

Ms. Marcia Blomberg
Business Reporter
Union-News/Sunday Republican
P.O. Box 2350
Springfield, MA 01102-2350

Re: Your FOIA appeal dated March 4, 2003

Dear Ms. Blomberg:

On February 26, 2003, you faxed a Freedom of Information Act (FOIA) request to NCUA's Region I Office. You requested a list of the board of directors of the D. Edward Wells Federal Credit Union (FCU) as the board existed before the NCUA placed the FCU into conservatorship. Layne Bumgardner, NCUA's Region I Director, responded to your request on February 26, 2003, with a follow-up response dated March 3, 2003. Enclosed with Mr. Bumgardner's response was a list of the names and titles of credit union officials, with the home addresses, home telephone numbers, business telephone numbers and FCU account numbers redacted. The redacted information was withheld pursuant to exemption 6 of the FOIA. On March 4, 2003, you appealed the Region I decision to redact the personal information. We received your appeal on March 11th. Your appeal is granted in part and denied in part. The home addresses, home telephone numbers and FCU account numbers continue to be withheld pursuant to exemption 6 of the FOIA as explained below. The business telephone numbers (for the individuals that noted them) are released on the enclosed list. We note that there is also a space for e-mail addresses for the individuals listed on the enclosure. No e-mail addresses were provided; a determination of their release has not been made.

Exemption 6

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). The 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). Home addresses, home telephone numbers and financial institution account numbers meet the threshold requirement for personal information. There is also some privacy interest in one's work telephone number. 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 Supreme Court has held that the public interest to be considered for purposes of exemption 6 balancing is information that would shed light on an agency's (in this case - NCUA's) performance of its statutory duties. *United States Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989). The public interest in this case is not in the personal information itself, but rather information derived from use of the personal information. The personal information (addresses and phone numbers) is needed in order to contact the officials. The information derived is information obtained in speaking or corresponding with the former credit union officials about NCUA activities at D. Edward Wells FCU. Several lower courts have dealt with the issue of "derivative use" in balancing the public interest against a privacy interest and have come down on both sides of the issue. We believe that the public interest does not outweigh the strong privacy interest in one's home address or home telephone number. However, we believe the public

interest balanced against the lesser privacy interest in the business telephone numbers warrants their release, especially in light of the fact that these officials can no longer be contacted at the FCU since the FCU has been placed into conservatorship. We also note there is no public interest in disclosing the personal FCU account numbers. The individuals' home addresses, home telephone numbers and personal FCU account numbers meet the requirement for exemption 6 protection and continue to be withheld. The business telephone numbers are released.

Pursuant to 5 U.S.C. 552(a)(4)(B) of the FOIA, 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 (the requestor) reside, where the requestor's 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

Enclosure

GC/HMU:bhs

03-0328

FOIA 03-116

cc: Region I