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U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
Wage and Hour Division
WASHINGTON, D.C. 20210

(Gen.) F.O.I.A.



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NOV 26 1976

This is in regard to your letter of November 11, 1976, received in this office on November 18, 1976. You request, pursuant to 5 U.S.C. sec. 552(a)(3), any and all correspondence between this Department or its employees and the representatives of [redacted], pertaining to the hearings to be held on December 7, 1976, to determine the reasonable cost or fair value of facilities furnished to employees by [redacted], and its labor contractors.

Exemption 7(A) of the Freedom of Information Act and the Departmental regulations at 29 CFR Part 70.27 permit the withholding of documents where disclosure would interfere with law enforcement proceedings. It is my determination that the release of information from our investigative file on [redacted], at this time would result in the premature disclosure of the Department's potential case in the hearing scheduled to be held on December 7, 1976. In view of the pendency of this hearing, it is my belief that the facts of this case fall within Exemption 7(A) and any disclosure at this time may reasonably be expected to result in harm to the Department's December 7th hearing or other possible litigation in this matter.

An applicant whose request for a record has been denied may file an appeal within 90 days from the date of denial. The appeal shall state, in writing, the grounds for appeal, including any supporting statements or arguments. The appeal should be addressed to the Solicitor of Labor, Department of Labor, 200 Constitution Avenue, N. W., Washington, D. C. 20210. To expedite the processing of the appeal the envelope should be clearly marked: F.O.I.A. Appeal.

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As a matter separate from the F.O.I.A., you may wish to address your request for portions of the record in this matter to the Administrative Law Judge who will be presiding at the December 7th hearing. He will

be in a position to determine what may be disclosed and will be able to respond to any requests which you may address to him.

We may point out that the express statutory language of section 3(m) of the Fair Labor Standards Act defines "wage" paid to any employee to include the reasonable cost to the employer of furnishing board, lodging or other facilities. This section also contains provisions under which the fair value of the board, lodging or other facilities, rather than the reasonable cost to the employer, may be used. Sections 531.3, 531.4 and 531.5 of the enclosed copy of 29 CFR Part 531, contain the methods under which the reasonable cost or fair value under section 3(m) of the Act is determined.

The obvious purpose of section 3(m) of the Act is to insure that employees who have board, lodging or other facilities included as a part of their wages be treated reasonably or fairly in the evaluation thereof by their employers. The reason for holding the subject hearing is, therefore, to insure that the purpose and intent of section 3(m) is carried out with respect to those employees employed by [REDACTED] and its labor contractors.

Sincerely,

by Warren D. Landis
Deputy Administrator
Wage and Hour Division

Ronald J. James
Administrator

Enclosure