



NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

April 18, 1990

Office of General Counsel

Charles A. Intriago, Esq.
Alert International, Inc.
8180 N.W. 36th Street
Suite 150
Miami, Florida 33166

Re: Freedom of Information Act - Appeal
(Your March 26, 1990)

Dear Mr. Intriago:

We received your Freedom Of Information Act (FOIA) appeal on March 29, 1990. On February 2, 1990, you requested the NCUA's Examiner's Guide or copies of the sections in the Guide dealing with Bank Secrecy Act examinations and review of money laundering activities. The National Credit Union Administration ("NCUA") denied your request on February 13, 1990. The denial is affirmed.

We have determined that the records meeting your request should be withheld pursuant to FOIA.

ANALYSIS

Release of portions of the NCUA Examiner's Guide may allow an individual to circumvent the law. Exemption 2 of the FOIA (5 U.S.C. 552(b)(2)) exempts the information that relates "solely to the internal personnel rules and practices of an agency." This exemption is set forth in Section 792.3(a)(2) of the NCUA Rules and Regulations (12 C.F.R. 792.3(a)(2)), which provides, in part, that:

FOIA

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This exemption applies to internal rules or instructions which must be kept confidential in order to assure effective performance of the functions and activities for which NCUA is responsible and which do not materially affect members of the public. This exemption also applies to manuals and instructions to the extent that release of the information contained therein would permit circumvention of laws or regulations.

It has been determined that Exemption 2 applies to more than just employment and personnel matters. In Crooker v. Bureau of Alcohol, Tobacco & Firearms, 670 F.2d 1051, 1056 (1981), the court held that in the (b)(2) exemption:

the words "personnel rules and practices" encompass not merely minor employment matters, but may cover other rules and practices that affect the internal workings of an agency.

The court ruled that Exemption 2 applies to the internal instructions used by some government officials. The court specifically adopted the rationale set forth for exemption 2 from the concurring opinion in Jordan v. United States Department of Justice, 591 F.2d 753 (1978), which states, in part, that:

Exemption 2 is applicable where the document consists of internal instructions to such government officials as investigators and bank examiners. In such a case disclosure would permit circumvention of the law, and there is no substantial, valid external interest of the community at large in revelation.

Under this line of case law, NCUA is withholding the requested material under Exemption (b)(2) because the disclosure of portions of the NCUA Examiner's Guide would significantly risk circumvention of NCUA's enforcement of the Bank Secrecy Act.

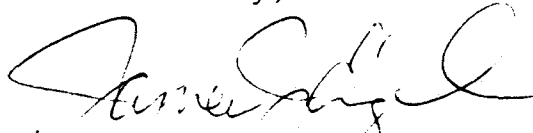
Pursuant to the Freedom of Information Act (See 5 U.S.C. §552(a)(4)(B)), you may seek judicial review of this appeal by filing suit to enjoin the NCUA from withholding the documents you requested and to order production of these records. Such a suit

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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,



for Robert M. Fenner
General Counsel

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SSIC 3212
90-0344