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NATIONAL CREDIT UNION ADMINISTRATION

Washington, D.C. 20456

April 6, 1989

Office of General Counsel

Ms. Vicki Warren
The Goldstein Firm
3000 Connecticut Ave. N.W.
Washington, D.C. 20008

Re: Freedom of Information Act - Appeal
(Your March 6, 1989, Letter)

Dear Ms. Warren:

We received your Freedom of Information Act ("FOIA") appeal on March 13, 1989. On February 14, 1989, you requested, among other things, documents from our Region I (Albany) Office regarding "steps taken by the National Credit Union Administration ("NCUA") once [NCUA] realized that Systems #1 Federal Credit Union was in financial trouble and before [NCUA] liquidated the Credit Union." Region I denied this part of your request in a letter dated February 27, 1989. The denial is reversed in part and upheld in part. The records responsive to your request are NCUA internal memoranda and documents relating thereto, FCU examination reports, and correspondence between NCUA and the Credit Union's attorney. Portions of two internal memoranda and one letter from the credit union's attorney to NCUA are being released. Portions not released (blacked out) are withheld pursuant to exemption 5 of the FOIA. The redacted memoranda and letter are enclosed. One complete document (a letter from NCUA to the credit union's attorney) is also enclosed. The remaining records are exempt from release pursuant to 5 U.S.C. §§552(b)(5) and/or (8) of the FOIA because they relate to either intra-agency memoranda (exemption 5) and/or are contained in or related to examination, operation or condition reports prepared by, on behalf of, or for the use of the NCUA (exemption 8).

FOIA Vol. 10 Part GC(1) information concerning NCUA's
Liquidation Decision

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ANALYSIS

We have determined that, except for the enclosed records, the records meeting your request are exempt from release pursuant to exemptions 5 and 8 of the FOIA.

Exemption 5 of the FOIA (5 U.S.C. §552(b)(5)) exempts information contained in:

(5) 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.

The courts have held that exemption 5 was intended by Congress to protect consultant functions of government, and such protection extends to documents reflecting advisory opinions, recommendations and deliberations comprising part of the process by which government decisions and policies are formulated. Montrose Chemical Corp. v. Train, 491 F.2d 63 (D.C. Cir. 1974). NCUA's regulation implementing exemption 5 is found at Section 790.4(a)(5) of NCUA's Rules and Regulations. This section repeats the FOIA exemption and adds the following:

This exemption preserves the existing freedom of Administration officials and employees to engage in full and frank written or taped communications with each other and with officials and employees of other agencies. It includes, but is not limited to, inter-agency and intra-agency reports, memoranda, letters, correspondence, work papers, and minutes of meetings, as well as staff papers prepared for use within the Administration or between the Administration and other governmental agencies.

Most of the internal memoranda responsive to your request are completely withheld pursuant to exemption 5. Enclosed are the redacted memoranda and letter. The portions deleted are withheld pursuant to exemption 5. One complete letter is enclosed.

Exemption 8 of the FOIA (5 U.S.C. 552(b)(8)) exempts information:

(8) Contained in or related to examination, operating, or condition reports prepared by,

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on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

The regulation implementing exemption 8 is found at Section 790.4(a)(8) of NCUA's Rules and Regulations. Section 790.4(a)(8) repeats exemption (8) of the FOIA and adds the following:

This includes all information, whether in formal or informal report form, the disclosure of which either would harm the financial security of credit unions or would interfere with the relationship between the Administration and member credit unions.

The courts have gleaned two purposes to exemption (8) from its legislative history: 1) to protect the security of financial institutions by withholding frank evaluation of a bank's stability, and 2) to promote cooperation and communication between employees and examiners. (See Atkinson v. FDIC, 1 GDS \$80,034, at 80,102 (D.D.C. 1980.)) The courts have applied this exemption to financial institutions no longer in operation, such as Systems #1 Federal Credit Union. (See Gregory v. FDIC, 631 F.2d 896, at 899 (D.C. Cir. 1980).) In addition, courts do not require agencies to segregate and disclose portions of documents unrelated to the financial state of the institution. An entire report relating to the financial condition of an institution may be withheld. (See Atkinson v. FDIC, 1 GDS 80,034, 80,103 (D.D.C. 1980)).

Examination reports and records related thereto that are responsive to your request are withheld pursuant to exemption 8.

Pursuant to 5 U.S.C. §552(a)(4)(B) of the Freedom of Information Act, you may seek judicial review of this appeal determination by filing suit to enjoin the NCUA from withholding the documents you requested and to order production of these records. Such a suit may be filed in the District Court of the United States in the district where you reside, in the district in which your principal place of

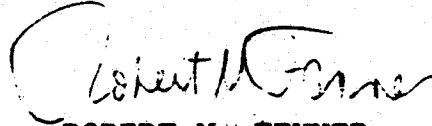
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business is located, in the district in which the records are located (Albany, NY), or in the District of Columbia.

Sincerely,



ROBERT M. FENNER
General Counsel

RRD:sg

Enclosures

BONGIORNO & AVERNA
ATTORNEYS AT LAW
600 OLD COUNTRY ROAD
GARDEN CITY, NEW YORK 11530

TELEPHONE 516 228-8920

RAYMOND J. AVERNA
PETER C. BONGIORNO

November 21, 1988

National Credit Union Administration
9 Washington Square
Washington Avenue Extension
Albany, New York 12205

Attn: Foster C. Bryan
Regional Director

Dear Mr. Bryan:

Please be advised that we have recently been contacted by
the Board of Directors of Systems #1 F.C.U. for the purpose of

[REDACTED]

Accordingly, a copy of the Credit Union Merger Procedures
and Merger Forms Manual would be of great assistance to my
office in determining whether this firm wishes to represent
Systems #1 in these matters should the need arise.

Please be assured that we would have obtained a copy of
such manual from Systems #1, however, they have informed us
that they have never received a copy. Further, since I have
not been furnished with a copy of such manual, I am not in a
position to advise the Board of Systems #1, in the event I were
retained, as to what the respective rights and obligations of
each of the parties are.

Furthermore, as you can well appreciate that information
is of particular import as it concerns

[REDACTED]

[REDACTED]

In conclusion, since it appears to the undersigned that the goal of all parties is [REDACTED]

[REDACTED] the undersigned is anxious to see this matter resolved without our intervention and further representations which will cause the union to incur further legal costs which would otherwise be avoided.

Accordingly, in that the Board has authorized us to request on their behalf a copy of the Credit Union Merger Procedures and Merger Forms Manual, please forward same at your earliest possible convenience.

If you do not possess such manual, or it is your intention not to forward same, if you would be so kind to notify my office within ten days so that I may convey that information to the Board of Systems #1.

Your anticipated cooperation is greatly appreciated. Should you like to discuss the above, feel free to contact the undersigned.

Very truly yours,
BONGIORNO & AVERNA

Raymond J. Aversa
By: Raymond J. Aversa

RJA/ad



REGION I

December 20, 1988

Raymond J. Averna
Bongiorno & Averna
Attorneys at Law
600 Old Country Road
Garden City, New York 11530

Dear Mr. Averna:

Enclosed please find a copy of the merger manual that is currently being used by the National Credit Union Administration, Region I. In addition, I am forwarding to you copies of Part 708 of the National Credit Union Administration, Rules and Regulations, which pertains to mergers.

Regarding the merger of J.U.R.I. Federal Credit Union into Systems #1 Federal Credit Union, this was approved by NCUA on February 17, 1987, and included certain guarantees by this agency, in order to provide some protection to the continuing credit union. The provisions for payment of these guarantees are included in the letter, approving the merger, to Tom Paminella, President of Systems #1 Federal Credit Union, dated February 17, 1987.

If I can be of further assistance, or you wish to discuss this matter, please contact me.

Sincerely,

FOSTER C. BRYAN
Regional Director

DMM:gw
21950

cc: Reading

~~SL 21950~~

SE Gherzi

PCO Kessel

DE 03J

Special Actions

NATIONAL CREDIT UNION ADMINISTRATION

REGION I

I/MKW:gw
21950-03J

Re
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**TO: Gene Gheri
Supervisory Examiner, Group J**

**FROM: Foster C. Bryan
Regional Director, Region I (Albany)**

SUBJ: Systems #1 Federal Credit Union

DATE: February 2, 1989

The recommendation to place subject credit union into involuntary liquidation has been approved. Effective October 1, 1984, all involuntary liquidations in Region I, II and III will be processed by the liquidation section of Region II(Capital). I have appointed Director of Insurance Harry Herrmann and Insurance Analyst Ramona Edwards as the Agents for the Liquidating Agent for the case. In order that you may deliver the various Administrative Orders and pick up and ship the records collect to Region II (Capital), we are forwarding the following attachments:



REGIONAL SUMMARY

Subject: Systems #1 FCU

Charter No.: 21950

Location: Brooklyn, New York

Assets: \$3,241,677 as of
November 30, 1988

Background and History

Systems #1 FCU (FCU) was chartered under the name of Brooklyn 1109 in 1975 to serve members of the Communications Workers of America, Local 1109, located in Brooklyn, NY. In 1976 the field of membership (FOM) was expanded to include New York Telephone Company employees in the boroughs of Brooklyn, Richmond and Queens and the counties of Nassau and Suffolk. In May, 1982 the name was changed to Systems #1. The FOM was expanded in 1985 to include the employees of New York Telephone Company and American Bell who work in or are assigned to the boroughs of Bronx and Manhattan. Additionally, the following credit unions (asset size at time of merger in parentheses) merged into the FCU in the year(s) indicated:

1. John Hus Moravian FCU #24035 - 1984 - (\$25,000)
2. West Park FCU #22844 - 1985 - (\$35,000)
3. Kings Highway FCU #14218 - 1985 - (\$65,000)
4. Local 107 FCU #7831 - 1985 - (\$41,000)
5. ABNCO FCU #19004 - 1986 - (\$1,172,537)
6. OLPH - Bay Ridge FCU #5518 - (1986) - (\$90,220)
7. J.U.R.I. FCU #24096 - 1987 - (\$560,200)