

November 24, 1999

R.C. Eickelberg, CEO

Deer Valley Federal Credit Union

16215 N. 28th Avenue

Phoenix, AZ 85053

FOIA Appeal, your letter dated October 21, 1999

Dear Mr. Eickelberg:

On September 29, 1999, you filed a Freedom of Information Act (FOIA) request for copies of the field of membership expansion application and supporting documents filed by Honeywell FCU, located in Minneapolis, MN. This request was submitted to NCUA's Region V office. On October 14, 1999, J. Leonard Skiles, NCUA's Region V Director, responded to your request, enclosing approximately 20 pages of responsive records. Approximately sixty pages of responsive documents were withheld pursuant to exemption 4 of the FOIA.

5 U.S.C. 552(b)(4). We received your October 21, 1999 appeal on October 26. Your appeal is granted in part and denied in part. Enclosed are five pages (four with redactions) previously withheld. The redactions are made pursuant to exemptions 4 and 6 of the FOIA. The rest of the documents continue to be withheld pursuant to exemption 4 of the FOIA. The exemptions are discussed below.

Exemption 4 of the FOIA protects two categories of information: (1) trade secrets; and (2) information which is commercial or financial, obtained from a person and privileged or confidential. 5 U.S.C.552(b)(4). All of the information withheld is within the commercial/financial category. The term "commercial" has been interpreted to include anything "pertaining or relating to or dealing with commerce." American Airlines, Inc. v. National Mediation Board, 588 F.2d 863, 870 (2d Cir. 1978). All of the information withheld pursuant to exemption 4 meets the broad interpretation of commercial or financial information. Information "obtained from a person" has been held to include information obtained from a corporation. Nadler v. FDIC, 92 F.3d 93, 95 (2d Cir. 1996). Information obtained from a credit union meets the standard of obtained "from a person" under Nadler. In Critical Mass Energy Project v. NRC, 975 F2d 871 (D.C. Cir. 1992), cert. denied, 507 U.S. 984 (1993), the court established two distinct standards to be used in determining whether commercial/financial information submitted to an agency is "confidential" under exemption 4. According to Critical Mass, information required to be submitted to an agency (which is the case here) is confidential if its release would (1) impair the Government's ability to obtain necessary information in the future; or (2) cause substantial harm to the competitive position of the person from whom the information was

obtained. *See National Parks & Conservation Association v. Morton*, 498 F.2d 765 (D.C. Cir. 1974). We believe the information withheld meets the substantial harm prong of National Parks as noted in Critical Mass.

Exemption 6 of the FOIA protects 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."

5 U.S.C. 552(b)(6). The courts have held that all information which 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, 272 (1976). Personal information about Honeywell FCU officials has been redacted from three of the released pages. This information meets the threshold requirement for exemption 6 protection. There is minimal, if any public interest in disclosing this personal information. The individuals' privacy interests outweigh any public interest in disclosure.

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 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

99-1043

SSIC 3212

Enclosure

cc: Region V Director

Douglas Young, Honeywell FCU