



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

May 23, 1991

Robert Dembia, Esq.  
Levine & Dembia  
55 John Street  
Suite 615  
New York, New York 10038-3712

Re: Freedom of Information Act - Appeal  
(Your April 18, 1991 Letter)

Dear Mr. Dembia:

We received your Freedom of Information Act ("FOIA") appeal on May 6, 1991. On April 15, 1991, the National Credit Union Administration ("NCUA") denied your request for an examiner's report containing information relating to deductibles for the Varoh Federal Credit Union. We have determined that the records meeting your request should be withheld pursuant to FOIA.

ANALYSIS

Exemption 8 of FOIA (5 U.S.C. §522(b)(8)) exempts information:

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.

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

This includes all information, whether in formal or informal report form, the disclosure of which would

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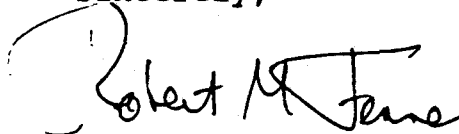
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harm the financial security of credit unions or  
would interfere with the relationship between NCUA  
and credit unions.

The courts have discerned two major purposes for exemption 8 from its legislative history: 1) to protect the security of financial institutions by withholding from the public reports that contain frank evaluations 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). 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 condition of the institution. An entire report relating to the financial condition of the institution may be withheld. See Atkinson, 1 GDS at 80,103. We believe both purposes of exemption 8 are met. Therefore, the examination report responsive to your request is withheld pursuant to exemption 8.

Pursuant to 5 U.S.C. §552(a)(4)(B), you may seek judicial review of this appeal by filing suit to enjoin NCUA from withholding the documents you requested for your client and to order production of such documents. Such a suit may be filed in United States District Court in the district where the requestor resides, where the requestor's principal place of business is located, or in the District of Columbia.

Sincerely,



Robert M. Fenner  
General Counsel

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