



NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

Office of General Counsel

GC/YG:sg
3212

Mark O. Rorem, Esq.
Fisher & Hurst
Four Embarcadero Center
San Francisco, CA 94111

Dear Mr. Rorem:

This responds to your Freedom of Information Act appeal dated June 30, 1986. Specifically, you appeal the withholding of certain documents and assert that the absence of any descriptive information about the withheld documents make it difficult to determine whether it was reasonable for the National Credit Union Administration (NCUA) to withhold those documents.

After carefully reviewing the withheld documents, I have determined that some of the documents are nonexempt. I have enclosed these documents as part of this response. The remaining documents, of which there were at least 100, continue to be withheld. These documents are withheld pursuant to 5 U.S.C. §§552(b)(5), (6), (7) and/or (8).

The documents withheld pursuant to 5 U.S.C. §552(b)(5) come under two general categories:

1. Intra-agency memoranda or letters which would not be available by law to a party in litigation with the agency; and
2. Documents and other memoranda prepared by an attorney in contemplation of litigation, or confidential communications between an attorney and the agency relating to a legal matter for which NCUA has sought professional advice.

As you may know, Exemption 5 is quite broad and encompasses many statutory privileges as well as privileges recognized by case law. See, United States v. Weber Aircraft Corp., 104 S.Ct. 1488, 1493(1984). The intra-agency memoranda and attorney work-product or attorney-client communications withheld here are protected from disclosure under Exemption 5. See, NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 149(1975); FTC v. Grolier, Inc., 462 U.S. 19, 26(1983).

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The documents withheld pursuant to 5 U.S.C. §552(b)(6) contain personal financial information of several members of the credit union or other personal information concerning individuals other than Robert or Hideko Sharp, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. The Supreme Court has held that all information which applies to a particular individual qualifies for Exemption 6 consideration. See, Department of State v. Washington Post Co., 456 U.S. 595, 599-603(1982). It has been determined that the privacy interest of the individuals identified in the withheld documents is greater than the interest of the requester, particularly since there is no public interest in disclosure, See, Lloyd & Henniger v. Marshall, 526 F. Supp. 485, 487 (M.D. Fla. 1981).

Documents collected for investigatory purposes, the release of which would interfere with enforcement proceedings (civil or criminal) have been withheld pursuant to 5 U.S.C. §552(b)(7). Reports of investigations into specific allegations of wrongdoing by the Credit Union or its officials/employees are representative of the types of documents we have withheld under Exemption 7.

The remaining documents were withheld pursuant to 5 U.S.C. §552(b)(8). Each of the withheld documents, including many withheld pursuant to other exemptions, contain or relate to examination, operating or condition reports prepared by, or on behalf, or for the use of NCUA as an agency responsible for the regulation and supervision of Federal credit unions (financial institutions). See, Gregory v. FDIC, 631 F.2d 896, 898 (D.C. Cir. 1980); McCullough v. FDIC, 1 P-H Govt. Disclosure Service ¶80, 194 (D.D.C. 1980). Consumers Union v. Heimann, 589 F.2d 531, 533 (D.C. Cir. 1978). For example, most of the documents withheld pursuant to Exemption 8 and many of the documents withheld pursuant to Exemptions 5, 6 and 7 are exam reports or related financial data, and correspondence concerning examinations and exam reports.

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,

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Robert M. Fenner
General Counsel