

January 26, 2009

Kwami Abdul-Bey
149 Bainbridge Street
Brooklyn, NY 11233

Re: Applicability of the Freedom of Information Act (FOIA) to Federal Credit Unions.

Dear Mr. Abdul-Bey:

You asked if a federal credit union is subject to the requirements of the FOIA. No, the FOIA applies to federal agencies and not to private entities, like federal credit unions.

The FOIA requires federal agencies to make certain agency records available to the public. 12 U.S.C. §552. The term agency, as defined by the FOIA, includes “any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.” 5 U.S.C. §552(f)(1).

A federal credit union is a nonprofit, cooperative association owned by its members and managed by a board of directors elected by the members. 12 U.S.C. §§1752, 1760-61. While federal credit unions are subject to National Credit Union Administration supervision, 12 U.S.C. §§1754, 1756, they are not government corporations, government controlled corporations, nor otherwise within the definition of agency for FOIA purposes. While federal credit unions may be considered federal instrumentalities under certain federal laws, for example tax and bankruptcy laws, federal credit unions are not agencies for purposes of FOIA. Courts have looked to the federal government’s degree of control over daily operations in distinguishing between a federal agency and a private entity and have concluded a federal credit union is a private entity. *Heiskala v. Johnson Space Center Federal Credit Union*, 474 F. Supp. 448, 453 (S.D. Tex. 1979); *Jesinger v. Nevada Federal Credit Union*, 24 F.3d 1127, 1132 (9th Cir. Nev. 1994).

If you have any further questions please contact Staff Attorney Justin Anderson or me at (703) 518-6540.

Sincerely,

/S/

Sheila A. Albin
Associate General Counsel