



NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

Office of General Counsel

Mr. John P. Palm
Financial/Credit Risk Analyst
Travelers Express Company, Inc.
5075 Wayzata Boulevard
Minneapolis, MN 55416

GC/HM/COOL
3212
5/5/86

Dear Mr. Palm:

This responds to your Freedom of Information Act (FOIA) appeal dated April 18, 1986.

The appeal is for the denial of the release of Early Warning System (EWS) codes for several hundred credit unions that you requested pursuant to your letter of March 19, 1986. NCUA's initial letter of denial was dated April 4, 1986.

An EWS code is assigned to a credit union based on NCUA's examination (including supervisory visits), and analysis of financial performance. As stated in the April 4, 1986, letter, the request for EWS codes was denied pursuant to the exemption provided in 5 U.S.C. §552(b)(8) of the FOIA. This exemption relates to any 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." This exemption has been interpreted quite expansively by the courts. A broad and all inclusive scope has been given to the exemption. (See McCullough v. FDIC, 1 GDS ¶80,184, D.D.C. 1980.) Records including the findings of examinations are exempt pursuant to exemption 8. (See Atkinson v. FDIC, 1 GDS ¶80,084, D.D.C. 1980.) Inasmuch as the EWS codes are assigned as a result of the examination process, they are exempt.

Ruling

The appeal of the denial of the FOIA request of John Palm for EWS codes is hereby denied. The records requested are exempt from disclosure pursuant to 5 U.S.C. §552(b)(8).

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

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United States in the district where you reside, in the district in which your principal place of business is located, in the district in which the records are located, or in the District of Columbia.

Sincerely,

RS

ROBERT M. FENNER
General Counsel

HMU:cch

cc: Ben Henson
Director, Administrative Office