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| WOODBRIDGE INVOLVED SENIOR CITIZENS, ROSE BARILLA, on behalf of herself and all others similarly situated, | : SUPERIOR COURT OF NEW JERSEY LAW DIVISION : MIDDLESEX COUNTY |
| Plaintiffs, | : |
| -vs- | : Docket No. L-66688-79 |
| WOODBRIDGE HOUSING AUTHORITY, and EUGENE FINN, in his capacity as Director of the Woodbridge Housing Authority, | : Civil Action |
| Defendants. | : |

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PLAINTIFF's BRIEF IN SUPPORT
OF MOTION FOR SUMMARY JUDGMENT

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## STATEMENT OF THE CASE

On August 6, 1980, plaintiffs' filed a Two Count Complaint (Pa 1 - Pa 7), the First Count of which alleged that the defendant, Woodbridge Housing Authority (hereinafter "Authority" or "WHA"), improperly denied plaintiffs' request, made pursuant to N.J.S.A. 47:1A-1 et seq., the Right to Know Law, for disclosure of certain public records. Given that there are no material factual issues in dispute, plaintiff contends that this matter is ripe for Summary Judgment in accordance with the standards set forth in R. 4:46-2.

Plaintiff, Woodbridge Involved Senior Citizens (hereinafter "WISC"), is a not-for-profit corporation, organized under the laws of New Jersey. WISC has members who are low income senior citizens and who are currently on waiting lists for admission into public housing complexes managed by the defendant Authority. WISC initiated its request to inspect and copy waiting lists maintained by the Authority as a result of complaints received from both members and nonmembers who had applied for senior citizen public housing. Typically, said complaints related to the length of time that applicants have had to wait for admission into public housing as well as well as to the difficulty experienced in obtaining information concerning an applicants' place on the waiting list and/or an approximate date for admission. Moreover, concern was expressed to WISC that applicants for public housing were not being admitted in proper sequence from the waiting list. (Pa 26).

Accordingly, WISC requested that waiting lists, with financial

and confidential information deleted, be made available for inspection. (Pa 19, Pa 24). If disclosure is ordered, public interest organizations, such as WISC, would be able to perform a valuable watch dog role, thereby reassuring applicants that the defendant Authority is admitting persons in proper sequence. Disclosure would also shed needed light upon an admissions process and waiting list system which are currently sources of significant confusion to many applicants and the general public.

The nature of the waiting list system was made clear by the testimony of William Katchen, the Assistant Director of the Authority, during depositions conducted on December 5, 1980. During the course of said depositions, it was ascertained that the defendant Authority maintains two master lists for admission into senior citizen public housing; one for studio apartments and one for one bedroom apartments. (T 54-11). [1] Said lists are in turn each divided into five sublists according to rent or income ranges prescribed by Housing Authority Resolution number 230. (T 45-15, Pa 18). Thus, for senior citizen public housing alone the defendant Authority maintains ten different lists. It is these ten lists which are the subject of plaintiffs' disclosure request; a request which plaintiffs emphasize has been made, not for any self-serving ends, but rather in an effort to advance the interests of hundreds of senior citizens who are applicants or potential applicants for public housing in the City of Woodbridge.

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1. "T" refers to transcript of depositions of Rose Barilla, plaintiff, and William Katchen, Assistant Director of the defendant Authority, taken on December 5, 1980. A copy of said transcript is attached hereto.

POINT I: DISCLOSURE OF WAITING LISTS MAINTAINED BY THE WOODBRIDGE HOUSING AUTHORITY IS REQUIRED UNDER THE NEW JERSEY RIGHT TO KNOW LAW.

Even prior to the enactment of the Right to Know Law, N.J.S.A. 47:1A-1 et seq., New Jersey Courts recognized the importance of allowing access to public records. Thus in Moore v. Mercer County Board of Chosen Freeholders, 76 N.J. Super 396 (App. Div. 1962), modified in 39 N.J. 26 (1962), the Court quoted, with approval, the following passage from Cross, The People's Right to Know, (1953), pages xii-xiv:

> Citizens of a self-governing society must have the *legal* right to examine and investigate the conduct of its affairs, subject only to those limitations imposed by the most urgent public necessity. To that end they must have the right to simple, speedy enforcement procedure geared to cope with the dynamic expansion of government activity.
>
> These rights must be elevated to a position of the highest sanction if the people are to enter into full enjoyment of their rights to know. Freedom of information is the very foundation for all those freedoms that the First Amendment of our Constitution was intended to guarantee.

Affirming this policy the State Legislature in 1963 enacted the Right to Know Law. Therein the Legislature declared that it is the State's public polciy to ensure that public records are readily accessible for examination by private citizens. The Right to Know Law, N.J.S.A. 47:1A-1 et seq. affords broad access to public records, regardless of whether or not a citizen can show a personal or particular interest in the material requested. Ramer v. Byrne, 154 N.J. Super 463 (Law Div. 1977), affid. 162 N.J. Super 455 (App. Div. 1978); Irval Realty v. Board of Public Utility Commissioners, 61 N.J. 366 (1972).

Given that the purpose of the Right to Know Law is to promote a free flow of information so as to insure an informed citizenry, the inspection of public records will be prevented only where on balance more harm than good will result to the public interest. Nero v. Hyland, 76 N.J. 203 (1978); Guarriello v. Benson, 90 N.J. Super 233 (Law Div. 1966). Thus, in Nero, supra, the New Jersey Supreme

Court denied disclosure of a character investigation report upon finding that the public interest in the appointment of able and honest government officials far outweighed the plaintiff's purely personal interest in the information sought.

N.J.S.A. 47:1A-2 sets forth the requirements for disclosure of public records as follows:

> Except as otherwise provided in this Act or by any other statute, resolution of either or both houses of the Legislature, executive order of the Governor, rule of court, any Federal law, regulation or order, or by any regulation promulgated under the authority of any statute or executive order of the Governor, all records which are required by law to be made, maintained or kept on file by any board, body, agency, department, commission or official of the State or of any political subdivision thereof or by any public board, body, commission or authority created pursuant to law by the State or any of its political subdivisions, or by any official acting for or on behalf thereof shall, for the purposes of this Act, be deemed to be public records. Every citizen of this State, during the regular business hours maintained by the custodian of any such records, shall have the right to inspect such records. ...

Under the above-cited Statute there can be little doubt that the Woodbridge Housing Authority is an "Authority" created pursuant to law by the State or one of its political subdivisions. See N.J.S.A. 55:14A-4; Housing Authority of City of Asbury Park v. Richardson, D.C., 346 F. Supp 1027 (D.N.J. 1972); O'Keefe v. Dunn, 89 N.J. Super 383 (Law Div. 1965).

Nor can it be seriously argued that waiting lists are not records "required by law to be made, maintained or kept of file ..." Pursuant to 24 C.F.R. 880.603 (b)(2), if no suitable unit is available in a public housing project, an eligible applicant must be placed on a waiting list maintained by the Public Housing Authority. Moreover, the HUD Public Housing Occupancy Handbook, 7465.1 REV, section 2-16 (hereinafter "HUD Handbook"), states that:

> An eligible applicant is to be assigned an appropriate position on a waiting list for admission based upon type and size of unit required, factors affecting preference, and date and time of application recieved. Eligible families must then be chosen in sequence from the waiting list as vacancies occur.

N.J.S.A. 47:1A-1 et seq. also provides for the exemption of certain public records from disclosure. Perhaps the clearest exemption is the one contained in N.J.S.A. 47:1A-3 for records relating to an investigation in progress. Self-evidently, this exemption is clearly inapplicable to the instant matter. N.J.S.A. 47:1A-2 further excludes from the public domain records specificially prohibited from disclosure by Federal or State law, regulation or executive order. However, this provision does not empower the government to deny access to public records via the promulgation of regulations or executive orders, unless otherwise necessary for the protection of the public interest. Irval Realty, supra. Finally, N.J.S.A. 47:1A-1 allows for non-disclosure even when there is no applicable Federal or State law, regulation or executive order if necessary for the public's protection.

Although there are no New Jersey cases directly on point, ordering access to public housing waiting lists is not without some precedent. In at least two instances Federal Courts have approved the publication of waiting lists maintained by local housing authorities. In Delaware County Welfare Rights Organization v. Trosino, No. 72-1401 (E.D.Pa., February 25, 1975), reported at 8 Clearinghouse Review 878, the Court approved stipulations by counsel directing the local authority to compile at least six times yearly, and to post in a public area of its offices, waiting lists arranged in chronological order, and showing, where applicable, an applicant's priority status. Similarly, an order entered by the District Court in Gautreaux v. Chicago Housing Authority, No. 66-C-1459 (N.D.Ill., 1969), reported at Poverty Law Reporter, paragraph 2735.67, required the Chicago Housing Authority to make public its available waiting lists. This was one of many orders entered by the Northern District Court of Illinois in an effort to desegregate public housing in Chicago. See also Gatreaux v. Chicago Housing Authority, 296 F. Supp. 197 (E.D.Ill. 1969), 436 F.2d. 306 (7th Cir. 1970); 342 F. Supp. 827 (E.D.Ill. 1972); 480 F.2d. 210 (7th Cir. 1973); 503 F.2d. 930 (7th Cir. 1974).

POINT II: THE FEDERAL PRIVACY ACT OF 1974, 5 U.S.C.A. 552(a) ET SEQ. IS NOT A BAR TO DISCLOSURE.

Herein the defendant Authority has alleged that the Federal Privacy Act of 1974 prohibits disclosure. (Pa 21). However, the defendant Authority misconstrues the legislative purpose of this Act, which was enacted as a result of escalating concern over the voluminous dossiers collected on the conduct and activities of private citizens by various agencies and executive departments of the Federal government. To regulate and guard against the improper collection, maintainence and dissemination of information by such Federal agencies the Privacy Act was passed. Said Act permits individuals: to determine what records pertaining to them are collected, maintained and dessiminated; to ensure that the dissemination of information is for a lawful purpose; and; to gain access to their records.

Moreover, the Privacy Act only applies to Federal departments and agencies which, as defined by 5 U.S.C.A. 552(e) include any Federal executive department, military department, Federal government corporation, or other establishment in the executive branch of the government or any independent regulatory agency. Plaintiffs contend that the WHA does not fall within this definition of "agency". Even assuming, arguendo, that the WHA is an agency which comes within the purview of the Federal Privacy Act, this Act does not operate as a bar to the release of the information requested. [2]

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2. It should be noted that by letter dated May 14, 1980, (Pa 22), WISC, pursuant to the Freedom of Information Act, requested access to Woodbridge Housing Authority waiting lists from HUD and in a letter dated July 1, 1980, (Pa 19), WISC urged the Authority to reconsider its decision with regard to "its request brought pursuant to the New Jersey Public Records Act and The FOIA. ..." Clearly, if the Privacy Act definition of "agency" applies to the Authority then the Freedom of Information Act is similarly applicable and plaintiff asserts its right to the requested waiting lists thereunder.

If in fact the WHA is a Federal agency and is accordingly bound by the provisions of the Privacy Act, then a fortiori the provisions of the ~~Privacy~~ FOIA ~~Act~~, U.S.C.A. 552 et seq., are also binding and would supercede the New Jersey Right to Know Law. Therefore, it is in the context of a Freedom of Information Act request that the Privacy Act has generally been raised as prohibiting disclosure.

When objections have been raised to the release of information under the Freedom of Information Act (hereinafter "FOIA") based upon the Privacy Act, Federal Courts have uniformly held that the latter is not an additional bar to disclosure of information requested under the FOIA, if the FOIA would otherwise require disclosure. Only when an FOIA exemption to disclosure applies and the government agency involved wishes to disclose anyway does the Privacy Act become operative. Only then does the Privacy Act prevent disclosure unless the permission requirement is fulfilled.

For example, Sears Roebuck,Inc. v. General Services Administration, 552 F.2d. 1378 (D.C.Cir. 1977), cert. den. 434 U.S. 826, 98 S.Ct. 74, 54 L.Ed.2d. 84 (1977), the Circuit Court held that the Federal Privacy Act does not alter the procedure for weighing the public interest in disclosure under FOIA exemption 6 cases.[3] The Court went on to note that the Privacy Act puts nothing further in the scales to be weighed when considering a disclosure request under the FOIA.

In U.S. v. Brown, 562 F.2d. 1144 (9th Cir. 1977), the government asserted that prison records were not discoverable under the FOIA since such records were protected by the Privacy Act of 1974. Nevertheless the Ninth Circuit found that the Privacy Act contains a specific exemption for material which is required to be released under the FOIA. 5 U.S.C.A. 552a(b)(2).

Lower Courts have adopted and applied the reasoning of the

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3. Exemption 6 of The FOIA, 5 U.S.C.A. 552(b)(6), specifies that personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, are exempt.

Circuit Courts. In Providence Journal Co. v. FBI, 460 F.Supp. 762 (D.R.I., 1978), the plaintiff attempted to obtain, by FOIA request, logs and memoranda relating to its electronic surveillance. Therein the Court held that an agency which is required to disclose material under the FOIA, can release it without bringing into play the Privacy Act requirement that permission first be obtained. In support of this finding the District Court cited S.Rep.No. 93-1183, reprinted in U.S. Code Cong. and Admin. News, p. 6916, stating that "disclosure requirements of the Privacy Act do not apply ... when the disclosure would be required or permitted by the FOIA ..." 460 F. Supp. at 767, Fn. 9.

Finally, in Disabled Officers Assoc. v. Rumsfeld, 428 F.Supp. 454 (D.D.C., 1977), the plaintiffs successfully attempted to obtain lists of names and addresses of retired disabled officers from the Department of Defense. The Defense Department argued that "disclosure was prohibited by the spirit, if not the letter of the Privacy Act of 1974, which precludes Federal agencies from selling or renting individual's names or addresses. The Court held that this provision does not ban disclosure given specific language stating that names and addresses otherwise permitted to be made public would not be withheld.

Thus, relevant case law clearly indicates that where the release of information is not prohibited by the FOIA, the Privacy Act does not operate as an additional bar.

POINT III: THE BENEFITS OF DISCLOSURE TO THE PUBLIC AND TO THE PLAINTIFFS OUTWEIGH ANY POSSIBLE ADVERSE EFFECTS UPON THE PUBLIC INTEREST.

Given that the Privacy Act does not bar disclosure and given that the Authority has cited no other Federal or State law, regulation or executive order which prohibits access, the Authority must accordingly demonstrate that the release of the requested records will so adversely affect the public interest as to warrant non-disclosure. Presumably the Authority will argue that disclosure, even if not violative of the Privacy Act, would nevertheless constitute an infringement upon public housing applicants' privacy rights and as such would be detrimental to the public interest. Although, New Jersey's Right to Know Law contains no specific exemption for materials, which if released, would be an invasion of privacy, the authors of the FOIA did anticipate this contingency and wrote into the Act certain exemptions in this regard.

The two exemptions of particular relevance to the instant matter are those which appear at 5 U.S.C.A. 552(b)(4) and at 5 U.S.C.A. 552(b)(6). While plaintiffs recognize that the application of the two aforementioned provisions is not necessarily dispositive for purposes of this action, said exemptions may provide guidance in assessing the propriety of the defendant Authority's denial of WISC's request. See Nero, supra, wherein the New Jersey Supreme Court, in its deliberations concerning a Right to Know dispute, also looked to Federal Court cases interpreting the FOIA.

A) UNDER 5 U.S.C.A. § 552(b)(6) DISCLOSURE WOULD BE MANDATED.

In determining whether disclosure would result in an unwarranted invasion of personal privacy, Federal Courts have typically applied a balancing test similar to the one articulated in Rural Housing Alliance v. U.S. Dept. of Agriculture, 498 F.2d. 73 (D.C. Cir., 1979). Therein the Court held that:

> In balancing interests the Court should first determine if disclosure would constitute an invasion of privacy and how severe an invasion. Second, the Court should weigh the public interest purpose of those seeking disclosure, and whether other sources of information might suffice. 498 F.2d at 77.
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> See also United Supermarkets v. N.L.R.B., 149 F.Supp. 407 (N.D.Tex. 1978); Fergueson v. Kelly, 455 F.Supp. 324 (N.D. Ill. 1978); Disabled Officers Assoc., supra.

Accordingly, a finding that disclosure would result in an unwarranted invasion of personal privacy does not in and of itself dictate the withholding of the materials sought. Rather, careful consideration will be given to the potential benefits which might accrue to the public as a result of disclosure. Thus, in Information Acquisition Corporation. v. Dept of Justice, 444 F.Supp. 488 (D.C., 1978), the District Court noted that:

> Even rather substantial invasions of privacy may theoretically be outweighed by a showing of strong public interest in disclosure. 444 F.Supp. at 464 (emphasis added).

Herein, plaintiffs contend that the public has an important interest in the disclosure of the waiting lists maintained by the WHA. Courts have recognized that disclosure of certain information may have the salutory effect of reassuring the public that their government repre-

sentatives are acting responsibly and in good faith as well as encouraging said officials to adhere to mandated procedures. See Providence Journal Co., supra,; Columbia Packing Co., Inc. v. U.S. Dept. of Agriculture, 563 F.2d 495 (1st Cir. 1977). Release of even sanitized waiting lists would allow applicants to better understand and monitor the admissions process. Improper admissions practices, as described by Mr. Katchen and Ms. Barilla during deposition proceedings on December 5, 1980, provide further support for disclosure.

For example, Ms. Barilla testified that she was not always provided with information concerning her place on the waiting list upon request. (T 10-15). This dispite the requirements of 24 C.F.R. 880.603b(2) and Section 2-12a(1) of the HUD Handbook. Nor was the waiting list system ever explained to her. As a result, she was unaware that there existed ten separate waiting lists for senior citizen public housing. (Pa 29). On those rare occasions when she was able to ascertain her standing on the waiting list, Ms. Barilla assumed that she was on a master list organized solely according to apartment size. (Pa 29).

Moreover, although at the time she applied for public housing she was over 62, Ms. Barilla was not notified of her right to complete an application for admission to senior citizen housing. (PA 29). Nevertheless, she was apparently placed on a waiting list for senior housing. However, she is on the senior citizen waiting list for a studio apartment although she requires a one bedroom apartment as indicated by her public housing application.[4] (T 6-15, T 11-19)

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4. Ms. Barilla is virtually blind as a result of cateracts and therefore requires the assistance of her daughter who currently lives with her. (Pa 29).

Had the proper procedure been adhered to,whereby Ms. Barilla would have completed an application for senior housing, this error could have been avoided. Further, Ms. Barilla never received a response to her written request, dated May 17, 1980, for information concerning her current place on the public housing waiting list. (PA 17). If Ms. Barilla had been able to inspect the waiting lists she would have realized that she was on the incorrect list for senior housing and could have brought this error to the Authority's attention. Additionally, Ms. Barilla would have understood that there exist not two but ten different lists for seniors and would have been better able to satisfy herself that applicants were being admitted in proper sequence, assuming this to be the case.

Other Authority policies as described by Mr. Katchen, underscore the benefit of making the waiting lists available for inspection. For example, notwithstanding the requirements contained in the Authority's own Admission and Occupancy Policies and the HUD Handbook, Mr. Katchen acknowledged that applicants are not given written determinations as to acceptance or rejection. (T 56-4, Pa 9). Thus, an applicant who is deemed ineligible does not receive formal written notification setting forth the reasons for this finding. Nor is an applicant notified of his or her right to appeal. It is not unlikely that an applicant who has been rejected may assume that he has been placed on a waiting list and will be contacted when an apartment becomes available. Only upon taking the initiative of writing to or calling the Authority would such an applicant learn of his true status and perhaps be advised of his or right to appeal, albeit, in a belated fashion.

Moreover, Mr. Katchen acknowledged that with the exception of a residency preference no other admissions preferences have ever been utilized by the WHA during his tenure of employment. (T 86-1). It should be noted that the Admissions and Occupancy Policies of the WHA do provide a preference for emergency situations which are in essence described as a state of homelessness. (Pa 11). However, even this "emergency" preference contained in the WHA Policy Statement fails to conform to the requirements of 42 U.S.C.A. 1437d(c)(4)(A) which provides for:

> The establisment of tenant selection criteria which gives preference to families which occupy substandard housing or are involuntarily displaced at the time they are seeking assistance under this Act and which is designed to assure that, within a reasonable period of time, the project will include families with a broad range of incomes and will avoid concerntrations of low-income and deprived families with serious social problems, but this shall not permaintenance of vacancies to await higher income tenants where lower income tenants are available. (emphasis added).

In addition, the Authority's policies with regard to the provision of suitable facilities for the handicapped appears to be lacking. 29 U.S.C.A. 794 prohibits discrimination against handicapped persons by any recipient of Federal funds. Presumably in order to conform to this Federal requirement, ten percent of the apartments in the most recently constructed senior citizen project are specifically equipped to accomodate handicapped persons. Yet the admissions procedure currently in effect potentially perpetuates discrimination against the handicapped. Seniors identified as handicapped are assigned to one of the existing waiting lists based solely upon apartment size and income. Should a handicapped equipped apartment become available, it is offered to the applicant who is at the head of the

appropriate list, regardless of that persons physical status. Equally inappropriate, if a handicapped applicant rejects an offer of an apartment not designed for the disabled, that applicant would be moved to the bottom of the list. (T 81-14). Thus, there is no effort made to correlate vacant handicapped equipped apartments with the needs of disabled applicants. Finally, there appears to be some question as to whether or not the Authority has met the nondiscrimination requirements contained in 24 C.F.R. 860.203. (T 83-10).

Many of the aforementioned irregularities have a direct bearing on the waiting lists maintained by the Authority and serve to highlight the importance of insuring that the admissions process is open to public monitoring and scrutiny to the greatest extent possible.

B) RELEASE OF THE WAITING LISTS WOULD NOT CONSTITUTE AN INVASION OF PRIVACY.

Even prior to analyzing the impact of disclosure on the public interest, Federal Courts will generally ascertain whether the release of personal, medical or similar files will result in unwarranted invasion of privacy. Initially it should be noted that waiting lists may not qualify as "personal, medical or similar files" under 5 U.S.C.A. 552(b)(6). See Getman v. N.L.R.B., 450 F.2d 670 (D.C.Cir. 1971). However, assuming waiting lists would be classified as personal or similar records, it must be determined whether or not they contain sufficiently intimate personal details so as to come within the purview section (b)(6).

Decided cases indicate that this exemption applies only to information which relates to a specific person or individual, involving intimate details of a highly personal nature. Roebels v. E.P.A., 484 F.2d 843 (4th Cir. 1973). Other factors to be considered include whether or not disclosure would be highly embarrassing causing an individual to lose either friends, who might be prejudiced by the released information, or employment opportunities. Plain Dealer v. U.S. Dept. of Labor, 471 F.Supp. 1023 (D.D.C. 1979); Dept. of Air Force v. Rose, 425 U.S. 352, 96 S.Ct. 1592, 48 L.Ed.2d 11 (1976).

Specifically Courts have held that files containing information relating to marital status, legitimacy of children, medical condition, welfare payments, alcoholic consumption, and religious or philosophic beliefs are entitled to protection under 5 U.S.C.A. 552(b)(6). Rural Housing, supra, Wine Hobby U.S.A. v. I.R.S., 502 F.2d 133 (3rd Cir. 1974); Local 30, United Slate, Tile, etc. v. N.L.R.B.,408 F.Supp. 520 (E.D.Pa. 1976); Joseph Horne Co. v. N.L.R.B., 455 F.Supp 1383 (W.D.Pa. 1978).

Ordering the release of the names and addresses of employees eligible to vote in certain N.L.R.B. elections, the Court in Getman, supra, found that such information could not be described as "highly personal". Further, Courts have ordered the disclosure of names and addresses of retired disabled officers as well as the release of personal inforamtion, including marital status and employment status, of persons arrested or charged with the violation of Federal criminal statutes. See Disabled Officers Assoc., supra,; Tennessee Newspaper Inc. v. Levi, 403 F.Supp. 1318 (M.D.Tenn. 1975).

The only information contained on the waiting lists maintained by the Authority is the applicants name, the date of application, and the amount of rent said applicant would pay upon admission. Aside from the fact that a given individual has applied for public housing the only other information which could possibly be construed as of a "highly personal nature" is the rental rate. However, financial information is generally viewed as coming within exemption 4, 5 U.S.C.A. 552(b)(4), rather than exemption 6. Further, WISC has made it abundantly clear that it is not seeking access to any financial information and would have no objection to the deletion of such data. (Pa 19). Nor would it be necessary to label the various lists according to income range. Simply providing the ten different lists for senior housing based upon apartment size would be adequate and would not divulge any "highly personal" information. Plaintiffs maintain that the release of the waiting lists, even in some highly sanitized form, is infinitely preferable to the blanket withholding of the requested records. As Federal Courts have pointed out, whenever possible the balance should tilt towards disclosure. Providence Journal Co. v. FBI, 460 F.Supp. 778 (D.R.I., 1978); Dept. of Air Force v. Rose, supra. Added support for the release of requested information, with confidential material deleted, appears at 5 U.S.C.A. 552(b) which provides that "any reasonably segregable portion of a record shall be provided to any person requesting such record with the deletion of the portions which are exempt under this subchapter."

C) WAITING LISTS MAINTAINED BY THE AUTHORITY DO NOT CONTAIN "FINANCIAL MATTER" AS THAT TERM IS USED IN 5 U.S.C.A. 552b(4).

In National Parks and Conservation Association v. Morton, 498 F.2d 765 (D.C.Cir., 1974) the Circuit Court construed 5 U.S.C.A. 552(b)(4) of the FOIA which exempts "trade secrets and commercial or financial information" as follows:

> Commercial or financial matter is "confidential" for purposes of the exemption if disclosure of the information is likely to have either of the following effects: (1) to impair the governments 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. 498 F.2d at 770.

If the above criteria are applied, it is evident that the requested information would be not withheld based upon the section 4 exemption. Disclosure in this instance would neither impair the governments ability to obtain necessary information nor cause substantial harm to the competitive position of the person from whom the information was obtained.

## CONCLUSION

To summarize:

1) Neither the Privacy Act nor any other State or Federal law, regulation or executive order specifically prohibits disclosure;

2) The public interest would be well served by disclosure;

3) Disclosure would not result in the release of highly personal or intimate information and would therefore not constitute an unwarranted invasion of privacy.

For the above stated reasons it is respectfully submitted that plaintiff's Motion for Summary Judgment should be granted.

Respectfully submitted,

MIDDLESEX COUNTY LEGAL SERVICES CORP.

DATED: 1/27/81

BY: _____
STEVEN P. WEISSMAN,
Staff Attorney