



(51) J. T. 3/1/88

NATIONAL COMMISSION ON ADMINISTRATION
WASHINGTON, D.C. 20540

July 7, 1988

Office of General Counsel

Mr. Richard M. Wagner
5550-A Ryewyck Court
Toledo, Ohio 43614

Re: FOIA Appeal (Your letter dated June 9,
1988)

Dear Mr. Wagner:

The response to your request under the Freedom of Information Act ("FOIA") should have cited the applicable FOIA exemptions. Since it did not, we have referred the matter back to the FOIA Officer for further review, and also for consideration of the other information you asked for in your June 9, 1988, letter.

You submitted a FOIA request dated April 8, 1988, in which you requested that NCUA's Region IV Office provide you with all NCUA records pertaining to you, particularly those involving your application for the position of Financial Institution Examiner. Your request was forwarded to NCUA's Administrative Office for response. The FOIA Officer determined that all NCUA's records pertaining to you, with the exception of one document, could be released. The FOIA Officer informed you that one document was being withheld under 5 U.S.C. §552a(k)(5) of the Privacy Act, which exempts investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal employment where an express promise of confidentiality was made to the source of the information.

In your letter of June 9, 1988, you appealed the FOIA Officer's determination on both procedural and

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substantive grounds. You also requested additional information under FOIA. Procedurally, you argued that the FOIA Officer failed to give you notice of a right to appeal the determination and the procedures to file an appeal. You were not informed of any appeal rights since the FOIA Officer's determination referred only to the Privacy Act, which does not provide for an administrative appeal of an agency's determination not to release a record. While there is no basis for an administrative appeal of the determination of your request under the Privacy Act, we have reviewed this matter and concur with the FOIA Officer's Privacy Act determination.

The FOIA Officer should have cited the applicable FOIA exemptions on which the decision to withhold a document was based, and informed you of your right to appeal the FOIA determination. We are, therefore, referring your request back to the FOIA Officer for a further determination under the FOIA. The request will be acted upon within ten working days from the date of this letter. The FOIA Officer will also make a determination on the new information requested in your appeal.

Sincerely,


ROBERT M. FENNER
General Counsel

JT:sg

¹The Privacy Act does provide for an administrative appeal of an agency determination not to amend a record [5 U.S.C. §552a(d)(3)], but that is not the case here.