



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

May 23, 1991

Dona Asher  
Pamela Redcher  
M. Jean Romanofsky  
6744 Bright Ave.  
Whittier, CA 90601

Re: Freedom of Information Act - Appeal  
(Your April 22, 1991, Letter)

Dear Ms. Asher, Ms. Redcher, and Ms. Romanofsky:

We received your Freedom of Information Act (FOIA) appeal on April 29, 1991. On April 8, 1991, the National Credit Union Administration (NCUA) denied Ms. Asher's request for a copy of a Criminal Referral Form she believes may have been filed on her by the Whittier Municipal Employees Federal Credit Union. Although all three of you have appealed NCUA's "decision not to release information regarding whether or not a criminal referral form has been filed," we have no record of Ms. Redcher or Ms. Romanofsky having requested such information or of any denials of such requests. Accordingly, this response addresses only Ms. Asher's appeal.

We have determined that the information Ms. Asher requests should be withheld pursuant to FOIA.

Analysis

The first subpart of Exemption 7 of FOIA, Exemption 7(A), authorizes the withholding of "records or information compiled for law enforcement purposes, but only to the extent that production of such law enforcement records or information . . . could reasonably be expected to interfere with enforcement proceedings." 5 U.S.C. §552(b)(7); see 12 C.F.R. §792.3(7)(i). The "enforcement proceedings" to which Exemption 7(A) may be applicable have been interpreted

FOIA Vol IV, G, 1

Dona Asher

May 28, 1991

Page 2

broadly. Such proceedings have been held to include not only criminal actions, see, e.g., Gould Inc. v. GSA, 688 F. Supp. 689, 701 (D.D.C. 1988); National Pub. Radio v. Bell, 431 F. Supp. 509, 510 (D.D.C. 1977), but regulatory proceedings as well, see, e.g., Injex Indus. v. NLRB, 699 F. Supp. 1417, 1420 (N.D. Cal. 1986); Fedders Corp. v. FTC, 494 F. Supp. 325, 327-28 (S.D.N.Y.), aff'd mem., 646 F.2d 560 (2d Cir. 1980).

With respect to the showing of harm to law enforcement proceedings required to invoke Exemption 7(A), the Supreme Court has rejected the position that "interference" must always be established on a document-by-document basis, and it has held that a determination of the exemption's applicability may be made "generically," based on the categorical types of records involved. NLRB v. Robbins Tire & Rubber Co., 437 U.S. 214, 236 (1978). The courts have long accepted that Congress intended that Exemption 7(A) apply "whenever the government's case in court would be harmed by the premature release of evidence or information," Id. at 232, or where disclosure would impede any necessary investigation prior to the enforcement proceeding, see National Pub. Radio v. Bell, 431 F. Supp. at 514-15. Other courts have ruled that interference has been established where, for example, the disclosure of information could prevent the government from obtaining data in the future. See, e.g., Crowell & Moring v. Department of Defense, 703 F. Supp. 1004, 1011 (D.D.C. 1989); Gould Inc. v. GSA, 688 F. Supp. at 703; Nishnic v. Department of Justice, 671 F. Supp. 776, 794 (D.D.C. 1987).

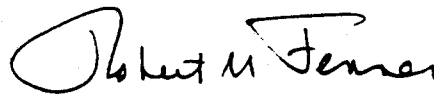
The exemption has also been held to be properly invoked when release would hinder an agency's ability to control or shape investigations, see, e.g., J.P. Stevens & Co. v. Perry, 710 F.2d 136, 143 (4th Cir. 1983), enable targets of investigations to elude detection, see, e.g., Moorefield v. Secret Serv., 611 F.2d 1021, 1026 (5th Cir. 1980), suppress or fabricate evidence, see, e.g., Alyeska Pipeline Serv. Co. v. EPA, 856 F.2d 309, 312 (D.C. Cir. 1988); Nishnic v. Department of Justice, 671 F. Supp. at 794, or prematurely reveal evidence or strategy in the government's case, see, e.g., Raytheon Co. v. Department of the Navy, 731 F. Supp. 1097, 1011 (D.D.C. 1989).

Dona Asher  
May 28, 1991  
Page 3

In accordance with the above cases, NCUA is withholding the requested information. Exemption 7(A) is applicable because Criminal Referral Forms or materials related thereto constitute information compiled for law enforcement purposes, the disclosure of which could reasonably be expected to interfere with law enforcement proceedings.

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

Sincerely,



Robert M. Fenner  
General Counsel

GC/LH:sg  
SSIC 3212  
91-0437