



NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

Office of General Counsel

GC/MM:sg
SSIC 3212
90-0108

Feb 8, 1990

Roy J. Bucholtz, Esq.
Miller & Bucholtz, P.C.
1801 Reston Parkway
Reston, VA 22090

Re: Freedom of Information Act - Appeal
(Your January 10, 1990, Letter)

Dear Mr. Bucholtz:

We received your Freedom of Information Act (FOIA) appeal on behalf of Robert Walls on January 10, 1990. On October 24, 1989, you requested 68 pages of documents concerning Mr. Walls from the National Credit Union Administration ("NCUA"). The National Credit Union Administration denied your request in its entirety on November 28, 1989. The denial is reversed in part and upheld in part. All of the requested documents are released except for the following: Portions of two internal memoranda are not released and are withheld pursuant to Exemption 5 of the FOIA, which protects "inter-agency or intra-agency memorandums or letters which would not be available by law to a party . . . in litigation with the agency." One other internal memorandum is withheld in part pursuant to Exemption 6 of FOIA, in that the memorandum contains personal information on uninvolved persons, "the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The three redacted memoranda are enclosed.

We have determined that, except for portions of three memoranda which are exempt from release pursuant to Exemptions 5 and 6 of the FOIA, the records meeting your request should be released pursuant to FOIA. See the enclosed documents.

FOIA Vol. IV, Part G, 1 Freedom of info.

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ANALYSIS

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 compromising 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 792.3(a)(5) of NCUA's Rules and Regulations (12 C.F.R. 792.3(a)(5)). 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.

Portions of two memoranda responsive to your request are withheld pursuant to Exemption 5.

Exemption 6 of the FOIA (5 U.S.C. 552(b)(6)) exempts the following information:

personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

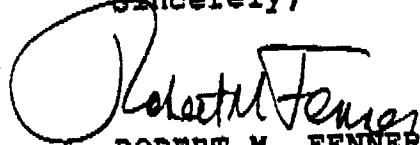
This exemption is set forth in Section 792.3(a)(6) of the NCUA Regulations (12 C.F.R. 792.3(a)(6)).

The Supreme Court has held that all information which applies to a particular individual qualifies for (b)(6) exemption consideration. See Department of State v. Washington Post Co., 456 U.S. 595, 599-603 (1982). Portions of one memorandum responsive to your request are withheld pursuant to Exemption 6 as they concern individuals other than the requestor.

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Pursuant to the Freedom of Information Act (see 5 U.S.C. §552(a)(4)(B)), you may seek judicial review of this appeal 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 the requestor resides, where his principal place of business is located, or in the District of Columbia.

Sincerely,


ROBERT M. FENNER
General Counsel

Enclosures