

July 11, 2000

(b)(6)

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

Dear (b)(6)

You filed a Freedom on Information Act (FOIA) request on October 15, 1999. Dianne Salva, NCUA's FOIA Officer, responded to your request on January 18, 2000. No responsive documents were found. On February 14, with a follow-up letter on February 28, you requested search documents created for the October 15 request. Dianne Salva responded to your request on April 7, 2000, enclosing approximately 100 pages of search documents. No records were withheld. On April 20, 2000, you appealed the April 7 response contending that there were additional responsive documents that were withheld. Included with this appeal was a new request for search records created in response to your February 14 and February 28 requests (FOIA requests 00-210 and 00-181). You asked that this request for search records be treated as a new FOIA request. We responded to your appeal on May 10, 2000. Ms. Salva responded to the request for search records for FOIA requests 00-210 and 00-181 on June 5, 2000, indicating that no additional search records were found. We received your June 12 appeal to Ms. Salva's June 5 response on June 15, 2000. We did find two additional pages of search documents. One page is enclosed. One page of notes drafted by staff in preparation of our response to your April 20 appeal is withheld pursuant to exemption 5.

You set forth several questions in your appeal. We have attempted to answer your questions in the numbered paragraphs (corresponding to the numbered paragraphs of your letter) below:

1. You note that in addition to a request for search records to FOIA requests 00-210 and 00-181, in your April 20 appeal, you also requested litigation records on your case (b)(6), and that that portion of your request was ignored. That portion of your request was addressed in paragraph number 2. of our May 10, 2000 response to your appeal. We stated there and reiterate here that we have no records concerning case (b)(6).
- 2, 3 & 4. You request here that a search be made for records of all offices that responded to your earlier FOIA requests. Pursuant to this appeal, we contacted all of the offices Ms. Salva contacted pursuant to your October 15, 1999 FOIA request (all 6 Regional offices, Office of the Secretary of the Board, Office of Inspector General, Office of General Counsel, and Asset Management and Assistance Center). As noted above, two additional pages of responsive documents have been identified. One page is enclosed, one page is withheld pursuant to exemption 5 of the FOIA. All other search records were sent to you on April 7.
5. You again note your belief that NCUA (specifically the Office of General Counsel) has litigation records on your case (b)(6). As noted in paragraph 1. above, we have no records concerning case (b)(6). You also believe that Pat Slye (NCUA's regulatory affairs specialist within the Office of General Counsel) has records on your FOIA/Privacy requests. Pat Slye works with Dianne Salva on initial FOIA/Privacy requests. All records generated by Ms. Slye were included with the enclosures sent to you with Ms. Salva's letter of April 7.
6. You note your concern with the possible misspelling of your name. We addressed this issue in our May 10 response to your April 20 appeal. (See numbered paragraph 5. of our May 10, 2000 letter.) As noted there, the search was made under the correct spelling of your name. You have been supplied with all search records.
7. You again indicate your belief that search documents exist (e.g. work sheets and computer printouts) and they are being illegally withheld. All NCUA staff that conducted a search for your records have been contacted. There were no worksheets or computer printouts generated by your request for records. Two pages of additional records were identified as responsive. One page is enclosed, one page is withheld.

8. You request a search of records of the NCUA Chairman and Special Counsel to the General Counsel Hattie Ulan. The Secretary of the NCUA Board is responsible for FOIA requests for NCUA Board records. She has indicated that there were no search documents created. There is one document created by Ms. Ulan. It consists of one half page of handwritten notes. This page is withheld pursuant to exemption 5 of the FOIA.

9. You again request a search declaration. There is no requirement that a search declaration be provided at this point in the administrative process. 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 now received all of the responsive documents. As noted above, one document is being withheld pursuant to exemption 5 of the FOIA.

Exemption 5

One-half page of notes is withheld pursuant to exemption 5. Exemption 5 of the FOIA protects "inter-agency or intra-agency memorandums or letters which would not be available by law to a party ... in litigation with the agency." 5 U.S.C. 552(b)(5). Included within exemption 5 is information subject to the deliberative process privilege. The purpose of this privilege is "to prevent injury to the quality of agency decisions." NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 151 (1975). One of the policy purposes constituting a basis for the deliberative process privilege is to encourage open, frank discussions on matters of policy between subordinates and superiors. The half page of notes withheld here were used in discussion and preparation of our May 10 response to your April 20 FOIA appeal.

Pursuant to 5 U.S.C. 552(a)(4)(B) of the Freedom of Information Act, you may seek judicial review of this 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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7