

September 26, 2002

(b)(6)

Re: Your FOIA appeal, letters dated August 30, 2002 and September 3, 2002

Dear (b)(6):

On July 5, 2002, you wrote to NCUA's Region V Office requesting a copy of the merger agreement package concerning Gulf Coast Federal Credit Union and Alice City Employees Federal Credit Union. Dianne Salva, NCUA's FOIA Officer, responded to your request on August 8, 2002. Ms. Salva sent you the releasable pages of the merger agreement package totaling approximately 64 pages. Unfortunately, the two-page merger agreement was not provided with Ms. Salva's response. It is now enclosed. Fifteen pages from the package were withheld pursuant to exemptions 6 and 8 of the Freedom of Information Act (FOIA), 5 U.S.C. §552(b)(6) & (8). On August 30, 2002, and September 5, 2002, you wrote to Ms. Salva, appealing her August 8th response and setting forth several concerns. Your appeal for the withheld pages is denied. The fifteen pages continue to be withheld pursuant to exemptions 6 and 8. An explanation of the exemptions and their applicability to the withheld documents follows. We have also tried to address the other concerns expressed in your two letters.

Exemption 6

Five pages were withheld pursuant to exemption 6. These pages contain lists of delinquent loan holders. Exemption 6 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). Courts have held that all information that applies to a particular individual meets the threshold requirement for privacy 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, 372 (1976). The withheld information clearly meets the requirement for exemption 6 protection. There is probably no public interest in disclosing the personal information withheld. Therefore, the information continues to be withheld pursuant to exemption 6.

Exemption 8

Ten pages were withheld pursuant to exemption 8. These pages contain financial information on both Gulf Coast FCU and the former Alice City Employees FCU, submitted to NCUA or gathered during the examination process. Exemption 8 applies to 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." 5 U.S.C. 552(b)(8). The withheld pages were prepared and submitted as part of the submission of the merger package to NCUA. The withheld documents were prepared for the use of NCUA, the agency responsible for the regulation of federal credit unions. They clearly fall within exemption 8.

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.C.Cir. 1980). Courts have interpreted exemption 8 broadly and have declined to restrict its all-inclusive scope. Consumers Union of United States, Inc. v. Heimann, 589 F.2d 531 (D.C. Cir. 1978). Records pertaining to a financial institution no longer in operation can be withheld pursuant to exemption 8. Gregory v. FDIC, 631 F.2d 896 (D.C. Cir. 1980). In this case, as you know, Alice City Employees FCU is no longer in existence in that it has been merged into Gulf Coast FCU. We believe that the purposes of exemption 8 are met; therefore the pages continue to be withheld pursuant to exemption 8.

In your September 3, 2002, letter, you note your belief that a credit union member should not be impeded from obtaining information about credit union investments. You should contact your credit union, rather than make a FOIA request to NCUA, in order to obtain information on your credit union's investments. Such access is not governed by the FOIA as it applies to NCUA, but rather by state law, as it applies to your credit union. Enclosed is a February 21, 1992, letter issued by this office addressing member access to federal credit union records.

You also state in your September 3, 2002, letter, that you do not have access to the Federal Credit Union Act, the NCUA Rules and Regulations, the Credit Union Merger Manual, and exemptions 6 and 8 of the FOIA. All of these are available on NCUA's website, found at www/ncua.gov. From the home page, go to Reference Information. All of the sources you noted are listed on and can be accessed from the Reference Information page. If you do not have access to the Internet or wish to obtain paper copies of any of these documents, please contact our publications office at 703-518-6340.

Pursuant to 5 U.S.C. 552(a)(4)(B), you may seek judicial review of this determination (the withholding of 15 pages pursuant to the above-noted FOIA exemptions) 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 principal 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

Enclosures

GC/HMU:bhs
02-0908
SSIC 321
FOIA 02-307

