

December 23, 2002

Benjamin Coates
The Center for Public Integrity
910 17th Street, NW
7th floor
Washington, DC 20006

Re: Your FOIA appeal dated November 19, 2002

Dear Mr. Coates:

On September 19, 2002, Alex Knott of the Center for Public Integrity, filed a Freedom of Information Act (FOIA) request for all records from 1997 until the present that contain the names of certain politicians and their staffs. Mr. Knott requested a waiver of fees in the FOIA request. On October 3, 2002, Mr. Knott sent a follow-up e-mail further elaborating on his request for a fee waiver. Dianne Salva, NCUA's FOIA Officer, responded to Mr. Knott's request on October 25, 2002. Thirty responsive pages were released and approximately 148 pages were withheld pursuant to exemptions 5, 6, & 8 of the FOIA, 5 U.S.C. §552(b)(5), (6), & (8). The request for a fee waiver was denied. On November 19, 2002, you appealed Ms. Salva's denial of the request for a fee waiver. Your appeal of the fee waiver is denied as explained below. Although your fee waiver request and appeal have been denied, there are no outstanding charges because we have changed the Center for Public Integrity's fee category.

Category of requester

NCUA regulations provide for several fee categories for different types of FOIA requesters. (See §792.20 of the NCUA FOIA regulation, 12 C.F.R. §792.20.) The Center for Public Integrity was categorized as a commercial use requester for purposes of the September 19th request. We have determined the Center for Public Integrity should be categorized as an other requester rather than a commercial use requester. Other requestors are entitled to 2 hours free search time and unlimited free review hours whereas commercial use requesters get no free search or review time. (See §792.19 - 792.20 of the NCUA FOIA Regulation) The invoice enclosed with Ms. Salva's October 25th response totaled \$101.50 (one hour of search time and one hour of review time each at \$50 per hour, and 30 pages of duplication at 5 cents per page). No fees are due since the Center for Public Integrity will not be charged for the first two hours of search or any review time. The cost for duplication (\$1.50) is below the NCUA minimum billing amount.

Fee waiver

The FOIA provides that fees can be lowered or waived if "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(iii). Section 792.27 of NCUA's FOIA regulation restates this test and sets forth the factors NCUA will consider in making a determination on a fee waiver request. NCUA will first determine:

- 1) whether the subject of the requested records concerns government operations or activities; 2) whether disclosure will contribute to an understanding of government operations or activities; 3) whether disclosure will contribute to the public understanding; and 4) whether disclosure is likely to contribute significantly to the public

understanding of government operations or activities. (See 12 C.F.R. §792.27(a)(1) - (4).) In making a determination on a fee waiver request, the agency must look to the records responsive to the specific FOIA request and determine if the standard is met. The records responding to Mr. Knott's request consist of complaints received from constituents of various members of Congress and NCUA's responses to those complaints. This type of constituency work does not specifically concern NCUA operations or activities (factor 1 noted above). We need not look to the other three factors since all four must be present in order to meet the public interest standard.

Once the public interest standard is met, NCUA Regulations require that we determine: 1) whether the requestor has a commercial interest in the disclosure; and if so 2) that the public interest outweighs the requestor's commercial interest. (See 12 C.F.R. §792.27(b)(1) – (2).) We need not address your commercial interest and whether or not the public interest outweighs your commercial interest since the necessary public interest standard has not been met.

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 principal place of business is located, where the records are located (the eastern district of Virginia) or the District of Columbia.

Sincerely,

Robert M. Fenner

General Counsel

GC/HMU:bhs

02-1154

FOIA 02-359

cc: Dianne Salva, FOIA Officer