

April 12, 2006

Ms. Rebecca J. Baker
(b) (6)

Response sent via e-mail and USPS

Re: FOIA Appeal, your e-mail of March 16, 2006

Dear Ms. Baker:

On January 20, 2006, you filed a Freedom of Information Act (FOIA) request for "a list of credit unions, if any, that do not calculate interest in interest-bearing accounts on a daily basis." On February 15, 2006, Dianne Salva, NCUA's FOIA Officer, sent you a response stating that the information you requested does not exist in NCUA's files. You appealed Ms. Salva's determination via an e-mail dated March 16, 2006. You state in your appeal that you know the record exists and to please produce it. We again assert that there are no documents responsive to your request. Your appeal is denied.

In clarification of your FOIA request and appeal, we note that federal credit unions are not authorized to pay interest. They pay dividends based on earnings. Some state-chartered credit unions are authorized to pay interest. We interpreted your request to include credit unions' payment of both dividends and/or interest. In reviewing the FOIA Officer's determination that no documents exist in response to your request, we contacted appropriate staff in both our Office of Examination and Insurance and one of our regional offices. Staff from both offices confirmed that we neither assemble nor maintain a list of credit unions that do not calculate interest/dividends in interest-bearing/dividend bearing accounts on a daily basis.

The adequacy of an agency's search under the FOIA is determined by a test of "reasonableness," which may vary from case to case. Zamansky v. EPA, 767 F.2d 569, 571-73 (9th Cir. 1985). The reasonableness of an agency's search depends, in part, on how the agency conducted its search in light of the scope of the request. Hayden v. Department of Justice, No. 03-5078, 2003 WL 22305071, at *1 (D.C. Cir. Oct. 6, 2003). The question is not whether any documents

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responsive to the request might exist, but rather whether the search for any responsive documents was adequate. As noted, we contacted staff responsible for data collection and found that no such data exists. We believe a reasonable search was conducted.

If you are interested in one or more particular credit unions, you may contact the credit union directly, the appropriate NCUA regional office if the credit union is federally chartered, or the state supervisory authority for a state chartered credit union. We also note that certain small, non-automated credit unions are exempt from truth-in-savings regulatory requirements. (See 12 C.F.R. §707.1(c).) Enclosed the Federal Register publication setting forth the exemption. Please contact Hattie Ulan of this Office (telephone 703-518-6544) if you need anything further.

Pursuant to 5 U.S.C. 552(a)(4)(B) of the FOIA, you may seek judicial review of the 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, or the District of Columbia.

Sincerely,

Robert M. Fenner
General Counsel

Enclosure

GC/HMU:bhs
06-0331
06-FOI-00034