

November 4, 1991

Johnnie Wilson
Office & Professional Employees
International Union
Local 381
7125 South Air Depot Blvd.
Oklahoma City, Oklahoma 73135

Re: Freedom of Information Act - Appeal (Your October 15, 1991, Letter)

Dear Mr. Wilson:

We received your Freedom of Information Act ("FOIA") appeal on October 23, 1991. On September 23, 1991, the National Credit Union Administration ("NCUA") denied your request for the following documents concerning O.C. IBEW Federal Credit Union: 1) copies of all NCUA Audits for the years 1989 and 1990; 2) copies of the computer-generated trial balance referred to in the "Examiner's Findings" under "Comments", page 3; and 3) copies of "Delinquent Loan List" referred to in "Examiner's Findings" under "Comments", page 2. We have determined that the records meeting your request should be withheld pursuant to FOIA.

ANALYSIS

The documents you seek are within the scope of exemption 8 of FOIA (5 U.S.C. 522(b)(8)). Exemption 8 exempts from disclosure 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.

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 following:

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 segregate and disclose portions of documents unrelated to the financial 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 documents contained in the examination report that are responsive to your request are withheld pursuant to exemption 8.

Pursuant to 5 U.S.C. ~552(a)(4)(B), you may seek judicial review of this appeal by filing suit to enjoin NCUA from withholding 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 requestor resides, where the requestor's principal place of business is located, or in the District of Columbia.

Sincerely,

Robert M. Fenner
General Counsel

GC/MJM:mm
SSIC 3212

