

July 1, 1997

Jerome G. Snider, Esq.

Davis Polk & Wardwell

450 Lexington Avenue

New York, NY 10017

Re: Freedom of Information Act Appeal dated June 3, 1997

Dear Mr. Snider:

On May 1, 1997, you filed a request under the Freedom of Information Act (FOIA) for certain documents dated or created from January 1, 1979 through January 1, 1984. You requested documents pertaining to Davisville Credit Union, in connection with proposed and actual mergers with NCUA-insured credit unions, including but not limited to Quonset Point Credit Union and Amtrol Employees Federal Credit Union. Richard Schulman, NCUA's FOIA Officer, responded to your request on May 16, 1997 stating that the NCUA had nothing in its files responsive to your request. You have appealed this determination stating that you have come across documents showing that Davisville Credit Union corresponded with NCUA regarding the actual or proposed mergers subject to your request. However, you did not provide any information about those documents that might otherwise assist in the processing of your request. Instead, you asked us to reinspect our records, to determine whether there are any responsive documents and if no responsive documents can be found, you asked us whether the records were destroyed or what record-keeping practices might account for the disappearance of such documents. We have found no responsive records. We confirm the FOIA Officer's finding and deny your appeal.

We note that Davisville Credit Union was chartered in the state of Rhode Island and was never federally insured. Davisville was insured by the Rhode Island Share and Deposit Indemnity Corporation (RISDIC). The only existing records NCUA has located pertaining to Davisville Credit Union concern Davisville's attempt to obtain federal share insurance and are dated from 1990 through 1991. These records were part of the subject of your September 17, 1996 FOIA request. Many of these records have been made available to you. (*See* my January 28, 1997 response to your December 12, 1996 FOIA appeal.)

You appear to be questioning NCUA's search for the documents requested. 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, 841 (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, 23 F.3d 458 (D.C. Cir. 1994) quoting from Weisberg v. United States Department of Justice, 745 F.2d 1476 (D.C. Cir. 1984).

You have requested records which you allege were dated or created between

January 1, 1979 and January 1, 1984. Assuming these documents did exist at one time, they now would be between thirteen and eighteen years old. 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. 1228.) Under NCUA's record retention schedules, routine correspondence for federal credit unions is transferred to the appropriate Federal Records Center when it is three years old and destroyed when it is seven years old. For state chartered credit unions, routine correspondence is transferred to the Federal Records Center when it is three years old and destroyed when it is five years old. Any correspondence concerning the possible merger of Davisville Credit Union with a federally insured credit union would have been placed in the federally insured credit union's file, sent to the Federal Records Center after three years and then destroyed either two or four years later. Thus, any correspondence that might have been

responsive to your request would have been destroyed by 1991 and NCUA is under no further obligation to search for the requested records.

Pursuant to 5 U.S.C. 552(a)(4)(B), you may seek judicial review of this determination by filing suit to against NCUA. Such a suit may be filed in the United States District Court in the district where the requester resides, where the requester's principal place of

business is located or in the District of Columbia.

Sincerely,

Robert M. Fenner

General Counsel

GC/HMU:bhs

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