

October 10, 2000

Andrew Kaminski

Re: FOIA Appeal, your letter dated September 2, 2000

Dear Mr. Kaminski:

You filed an undated request pursuant to the Freedom of Information Act (FOIA) which was received by Dianne Salva, NCUA's FOIA Officer, on August 16, 2000. You requested "the NCUA examiners reports and findings at the Polish & Slavic Federal Credit Union (P & S FCU) for the years 1986 to 1999." You specifically requested information on inquiries and inspections made by the NCUA examiners at the credit union as they relate to compliance with the Currency and Transaction Reporting Act. Ms. Salva responded on August 22, 2000, withholding responsive documents pursuant to exemption 8 of the FOIA,

5 U.S.C. 552(b)(8). We received your September 2 appeal on September 11. Your appeal is denied. Examination reports prior to 1991 have been sent to the Federal Records Center and have been destroyed. Examination reports and documents from 1991 - 1999 are withheld pursuant to exemptions 6 and 8. An explanation of NCUA record retention and the applicable exemptions follows.

#### Retention of records

NCUA, and all federal agencies, maintain most records only for a limited period of time. Records are maintained pursuant to both government-wide and individual agency schedules. (See applicable regulations of the National Archives and Records Administration, 36 C.F.R. Part 1228). Under NCUA's record retention schedules, examination reports are routinely kept in the regional office no longer than three years. They are then sent to a Federal Records Center (FRC) and destroyed after 7 years. xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxx examination information from 1991-1999 has been retained by NCUA. All earlier examination reports have been sent to the FRC and destroyed.

#### Exemption 6

Exemption 6 of the FOIA (5 U.S.C 552(b)(6)) exempts information about an individual in "personnel and medical files and similar files" where the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy." The courts have held that all information that applies to a particular individual meets the threshold requirement for exemption 6 protection. United States Department of State v. Washington Post Co., 456 U.S. 595 (1982). Once a privacy interest is established, application of exemption 6 requires a balancing of the public's right to disclosure against the individual's right to privacy. Department of the Air Force v. Rose, 425 U.S. 352, 372 (1976). The examination reports contain information identifying individual credit union members' account numbers, information about members' personal loans (including information on delinquent loans and loans in foreclosure), as well as personal information about employees and officials of P & S FCU. This information clearly meets the threshold standard. There is minimal, if any, public interest in disclosing this personal information. The individuals' privacy interests outweigh any public interest in disclosure. Since

exemption 8 allows for withholding without redactions ( see discussion below) the entire examination reports are withheld.

### Exemption 8

Exemption 8 of the FOIA (5 U.S.C. 552(b)(8)) exempts 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.

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 examination reports.

NCUA has incorporated these dual purposes into its regulation. Section 792.11(a)(8) of the NCUA Rules and Regulations (12 C.F.R. 792.11(a)(8)) restates exemption 8 and adds the following:

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.

Courts have interpreted exemption 8 broadly. Pentagon Federal Credit Union v. National Credit Union Administration, No. 95-1476, slip op. at 8 (E.D. Va. June 7, 1996). NCUA is not required to segregate and disclose portions of examination documents unrelated to the condition of the credit union. See Atkinson.

The records withheld pursuant to exemption 8 consist of examination reports from 1991 through 1999. The examination reports fit squarely within the language of exemption 8. Their release could reasonably harm the financial security of P & S FCU and interfere with the relationship between the credit union and NCUA. The cases that you refer to in your appeal letter do not concern exemptions under the Freedom of Information Act. They are therefore not applicable to this appeal.

Pursuant to 5 U.S.C. 552(a)(4)(B), 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 the 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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cc: Region I Director