

March 21, 2006

Mr. Michael Ravnitzky
(b)(6)

Re: Your FOIA Appeal dated February 17, 2006 (06-FOI-00019)

Dear Mr. Ravnitzky:

Late last year, you submitted a Freedom of Information Act (FOIA) request for several NCUA monthly management reports for the years 2001 and 2005. Dianne Salva, NCUA's FOIA Officer/Staff Attorney, responded to your request. You received several hundred pages of responsive documents. Some pages were released in full, some pages were redacted and some pages were withheld in full. We received your February 17, 2006 appeal on February 21st. You only appeal NCUA's withholding of portions of page 47 and the entirety of page 48 of the Management Report dated October 10, 2001. Redactions from these pages were made pursuant to exemptions (b)(5) and (b)(8) of the FOIA, 5 U.S.C. §552(b)(5) & (8). Your appeal is granted in part and denied in part. Portions of page 48 that were previously withheld pursuant to exemption 8 are now released. The information withheld on page 47 continues to be withheld. Exemptions (b)(5) and (b)(8) remain applicable to the redacted portions on enclosed pages 47 and 48. An explanation of the applicable exemptions follows.

Exemption 5

Exemption 5 of the FOIA protects "inter-agency or intra-agency memorandums or letters which would not be available by law to a party ... in litigation with the agency." 5 U.S.C. §552(b)(5). Included within exemption 5 is information subject to the deliberative process privilege. In order for information to qualify for the deliberative process privilege it must be both predecisional and deliberative. Petroleum Information Corporation v. United States Department of the Interior, 976 F.2d 1429, 1434 (D.C.Cir. 1992). The information withheld qualifies as such. The purpose of the deliberative process privilege is "to prevent injury to the quality of agency decisions." NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 151 (1975). Any one of the following three policy purposes have been held to constitute a basis for the deliberative process privilege: (1) to encourage open, frank discussions on matters of policy between subordinates and superiors; (2) to protect against premature disclosure of proposed policies before they are finally adopted; and (3) to protect against public confusion that might result from disclosure of reasons and rationales that were not in fact ultimately the grounds

for an agency's action. Russell v. Department of the Air Force, 682 F.2d 1045 (D.C. Cir. 1982). The first and third policies enumerated in Russell apply in this case. Portions of the management report continue to be withheld pursuant to exemption 5.

Exemption 8

Exemption 8 applies to information "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." 5 U.S.C. §552(b)(8). Courts have interpreted exemption 8 broadly and have declined to restrict its all-inclusive scope. Consumers Union of United States, Inc. v. Heimann, 589 F.2d 531 (D.C. Cir. 1978). In general, all records, regardless of the source, of a financial institution's financial condition and operations that are in the possession of a federal agency responsible for their regulation or supervision are exempt. McCullough v. FDIC, No. 79-1132, 1980 U.S. Dist. LEXIS 17685, at **7-8 (D.D.C. July 28, 1980). Some of the information withheld was gleaned from examination of federally-insured credit unions; therefore it qualifies for withholding pursuant to exemption 8.

The courts have discerned two major purposes for exemption 8 from its legislative history: 1) to protect the security of financial institutions by withholding from the public reports that contain frank evaluations of a bank's stability; and 2) to promote cooperation and communication between employees and examiners. See Atkinson v. FDIC, No. 79-1113, 1980 U.S. Dist. LEXIS 17793, at *4 (D.D.C. Feb. 13, 1980). The purposes of exemption 8 are met; therefore, the information redacted from pages 47 and 48 gleaned from examination information continues to be withheld pursuant to exemption 8.

Pursuant to 5 U.S.C. §552(a)(4)(B) of the FOIA, you may seek judicial review of this determination by filing suit against the NCUA. Such a suit may be filed in the United States District Court where you reside, where your principal place of business is located, the District of Columbia, or where the documents are located (the Eastern District of Virginia).

Sincerely,

/S/

Robert M. Fenner
General Counsel

Enclosures

GC/HMU:bhs
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