

May 23, 1991

Robert Dembia, Esq.
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Re: Freedom of Information Act - Appeal (Your April 18, 1991 Letter)

Dear Mr. Dembia:

We received your Freedom of Information Act ("FOIA") appeal on May 6, 1991. On April 15, 1991, the National Credit Union Administration ("NCUA") denied your request for an examiner's report containing information relating to deductibles for the Varoh Federal Credit Union. We have determined that the records meeting your request should be withheld pursuant to FOIA.

ANALYSIS

Exemption 8 of FOIA (5 U.S.C. ~522(b)(8)) exempts informa- tion:

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 institu- tions.

Section 792.3(a)(8) of NCUA's Rules and Regulations (12 C.F.R. ~792.3(a)(8)) implements exemption 8 and adds the fol- lowing:

This includes all information, whether in formal or informal report form, the disclosure of which would harm the financial security of credit unions or would interfere with the relationship between NCUA and credit unions.

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.D.C. 1980). Either purpose is sufficient reason to withhold a report. Courts do not require agencies to segre- gate and disclose portions of documents unrelated to the fi- nancial condition of the institution. An entire report relating to the financial condition of the institution may be withheld. See *Atkinson*, 1 GDS at 80,103. We believe both purposes of exemption 8 are met. Therefore, the examination report responsive to your request is withheld pursuant to ex- emption 8.

Pursuant to 5 U.S.C. ~552(a)(4)(B), you may seek judicial re- view of this appeal by filing suit to enjoin NCUA from with- holding the documents you requested for your client and to order production of such documents. Such a suit may be filed in United States District Court in the district where the re- questor resides, where the requestor's principal place of business is located, or in the District of Columbia.

Sincerely,

Robert M. Fenner
General Counsel

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