



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

February 28, 1992

Daniel P. O'Brien  
Cassidy & Associates  
75 State Street  
Suite 2200  
Boston, MA 02109

Re: Freedom of Information Act - Appeal

Dear Mr. O'Brien:

This is in response to your Freedom of Information Act ("FOIA") appeal. Although your letter was dated January 29, 1992, we did not receive it until February 6, 1992.

On January 15, 1992, the National Credit Union Administration (NCUA) denied your request (dated January 6, 1992) for a copy of a letter sent to NCUA by EasCorp, Inc. (EasCorp) opposing the Central Credit Union Fund, Inc.'s (CCUF) application for federal insurance. The denial is affirmed. We have determined that the document meeting your request should be withheld pursuant to FOIA.

ANALYSIS

Region I denied your request based on exemption 5 of FOIA (5 U.S.C. 552(b)(5)). Although we agree with you that exemption 5 is not applicable to your request, the document you seek is within the scope of exemption 8 of FOIA (5 U.S.C. 552(b)(8)). The letter that you request was produced as part of an examination to determine the insurability of a credit union. Exemption 8 exempts from disclosure 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 the National Credit Union Administration Rules and Regulations (the "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

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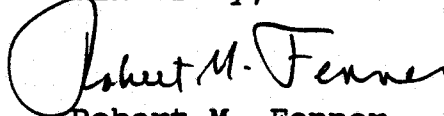
of which would harm the financial security of credit unions or would interfere with the relationship between NCUA and credit unions.

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 information. Even information relating to financial institutions that are no longer operating may be withheld, in order to further the policy of promoting "frank cooperation" between officials of financial institutions and government agencies. Gregory v. FDIC, 631 F.2d 896, 899 (D.C. Cir. 1980). We believe both purposes of exemption 8 are met.

Exemption 8 has been given a very broad interpretation and all-inclusive scope by the courts. See, McCullough v. FDIC, 1 GDS ¶80,184 (D.D.C. 1980). Courts do not require agencies to segregate and disclose portions of documents unrelated to the financial condition of the institution. Therefore, the document 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 document you requested and to order production of such document. Such a suit may be filed in United States District Court in the district where you reside (or the requestor you represent, if you are not the requestor), where your principal place of business is located, or in the District of Columbia.

Sincerely,



Robert M. Fenner  
General Counsel

GC/MJM:sg

SSIC 3212

92-0209

cc: Layne Bumgardner, Region I Director