

Appraisal Subcommittee

Federal Financial Institutions Examination Council

December 16, 1997

Donald E. Kelly
Vice President
The Appraisal Institute
2600 Virginia Avenue, N.W.
Suite 200
Washington, D.C. 20037

Dear Mr. Kelly:

This letter responds to your October 30, 1997 letter to me, which was received on October 31, 1997. Your letter appeals our staff's September 26, 1997 written determination to deny your September 4, 1997 Freedom of Information Act ("FOIA") request for "a copy of the Task Force Report on the Understandability and Enforceability of USPAP" [Report]." Pursuant to 5 U.S.C. 552 and Appraisal Subcommittee ("ASC") regulations at 12 CFR part 1102, subpart D, I am authorized to respond to your appeal.

After considering the facts and merits of your appeal, I believe that the Report is exempt from disclosure under FOIA for the reasons stated in the staff's September 26, 1997 letter. Therefore, your appeal is denied.

In your October 30, 1997 letter, you represented that our "denial of [your] request for production of the Report prevents [you] from exercising [your] obligations and responsibilities as a member of The Appraisal Foundation Advisory Council ("TAFAC"), a body duly constituted by the Bylaws of The Appraisal Foundation to advise the ASB [Appraisal Standards Board] and the Appraiser Qualifications Board . . . [You are] hardpressed to understand as a matter of law and policy why, as a member of TAFAC, [you are] privy -- indeed, obligated -- to receive and review [the ASB's USPAP Working Draft], but [are] not entitled to receive the analysis underlying and explaining 'working Draft' contained in the Task Force Report."

I recommend that you direct your questions to the ASB, which determined at the beginning of this task force's work that the Report would be confidential. We note that no one on TAFAC received a copy of the Report. Otherwise, it would have been very difficult, if not impossible, for the ASB to recruit expert volunteers to serve on the Task Force preparing the Report. The ASC, the Federal financial institutions regulatory agencies, other Federal agencies, the State appraiser regulatory agencies and other interested parties must rely on the ASB and its task forces to voluntarily tackle significant issues and to have the necessary freedom to discuss and analyze those issues. We must honor the ASB's request for confidential treatment.

In addition, we disagree with several of your statements and assumptions in your October 30th letter. The ASB, and its parent organization, the Appraisal Foundation, are not governmental entities subject to FOIA or the Administrative Procedures Act. The Report cannot be validly characterized as a "notice of proposed rulemaking" under the Administrative Procedures Act. The Report, in fact, does not propose any specific amendatory language. The ASC is not authorized by

Title XI to engage in rulemaking pertaining to appraisal standards and requirements. And, the ASC did not require the creation and delivery of the Report. The Report was the product of a grant contract, a voluntary relationship, between the ASC and the Appraisal Foundation. While we agree that the Report was a deliverable under the contract, that fact alone does not change the voluntary nature of the contract. The use of the word, "audit," by the ASB in its September 18, 1997 Request for Confidential Treatment was unfortunate. The ASC did not in any way "audit" the Report. Our receipt of the Report merely confirmed that work was done as promised under the contract. In fact, we now have returned the Report to the ASB, and no copies are in our possession.

If you consider this decision to be improper, you may, under 5 U.S.C. 552(a)(4)(B), file a complaint in United States District Court. If you have any further questions, please do not hesitate to contact us.

Sincerely,

Herbert S. Yolles
Chairman