

March 10, 1993

(b)(6)

Re: Freedom of Information Act - Appeal (Your February 8, 1993, Letter)

Dear (b)(6):

We received your Freedom of Information Act (FOIA) appeal on February 16, 1993. In a letter dated December 22, 1992, you filed a FOIA request, asking whether the National Credit Union Administration's (NCUA's) long distance phone bill listed calls to the number (b)(6) between April 5 and April 9, 1992. You also asked for the times and lengths of any such calls. On January 8, 1993, Regional Director Daniel L. Murphy denied your request. He noted that all outgoing calls were on special government lines and that the General Services Administration (GSA) tracks our usage of the lines but does not provide a detailed listing of calls. In your appeal, you state that your request does not compromise the safety and soundness, the operations, or the working relationship of NCUA or the Pocatello Railroad Federal Credit Union (FCU). You state, "I am requesting under the [FOIA] detailed information relating to any calls from 4-6-92 through 4-10-92, placed to (b)(6) from (b)(6) or any related phone number of the NCUA, Region VI office at Concord, California."

Analysis

The FOIA generally provides that any person has a right of access to federal agency records, except to the extent that such records are protected from disclosure by one of nine exemptions or by one of three special law enforcement record exclusions. 5 U.S.C. ~552; 12 C.F.R. Part 792, Subpart A. Note that under the FOIA, a requester has a right to existing records; agencies are not required to create records in order to respond to FOIA requests nor to answer questions disguised as FOIA requests. See e.g., *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 162 (1975); *Zemansky v. EPA*, 767 F.2d 569, 574 (9th Cir. 1985). Your request is framed as a question and, as such is not a proper FOIA request. However, we will construe it as a request for phone records covering the dates you mentioned.

Unfortunately, as noted by Mr. Murphy, there are no records responsive to your request. GSA does not provide us with a detailed listing of the calls made from NCUA's regional offices. Furthermore, GSA does not have this information itself, as it monitors only the regional offices' general use of the government long distance telephone lines.

Pursuant to 5 U.S.C. ~552(a)(4)(B), you may seek judicial review of this determination. Such a suit may be filed in United States District Court in the district where you reside, where your principal place of business is, or in the District of Columbia.

Sincerely,

Robert M. Fenner
General Counsel

GC/LH:sg
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