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**Appraisal Subcommittee**  
*Federal Financial Institutions Examination Council*

September 18, 1997

Ms. Shirley L. Berry  
Executive Director  
Arizona Board of Appraisal  
1400 West Washington, Suite 360  
Phoenix, AZ 85007

Dear Ms. Berry:

This letter responds to your August 19, 1997 letter to Ben Henson, the ASC's Executive Director, which was received on August 20, 1997. Your letter appeals Mr. Henson's written determination of July 15, 1997 to deny your June 18, 1997 Freedom of Information Act ("FOIA") request for "a copy of the portion of the minutes of the Appraisal Subcommittee ["ASC"] meeting in which the disposition of [complaint [redaction]] was discussed . . . ." Pursuant to 5 U.S.C. 552 and ASC regulations at 12 CER part 1102, subpart D, I am authorized to respond to your appeal.

Your appeal is based on both procedural and substantive grounds. Regarding procedures, you assert that the ASC's action "is untimely and . . . waived"; and, if the records involve "the open session portion" of an ASC meeting, "they are not subject to exemption . . . ." Regarding substance, you dispute that the portion of the minutes requested is subject to the exemptions listed in our July 15 letter. More specifically, you disagree that the ASC "is a law enforcement agency as contemplated in 5 U.S.C. 552(b)(7)(E)," and that disclosure "would reveal investigative techniques and procedures." You also state that the exemption in 5 U.S.C. 552(b)(8), which exempts matters "contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions," is inapplicable.

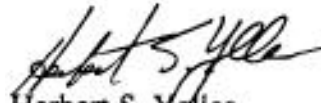
The procedural grounds are not valid. First, the ASC received your June 18, 1997 FOIA request on June 30, 1997, and had ten working days, until July 15, 1997, to respond to it. The July 15, 1997 letter therefore was timely. Second, ASC meetings are not open to the public because the ASC is not subject to the open meeting provisions of the "Government in the Sunshine Act."

After reviewing the requested portions of the minutes and further considering the merits of your substantive position, I agree that the exemptions listed in our July 15 letter do not apply in this specific instance. Therefore, release of the requested material is in order unless the records, or portions of the records, may be exempted from disclosure under another proper basis. In that regard, I believe that certain portions of the requested material are properly exempt under 5 U.S.C. 552(b)(5) as "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 the agency" and under 5 U.S.C. 552(b)(6) as "personnel and medical and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."

Nevertheless, the ASC may voluntarily waive FOIA exemptions in any specific matter, consistent with guidelines published by the Department of Justice. I have determined that such a waiver respecting 5 U.S.C. 552(b)(5) is appropriate. Accordingly, the requested documents are enclosed, with appropriate redactions to protect personal privacy interests.

If you have any further questions, please do not hesitate to contact us.

Sincerely,



Herbert S. Yolles  
Chairman

Enclosure