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Watch**[®]

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VIA EMAIL (ldutton@fulldisclosure.net)

June 16, 2011

Ms. Leslie Dutton
FULL DISCLOSURE NETWORK
337 Washington Blvd., Suite #1
Marina del Rey, CA 90292

Re: Freedom of Information Act Disclosure

Dear Ms. Dutton:

You have asked us to provide a legal opinion about the release, by Full Disclosure Network (“FDN”), of certain records obtained by a third party from the U.S. Department of Housing and Urban Development (“HUD”) regarding the development of an apartment complex, “Shores,” in Marina del Rey, Los Angeles County, California. Based on information you have provided us, it is our understanding that the relevant facts are as follows:

On or about March 23, 2011, David Barish, co-director of an association of Marina del Rey residents, sent a Freedom of Information Act (“FOIA”) request to HUD seeking records about the “Shores” project. HUD produced the requested records to Barish in approximately late April 2011, and Barish in turn forwarded the records to another Marina del Rey resident, Daniel Gottlieb. On May 1, 2011, Gottlieb forwarded the HUD records to FDN, which scanned the records, stored them on FDN’s computer server, and sent Gottlieb a series of 17 links for accessing the scanned records on FDN’s website. On May 2, 2011, Gottlieb sent a letter to HUD’s Inspector General hotline in which he referenced information contained in at least one of the HUD records. On May 21, 2011, Gottlieb sent a letter to Los Angeles County Chief Executive Officer William T. Fujioka regarding the “Shores” project in which Gottlieb specifically identified two of the links (<http://fulldisclosure.net/Documents/HUD-1.pdf> and <http://fulldisclosure.net/Documents/HUD-11.pdf>) where the HUD records could be accessed on FDN’s server. From these disclosed links, it also was possible to identify all of the other links where the HUD records could be accessed on FDN’s server. Gottlieb also sent copies of his May 21, 2011 letter to the Los Angeles County Counsel and representatives of the media, including the *Los Angeles Times*, *The Argonaut*, and *LA Weekly*. On June 9, 2011, HUD sent Barish a letter asserting that its release of the HUD records may not have been proper and that it was investigating and analyzing the matter. The letter demanded that Barish cease and desist from making any disclosure of the HUD records and provide information about any and all

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dissemination, distribution, use or copying of the records. Barish forwarded HUD's June 9, 2011 letter to Gottlieb, who forwarded it to FDN on or about June 10, 2011.

We are not aware of, and have not identified, any obligation or limitation that FOIA imposes on requestors' dissemination or use of records produced pursuant to FOIA, much less any obligations or limitation that FOIA imposes on the dissemination or use of such records by "downstream" recipients like Gottlieb and FDN. In addition, we believe it is important that the letter is not addressed to, and does not make any requests or demands of, "downstream" recipients such as Gottlieb or FDN. Consequently, we do not believe that FOIA presents any obstacle to FDN's dissemination or use of the HUD records.

In addition, we also examined California common law to assess whether the developers of the "Shores" project might be able to assert an invasion of privacy claim against FDN as a result of any use FDN might make of the HUD records. California common law recognizes four types of "invasion of privacy" claims, only one of which, the tort of "public disclosure of private facts," would appear to have any possible applicability. In order to assert a claim for "public disclosure of private facts," a party must plead and prove the following: "(1) public disclosure; (2) of a private fact; (3) which would be offensive and objectionable to a reasonable person; and (4) is not of legitimate public concern." *Shulman v. Group W Productions, Inc.*, 18 Cal. 4th 200, 214 (1998). "Newsworthiness" is both an element of a claim for "public disclosure of private fact" and a constitutional defense to liability for publication of truthful information. *Id.* at 216. In this regard, "the publication of truthful, lawfully obtained material of legitimate public concern is constitutionally privileged and does not create liability under the 'private facts' tort." *Id.* at 227.

It would appear unlikely that the developers of the "Shores" project would file suit against FDN, or any other person or entity, claiming that information the developers provided to HUD in order to obtain a federal loan guaranty was not truthful. Given that HUD produced the records in response to a FOIA request, that FDN obtained the records in good faith from Gottlieb, a third party, and that HUD itself has not affirmatively asserted that its disclosure of the records was improper -- it only claims to be investigating and analyzing the matter -- it would appear difficult for the developers to claim that FDN did not obtain the records "lawfully." It also appears that FDN may have a well-founded argument that the records are of legitimate public concern and are otherwise "newsworthy." Of course, we cannot state with certainty that the developer of the "Shores" project will not seek to assert a claim for "public disclosure of private facts" or how a court would rule on such a claim if it were brought, but, in our opinion, a "public disclosure of private facts" claim would not appear to be well-founded.

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Please do not hesitate to contact us if you have any additional questions or concerns.

Sincerely,

JUDICIAL WATCH, INC.

A handwritten signature in blue ink, appearing to read "Paul J. Orfanedes", with a long horizontal flourish extending to the right.

Paul J. Orfanedes