

February 23, 2000

(b)(6)

Re: FOIA Appeal, your letter of January 24, 2000

Dear (b)(6):

On October 15, 1999, you filed a Freedom of Information Act (FOIA)/Privacy Act request for information on yourself and four named individuals. On October 26, 1999, Dianne Salva, NCUA's FOIA Officer, sent you a copy of NCUA's systems of records and asked you to identify which systems you wanted searched. You responded on October 31 identifying the systems you wanted searched for yourself and the four individuals named in your request. On November 29, Frank Thomas, NCUA's Inspector General, responded to your request. He found no responsive records within the Office of Inspector General's system of records. You appealed Mr. Thomas' denial on December 7. On December 23, Hattie Ulan of this Office returned your appeal noting that Mr. Thomas' response only pertained to the system of records maintained by the Inspector General. Ms. Ulan informed you that once the agency search was completed and you received a response from Ms. Salva, you could appeal Mr. Thomas' determination as well as any determination made by Ms. Salva. On January 18, 2000, Ms. Salva responded to your request noting that no records responsive to your request were located. We received your January 24 appeal (which incorporates your December 7 appeal to Mr. Thomas) on January 28. In your appeal letter, you set forth several questions regarding NCUA's search for records you requested. You request a search declaration stating how the searches were conducted. You also request copies of any documentation which may have been created regarding your request. We have provided some general information about the search and a copy of a FOIA transmittal form. However, we do not provide a search declaration.

In conducting the search for information you requested, Ms. Salva contacted staff in the following NCUA offices: each of our six Regions; the Asset Management Assistance Center; the Office of Inspector General; the Secretary of the Board; and the Office of General Counsel. Ms. Salva forwarded copies of your October 15 and October 31 letters to staff from the above-noted offices. Staff from these offices searched the relevant systems for records on the individuals (including yourself) as noted in your two letters. No responsive documents were found. There is no requirement that an affidavit or search declaration be provided by an agency at the administrative appeal level. The only documentation created regarding your request were FOIA transmittal forms used to forward the request to agency offices and very brief responsive memos from these offices indicating no records were found. A copy of a blank transmittal form is enclosed.

Federal agencies are under a duty to conduct a reasonable search for records when a FOIA request is received. Patterson v. Internal Revenue Service, 56 F.3d 832 (7th Cir. 1995). The question is not whether any documents responsive to the request might exist, but rather whether the search for any responsive documents was adequate. Steinberg v. United States Department of Justice, 745 F.2d 1476 (D.C. Cir. 1984). We believe a reasonable search was conducted.

Pursuant to 5 U.S.C. 552(a)(4)(B) (FOIA) and 552a (Privacy Act), you may seek judicial review of the determination by filing suit against the NCUA. Such a suit may be filed in the United States District Court in the district where you reside, where your principle place of business is located, or the District of Columbia.

Sincerely,

Robert M. Fenner

General Counsel

Enclosure

GC/HMU:bhs

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