

All redactions made pursuant to exemption (b)(6)

October 1, 2009

Carol Nelkin, Esq.
Nelkin, Nelkin and Krock
5417 Chaucer Drive
Houston, TX 77005

Re: Your FOIA Appeal dated September 9, 2009, received September 10, 2009.

Dear Ms. Nelkin:

You are appealing the agency's determination on your Freedom of Information Act (FOIA) request, dated August 10, 2009, in which you sought information regarding the filing of Suspicious Activity Reports (SARs). Specifically, on behalf of your client, xxxx xxxxxx you sought an acknowledgement that SARs were filed, along with the number of SARs filed, by or on behalf of First Community Credit Union for the period of October 2007 to December 2008. You also requested documents referencing xxxxxxxxxxxx in any way, along with information indicating such documents were sent to NCUA by or on behalf of xxxxxxxxxxxx. By letter dated August 10, 2009, Staff Attorney Linda Dent responded to your FOIA request stating the agency would not confirm or deny the existence of any record of this type and, further, that any record of this type would be exempt under exemptions (b)(3) and (b)(8) of the FOIA. 12 U.S.C. §552(b)(3) and (8). Your appeal is denied.

Exemption 3

Exemption 3 of the FOIA incorporates certain nondisclosure provisions that are contained in other federal statutes. In this case, the nondisclosure provision of the Bank Secrecy Act (BSA) permits the withholding of any information relating to the SARs you requested.

The Bank Secrecy Act (BSA) provides, among other matters, that financial institutions may be required to file reports the Secretary of the Treasury determines to be useful in criminal investigations and proceedings. 12 U.S.C. §1829b, 12 U.S.C. §§1951-59, and 31 U.S.C. §§5311-31. Regulations implementing the BSA require financial institutions, including credit unions, to submit SARs to report crimes or suspected crimes in accordance with regulations and instructions accompanying the SAR form. 12 C.F.R. §748.1. The BSA contains a section specifically exempting all reports and records of reports from disclosure under the FOIA. 31 U.S.C. §5319. Courts have reiterated that this section of the BSA qualifies as an exempting statute under exemption 3 and have concluded that agencies may properly deny disclosure of SARs under exemption 3(A) of the FOIA. *Sciba v. Bd. of Governors of the Fed. Reserve Sys.*, 2005 U.S. Dist. LEXIS 45686 (D.D.C. 2005)

Exemption 8

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). 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). In general, all records, regardless of the source, of a financial institution’s financial condition and operations that are in the possession of a federal agency responsible for their regulation or supervision are exempt. *McCullough v. FDIC*, No. 79-1132, 1980 U.S. Dist. LEXIS 17685, at **7-8 (D.D.C. July 28, 1980). SARs are matters related to NCUA’s examination of credit unions, and as such are also properly withheld under exemption 8.

Information Regarding xxxxxxxxxxxx

In addition to the SARs, you also requested all documents referencing your client, Xxxxxxxxxxxx. Records about a person can only be disclosed to that person’s representative if the request is accompanied by a letter or affidavit signed by the person authorizing the representative to request the records. 12 C.F.R. §§792.11(a)(6), 792.55(c). Your initial request was not accompanied by the required authorization, and, therefore, did not receive an initial determination. You may resubmit this portion of your request accompanied by the necessary authorization, which we will process under the FOIA and Privacy Act.

Under 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. You may file suit in the United States District Court where you reside, where your principal place of business is located, the District of Columbia, or in the Eastern District of Virginia.

Sincerely,

/S/

Robert M. Fenner
General Counsel

GC/JMA:bhs
09-0936
Enclosure