



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

November 8, 1991

Mr. Eric Frankland  
206 Woodhaven Drive  
Edison, New Jersey 08817

Re: Freedom of Information Act Appeal (Your  
October 25, 1991, Letter)

Dear Mr. Frankland:

We received your Freedom of Information Act ("FOIA") appeal on October 30, 1991. On October 16, 1991, the National Credit Union Administration's ("NCUA") Region II Deputy Director denied your request for copies of supervisory examination reports for the Dow Jones Employees Federal Credit Union ("DJEFCU"). We have determined that the documents you requested from the Regional Office should be withheld pursuant to FOIA.

Analysis

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

Contained in or related to examination, operating, or condition reports prepared by, or 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), which implements exemption 8, specifically includes reports prepared by, or for the use of NCUA, among the exempt information. Section 792.3(a)(8) also adds the following language:

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

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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 an institution's stability; and (2) to promote cooperation and communication between employees and examiners. See, Atkinson v. FDIC, 1 GDS ¶80,034, at 81,102 (D.D.C. 1980). Either purpose is sufficient reason to withhold a report. Courts do not require agencies to segregate and disclose those portions of documents that are unrelated to the financial condition of the institution. An entire report relating to the financial condition of an institution may be withheld. See, Atkinson, 1 GDS at 80,103. We believe that both purposes of exemption 8 are met. Therefore, the examination reports responsive to your request are withheld pursuant to exemption 8.

We note your argument that exemption 8 is inapplicable because, "DJEFCU is not a 'financial institution' as referred to in 5 U.S.C. 552(b)(8)." However, we do not find your argument persuasive. Nothing in FOIA or its legislative history suggests that credit unions are excluded from the broad category of "financial institutions," and you offer nothing to support your argument. Further, NCUA has construed the term "financial institutions" to include credit unions, and has withheld examination reports under exemption 8, since the exemption was created by Congress. Had Congress intended credit unions to be treated differently from other financial institutions, it certainly could have either drafted the statute differently, or amended it to make such a distinction. We see no basis for finding that exemption 8, does not cover examination reports of credit unions.

We also note that, in your appeal letter, you seek additional documents not requested in your original letter to NCUA's Region I Director. Although your requests should properly be addressed to other offices, we will discuss them briefly.

Specifically, you ask for "copies of all filings made with [NCUA] by the DJEFCU and copies of any other documents in your files that specifically refer to the condition of" DJEFCU. Any documents referring to DJEFCU's condition are exempt from disclosure under exemption 8. In the category of documents filed with NCUA by DJEFCU, we are aware of one type of document, the NCUA Form 5300 Call Report, that is

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releasable. The Call Reports are maintained on behalf of NCUA by

National Technical Information Services  
5285 Port Royal Road  
Springfield, Virginia 22161  
(703) 487-4650

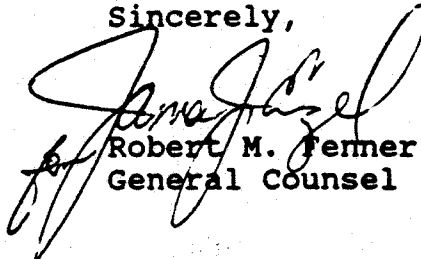
You may obtain copies of Call Reports by writing directly to National Technical Information Services. Your letter should specify the years for which you wish to receive the Call Reports.

There may be additional documents filed by DJEFCU that are not exempt. However, those documents, if any, would be in NCUA's Region II Office. (Credit unions located in New Jersey and chartered or insured by NCUA have recently been transferred from Region I's supervision to that of Region II.) Should you wish to make a request for such documents, please address it to:

Daniel L. Murphy  
Region II Director  
NCUA  
1776 G Street, N.W.  
Washington, D.C. 20006

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

Sincerely,



Robert M. Fenner  
General Counsel

GC/MRS:sg  
SSIC 3212  
91-1025