



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

June 4, 1990

Mr. Thomas Lewis
57 Adkinson Dr. East
Pensacola, Florida 32506

Re: Freedom of Information Act - Appeal
(Your March 22, 1990, Letter)

Dear Mr. Lewis:

We apologize for the delay in our response to your Freedom of Information Act (FOIA) appeal. Due to a mistake in transmittal within the agency, our Office did not receive your FOIA appeal until May 15, 1990. We processed your appeal expeditiously once the error was discovered. On February 22, 1990, you requested documents pertaining to your complaint against the Santa Rosa County Teachers Federal Credit Union from the National Credit Union Administration ("NCUA"). The NCUA provided you with all of the requested documents except for the report of the investigation conducted by an NCUA examiner in September 1989. The denial is affirmed. We have determined that the records meeting your request should be withheld pursuant to FOIA.

ANALYSIS

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, 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 792.3(a)(8) of NCUA's Rules and Regulations (12 C.F.R. 792.3(a)(8)). Section 792.3(a)(8) repeats exemption 8 of the FOIA and adds the following:

FOIA

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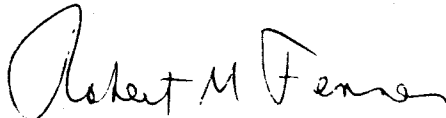
This includes all information, whether in formal or informal report form, the disclosure of which either would harm the financial security of credit unions or would interfere with the relationship between the Administration and member credit unions.

The courts have gleaned two purposes for exemption 8 from its legislative history: 1) to protect the security of financial institutions by withholding frank evaluation of 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).) Either purpose is sufficient reason to withhold a report. 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 the institution may be withheld. (See Atkinson at 80,034, 80,103 (D.D.C. 1980).) We believe both purposes of exemption 8 are met. Therefore, the investigation report responsive to your request is 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 by filing suit to enjoin the NCUA from withholding the documents you requested and to order production of this report. 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.

Again, we apologize for the delay in our response.

Sincerely,



Robert M. Fenner
General Counsel

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