



NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

October 29, 1986

Office of General Counsel

GC/HMU:sg
3212

Mr. Robert W. Libbey
Assistant General Manager
Frontier Alaska State Credit Union
3500 Eide Street
Anchorage, Alaska 99503

Dear Mr. Libbey:

This is in response to your Freedom of Information Act (FOIA) appeal dated September 30, 1986, and received by this Office on October 6, 1986.

Your original FOIA request was dated September 15, 1986, and was sent to Region VI of the NCUA located in Walnut Creek, California. Region VI denied your request for copies of all bid documents sent to NCUA regarding the proposed Purchase and Assumption Agreement with Alaska Teamsters Federal Credit Union.

We uphold the denial of all bid documents based on exemptions (b)(4) and (b)(8) of the FOIA (5 U.S.C. §552(b)(4) and (b)(8)). Exemption (b)(8) 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.) The exemption has been held applicable to reports of financial institutions that are no longer in operation. (See Gregory v. FDIC, 631 F.2d 896 (D.C.Cir. 1980).) The NCUA is responsible for the examination of Federal credit unions. The bid documents were based on and related to information contained in examination reports prepared by the NCUA. The fact that such examination reports came from a closed institution does not preclude use of exemption (b)(8). The bid documents meet the requirements of exemption (b)(8). Exemption (b)(4) applies, in part, to information that is commercial or financial, obtained from a person, and privileged or confidential. Information on financial condition and/or that which the submitter has a "commercial interest" in has been held to be commercial or financial. (See Washington Post Co v. HHS, 690 F. 2d. 252, D.C.Cir. 1982 and Public Citizen Health Research Group v. FDA, 704 F. 2d 1280, D.C. Cir. 1983).)

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The term "person" refers to a wide range of entities, including corporations. (See Comstock Int'l. Inc. v. Export-Import Bank, 464 F. Supp. 804, D.D.C. 1979.) Such information has been held to be confidential if disclosure would impair the Government's ability to obtain necessary information in the future. (See Carlisle Tire & Rubber Co. v. United States Customs Service, 1 GDS ¶179,162, aff'd. in part, rev'd. on other grounds, 663 F.2d 21, D.C. Cir. 1980.) The bid documents meet the requirements of exemption (b)(4). Hence, the bid documents are withheld pursuant to exemptions (b)(4) and (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. 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, or in the District of Columbia (where records are located).

Sincerely,

Robert M. Fenner
General Counsel

cc: Region VI
Ben Henson

HMU:sg