

July 14, 1995

Maurice Rogers, Esq.

712 18th Street, Ensley

Birmingham, Alabama 35218

Re: Freedom of Information Act - Appeal

(Your June 12, 1995 Letter)

Dear Mr. Rogers:

On May 19, 1995, you filed a Freedom of Information Act (FOIA) request for "copies of all papers relating to the receivership of America's First Credit Union, a State chartered credit union in Birmingham, Alabama, from the period of June 1st, 1990, until the termination of the receivership on or about September 1st, 1994." By letter dated June 6, 1995, Timothy P. McCollum, Acting Regional Director of Region III denied your request pursuant to exemption 8 of the FOIA (5 U.S.C. 552(b)(8)). We received your June 12 appeal on June 19. Mr. McCollum's denial of your request is upheld pursuant to exemption 8.

In addition to exemption 8, other exemptions (e.g. exemptions 5 and 6) may also apply to the documents responsive to your request. However, they are not discussed in detail since we have determined that the request is overly broad. If you wish to narrow your request, you can do so and submit a new request to the Freedom of Information Officer, NCUA - Office of General Counsel, 1775 Duke Street, Alexandria, VA 22314-3428. We have also given you a estimate of the amount of documents responsive to the original request and the time and cost that would be involved in reviewing and redacting the documents.

Many of the documents responsive to your request are contained in or related to examination reports. 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 an examination report.

NCUA has incorporated these dual purposes into its regulation. Section 792.3(a)(8) of NCUA's Rules and Regulations (12 C.F.R. 792.3(a)(8)) implements 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 do not require agencies to segregate and disclose those portions of documents that are unrelated to the financial condition of the institution. *See Atkinson*. Therefore, all examination reports and documents related thereto are withheld pursuant to exemption 8.

As previously, your request for all documents relating to the conservatorship (you call it receivership) of America's 1st Credit Union from 1990 through 1994 is overly broad. There are approximately 15 boxes of documents (including 4 boxes of documents that are examination related and thus exemptible under exemption 8) that are responsive to your broad request. These responsive documents involve several different lawsuits, bond claims, and loans that the credit union made, among other things. As stated in Commonwealth of Massachusetts v. U.S. Dept. of Health & Human Services, 727 F.Supp. 35, 36 (D. Mass. 1989), a request for all documents "relating to a subject is usually subject to criticism as overbroad since ... all documents 'relate' to all others in some remote fashion. Such a request thus unfairly places the onus of non-production on the recipient of the request [NCUA] and not where it belongs - upon the person who drafted such a sloppy request. Just as such requests are objectionable under Fed. Rules of Civ. Pro. 26(b)(1), so ought they be objectionable under the [FOI] Act." We advise that your request be narrowed as much as possible to describe only those particular documents that you are looking for. We also note that other exemptions in addition to exemption 8 (e.g. exemptions 5 - deliberative, attorney-client and attorney work product privilege, and 6 - personal privacy) may be applicable to any narrowed request.

You note in your original FOIA request that you would be willing to review the documents if they are voluminous. You could not review the documents until they were reviewed, reproduced and any exemptible information redacted by NCUA personnel. Otherwise, you would be privy to exemptible information. The FOIA and NCUA Regulations allow for NCUA to recoup the costs it incurs in searching for, reviewing and duplicating documents for commercial use requests. (*See* 5 U.S.C. 552(a)(4)(A)(ii)(I) and 12 C.F.R. 792.5(c)(1).) The charge for an NCUA professional to search for and review documents is currently \$33.07 per hour. (*See* 12 C.F.R. 792.5(b)(1).) We estimate that it would take at least one week (40 hours) to review and redact the 11 boxes of documents that are not specifically examination related, at an estimated cost of \$1322.80. Cost to duplicate documents is \$.25 per page. (*See* 12 C.F.R. 792.5(b)(3).) It is not possible to estimate duplication costs until all of the documents are reviewed and it is determined which documents are releasable.

Pursuant to 5 U.S.C. 552(a)(4)(B), you may seek judicial review of this determination by filing suit to enjoin NCUA from withholding the documents you requested and to order production of the documents. Such a suit may be filed in the United States District Court in the district where you reside, where your principal place of business is located, the District of Columbia, or where the documents are located (the Eastern District of Virginia.) As noted above, you may also submit a new, narrowed FOIA request.

Sincerely,

Robert M. Fenner

General Counsel

GC/HMU:bhs

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