by HMDA to submit data to the FFIEC. See 12 U.S.C. §2802(2), (4). Instead, along with several other private mortgage insurance companies, United submits its insurance application data voluntarily, with the expectation that doing so might help provide context and background for the information that is submitted by depository institutions and mortgage lenders and reported annually by the FFIEC. Consistent with this distinction, data from lenders and private mortgage insurers are separately aggregated and posted on FFIEC's website. In response to our inquiry, United has confirmed that it does not and would not customarily provide access to this information in response to a request from a third party. As noted by United, separate release of one company's data, several months in advance of the comprehensive, industry-wide release, could expose that company to market pressures and competitive disadvantages relative to peers whose data is not similarly exposed. We note, furthermore, that premature release of one provider's information could undermine the program and discourage those companies currently providing information voluntarily from future participation. Exemption 4 may be invoked where disclosure of the information would impair the effectiveness of a government program. See AI/net Communication Services, Inc. v. F.C.C., 800 F. Supp. 984, 990 (D.D.C. 1992) (internal citations omitted).

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014-003	Jason Smathers, AZ (self)	Saturday, 1/18/2014	Sought email records of the FFIEC in which requestor's last name appears; requestor had filed five FOIAs over the period of 2010 and 2011 and 12 emails were provided back to requestor in fulling this request; 8 emails were withheld under Exemption (b)(v) - deliberative correspondence (intra-agency) between FOIA public liaison and FOIA counsel
014-003-APPEAL		2/4/2014	Granted in part; two email messages were provided, but remaining email messages were appropriately withheld pursuant to FOIA Exemption (b)(5) which protects "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with an agency." Exemption 5 applies to "internal communications consisting of advice, recommendations, opinions, and other material reflecting deliberative or policy making processes..." See <i>Soucie v. David</i> , 448 F.2d 1067, 1077 (D.C. Cir. 1971). Exemption 5 also protects from disclosure information that is subject to the attorney-client privilege. <i>Mead Data Central, Inc. v. US. Dep't of the Air Force</i> , 566 F.2d 242, 252 (D.C. Cir. 1977). In this case, responsive information consists of emails between the FFIEC FOIA Public Liaison and her legal advisors where the Public Liaison sought legal advice in responding to your FOIA requests. As such, these documents are covered by both the deliberative process privilege and the attorney-client privilege.
015-011	Leonard F. Suzio Jr. President GeoDataVision, 61 N Plains Industrial Road, PBN 174, Wallingford, CT 06492	6/30/2015	Denied; Exemption 4 and Exemption 6 of the FOIA, U.S.C. § 552(b)(iv) and (vi). "Individual institutions' CRA [Community Reinvestment Act] loan data (loan number/amount) for each Census tract is withheld due to privacy concerns - disclosure at this level for each institution might invade the privacy of small business and small farm borrowers, could reveal protected business information, might erroneously signal an expectation that an institution lend in each census tract in its assessment area(s), and might lead to misinterpretation of the data."

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015-011-APPEAL		7/28/2015	<p>Denied; CRA data is not collected, owned, or managed by the FFIEC, rather it is the ownership of the financial institutions' primary supervisory Federal regulator (FRB, FDIC, and OCC). The Executive Secretary determined that the information you requested would be withheld pursuant to FOIA Exemptions 4 (relating to confidential business information) and 6 (relating to privacy information). Upon de novo review by the FFIEC Chairman it was determined that the FFIEC is not in possession of the data requested and the FFIEC response to the original FOIA request should have been denied as "no responsive records." The CRA data collected by the Board of Governors of the Federal Reserve System ("Board"), the Office of the Comptroller of the Currency ("OCC"), and the Federal Deposit Insurance Corporation ("FDIC") (collectively, the "Agencies") from individual reporter depository institutions ("Reporters") remain the property of the agency responsible for their collection. The FFIEC has no statutory or regulatory authority under the CRA. The Board acts on behalf of the Agencies in collecting and processing the CRA data, and in making the final disclosure reports for each individual Reporter, and the aggregate disclosure reports, available to the public on the FFIEC's public CRA website. The FFIEC hosts, on its website, a repository of the publicly released information which the Board provides on behalf of the Agencies. Non-public CRA information, including the information you have requested, is not collected by or sent to the FFIEC, and the FFIEC has no access to this information. Accordingly, the information sought is not an "agency record" of the FFIEC. United States Dep 't of Justice v. Tax Analysts, 492 U.S. 136, 145-46 (1989) (agency records subject to FOIA are those created or obtained by the agency and that the agency controls at the time of the request).</p> <p>The Executive Secretary's determination was correct to the extent that it informed you that the FFIEC is not obligated to create records or seek to obtain records not in its possession. However, because the FFIEC does not possess the records you seek, that portion of the Executive Secretary's response was overturned that dealt substantively with the request. The determination of whether to release non-public data provided by a particular Reporter is vested in that Reporter's primary federal regulator.</p> <p>For the reasons discussed above, and upon de novo review, I have determined that the FFIEC is not in possession of the data you requested and that the proper response to your FOIA request of June 30 should have been that the FFIEC has no documents responsive to your request. You may wish to contact the individual supervisory agencies (the Board, the OCC, and the FDIC) regarding the information relating to that agency's regulated Reporters.</p>
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