



NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

Office of General Counsel

GC/MM:sg
SSIC 3212
90-0202

March 1, 1990

Mr. Daniel W. Brown
United Communications Group
4550 Montgomery Avenue, Suite 700N
Bethesda, MD 20814-3382

Re: Freedom of Information Act - Appeal
(Your January 29, 1990, Letter)

Dear Mr. Brown:

We received your Freedom of Information Act (FOIA) appeal on February 2, 1990. On December 20, 1989, you requested the total number and description of disciplinary actions against NCUA examination personnel in 1988 and 1989 from the National Credit Union Administration ("NCUA"). The National Credit Union Administration provided you with the number of disciplinary actions but denied your request for a full description of each action taken. The denial is affirmed in part and reversed in part. All of the documents are being withheld except for four redacted letters of reprimand. The remaining documents are being withheld pursuant to Exemption 6 of FOIA, in that the memoranda contain personal information "the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The four redacted letters of reprimand are enclosed.

We have determined that, except for the portions of four letters of reprimand, the records meeting your request should be withheld pursuant to FOIA.

ANALYSIS

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

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constitute a clearly unwarranted invasion
of personal privacy.

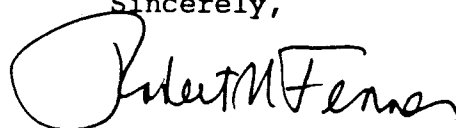
This exemption is set forth in Section 792.3(a)(6) of the NCUA Regulations (12 C.F.R. 792.3(a)(6)).

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). It has been determined that the privacy interest of the individuals identified in the withheld documents is greater than the interest of the requestor because disclosing the documentation would cause a serious invasion of privacy without advancing a measurable public interest. (See, Chamberlain v. Kurtz, 589 F.2d 827 (1979); Heller v. Marshals Service, 655 F. Supp. 1088 (D.D.C. 1987)).

You further requested the NCUA to prepare a written description of each action taken if it would not release the redacted memoranda. The FOIA applies only to agency records. The records must be under agency control at the time of the request. See, Department of Justice v. Tax Analysts, 492 U.S. ____ (1989) 109 S. Ct. 2841, 2847-8. The Agency does not have to create records to comply with a FOIA request.

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



NATIONAL CREDIT UNION ADMINISTRATION

TO: [REDACTED]

FROM: [REDACTED]

SUBJECT: [REDACTED]

DATE: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

If you believe you have been treated unfairly, you may seek redress under the agency grievance system. Information concerning the grievance system may be found in Chapter 16 of the Personnel Manual.

A copy of this letter will be filed in your official personnel folder (OPF) and will remain there as a temporary record for a period of one year.

[REDACTED]



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RECEIVED
DEC - 6 1989

This official Letter of Reprimand is being issued to you as a result of your failure to follow verbal instructions, and failure to follow written regional instructions.

Specifically, the basis for this Letter of Reprimand is as follows:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



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[REDACTED]

Future actions of yours that do not adhere to the expectations of conduct noted above may result in more serious disciplinary action.

You have the right to seek redress under the agency grievance system. Information concerning the grievance system may be found in Chapter 16 of the Personnel Manual.

A copy of this letter will be filed in your official personnel folder (OPF) and will remain there as a temporary record for a period of one year.

Sincerely,

[REDACTED]

[REDACTED]

[REDACTED]



NATIONAL CREDIT UNION ADMINISTRATION

[REDACTED]

[REDACTED]

This letter constitutes an official Letter of Reprimand which is being issued on the basis of events which transpired during your examination of [REDACTED]

Specifically, the basis for this Letter of Reprimand is as follows:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



NATIONAL CREDIT UNION ADMINISTRATION

Therefore, more severe action will be taken if a similar situation should occur in the future.

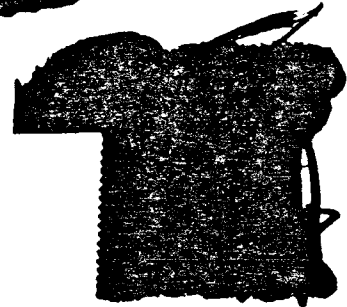
A copy of this letter will be filed in your official personnel folder and will remain there as a temporary record for a period of one year.

If you believe that you have been treated unfairly you may seek redress under the agency's grievance system. Information concerning the agency's grievance system may be found in Chapter 16 of the NCUA Personnel Manual.

Sincerely,



NATIONAL CREDIT UNION ADMINISTRATION



This letter of official reprimand is issued as a result of your unacceptable conduct and is being given for the following reasons:

1. As a representative of the National Credit Union you are required to conduct yourself in a professional manner at all times and in such a way as to foster a better understanding between examiners and officials of the credit unions.

2. You are also expected to meet and deal effectively and in a professional manner with your coworkers and supervisors.

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We hope this letter [REDACTED] will benefit you and that you will become a productive member of the NCUA examiner staff. However, this letter serves as a warning that further instances of this type of conduct will not be tolerated and could result in a more severe disciplinary action.

A copy of this letter will be filed in your Official Personnel Folder and will be retained as a temporary record for a period of one year from the date of issuance.

Sincerely,

[REDACTED]

[REDACTED]

[REDACTED]