



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

LS/YG:DL
SSIC 3212

AUG 07 1985

Sheldon J. Cohn, Esquire
Parkinson, Wolf, Lazar & Leo
Eighteenth Floor
1900 Avenue of the Stars
Los Angeles, California 90067

Dear Mr. Cohn:

This responds to your Freedom of Information Act appeal dated July 10, 1985.

You have challenged the withholding of the following numbered documents: 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 34, 35, 36, 37, 38, 39, 40 and 44. After carefully reviewing each of the above documents, we have determined that the following are nonexempt and have enclosed them with this response: 8, 12, 39, 40 and 44.

With respect to the documents numbered: 18, 21, 24, 25, 27, 28, 29, 30, 31, 33, 34, 35, 36, 37 and 38 we have determined that they fall within the scope of 5 U.S.C. §552(b)(4) which exempts from disclosure "trade secrets and commercial or financial information obtained from a person and privileged or confidential." These documents contain the work product (and attorney-client communications) of attorneys and accountants involving certain financial matters of the Kaiser Permanente Pacific Credit Union. The courts have recognized that these types of records are exempt pursuant to (b)(4). See Indian Law Resource Center v. Department of the Interior, 477 F.Supp 144 (D.D.C. 1979); Miller, Anderson, Nash, Yerke & Wiener v. DOE, 499 F. Supp. 767, 771 (D.Or. 1980).

Additionally, the matters involved in these documents were (are) of importance to this Agency with respect to its regulatory activities involving the Credit Union. The work performed by the attorneys and accountants was conducted, at least in part, to assist this Agency, and therefore, the documents would also be exempt under (b)(5). This exemption authorizes the withholding of "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." Documents such as those being withheld here, that are generated by consultants outside of the Agency, are protected from disclosure under (b)(5). See Soucie v. David, 448 F.2d 1067, 1078 n.44 (D.C. Cir. 1971); Hoover v. Department of Interior, 611 F.2d 1132 (5th Cir. 1980); Lead Industries Ass'n. v. OSHA, 610 F.2d 70 (2d Cir. 1979).

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Lastly, we have also determined that in addition to the above, all of the withheld documents are exempt pursuant to 5 U.S.C. §552(b)(8) as each contains or relates to examination, operating, or condition reports prepared by, or on behalf, or for the use of an agency responsible for the regulation or supervision of financial institutions.

Exemption (8) has been interpreted rather broadly by the courts and would protect from disclosure the documents we have withheld under this exemption, See, In re Knoxville News-Sentinel Co., Inc., 723 F.2d 470 at 476-477 (1983); McCullough v. FDIC, 1 P-H Govt Disclosure Service ¶80,194 (D.D.C. 1980).

Pursuant to 5 U.S.C. §552(a)(4)(B), you may seek judicial review of this appeal determination by filing suit to enjoin NCUA from withholding the records and to order the production of these records. Such suit may be filed in the District Court of the United States in the district in which you reside, in the district in which your principal place of business is located, in the district in which the records are located (San Francisco), or in the District of Columbia.

Sincerely,

(S)

ROBERT M. FENNER
Acting General Counsel

Enclosures