

May 10, 2000

(b)(6)

Re: FOIA Appeal, your letter of April 20, 2000

Dear

(b)(6)

On February 14, 2000, you filed a Freedom of Information Act (FOIA)/Privacy Act request for any records generated by NCUA to process the FOIA request you submitted on October 15, 1999. You also wrote on February 28, 2000, reiterating the February 14 request. Dianne Salva, NCUA's FOIA Officer, responded to your request on April 7, 2000. Enclosed with her response were approximately 100 pages of responsive documents. No records were withheld. We received your April 20 appeal on April 25, 2000. Although no documents were withheld, you appear to believe that there are additional responsive documents that were not given to you. You question the procedure and search conducted in response to your request. Our response to your numbered questions follows.

1. You note that Ms. Salva did not state how many pages of responsive documents were mailed to you. As noted above, there were approximately 100 pages of responsive documents. No records were withheld. All responsive documents were forwarded to you with Ms. Salva's April 7, 2000 response.
2. You state that Ms. Salva withheld all records concerning your U.S. District Court case ((b)(6)) which names NCUA as a co-defendant. We have no records concerning the case.
3. and 4. You indicate that Ms. Salva and FOIA and Regulatory Affairs Specialist Pat Slye conducted a search only under the Privacy Act, not under the FOIA. Although the FOIA transmittal form you received was identified your request as a Privacy Act request, your request letters were attached to the transmittal sheet. Your October 15, 1999 letter notes your request is a FOIA/Privacy Act request. The offices that received the transmittal sheet and your request searched all appropriate records. Your request was handled under both the FOIA and Privacy Act.
5. You note that your name was spelled incorrectly on the FOIA transmittal form ((b)(6)). You state that this was done deliberately so that NCUA employees would not identify responsive records. Again, the offices receiving the transmittal form also received your request letter. Staff from these offices spelled your name correctly in their transmittals back to Ms. Slye, indicating they conducted a search using the correct spelling of your name. (See e.g. memos from Region III, dated 1/13/00 and Region IV, dated 1/12/00, both enclosed with Ms. Salva's 4/7/00 response to you.)
6. You indicate your belief that NCUA did not properly search for documents responsive to your request. A reasonable search was conducted. See discussion below. All documents created during the search have been supplied to you.
7. You state there was an anonymous note in the records you received ordering an extended search. You indicate search records pertaining to this note were unlawfully withheld. Again, all responsive records were provided.
8. You request that a search declaration be provided. There is no requirement under the FOIA, Privacy Act or cases interpreting those laws to provide a search declaration at this point in the administrative process.
9. You request search records for FOIA request 00210/181 and ask that this be treated as a new FOIA request. You will receive a separate response to that request from NCUA's FOIA Officer.

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 and you have received all of the responsive documents. We have previously detailed the procedure used to respond to your October 15, 1999 FOIA request. See my February 23, 2000 letter to you.

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, the District of Columbia, or where the documents are located (the Eastern District of Virginia).

Sincerely,

Robert M. Fenner

General Counsel

GC/HMU:bhs

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