

May 10, 1996

(b)(6)

Re: Freedom of Information Act Appeal

(Your March 15 and April 15, 1996 Letters)

Dear (b)(6):

On February 26, 1996, (b)(6) made a request pursuant to the Privacy Act,

5 U.S.C. 552a, for reports, evaluations, correspondence, and other documents from 1992 to 1995, concerning Robins Federal Credit Union and personally discussing (b)(6). On March 7, 1995, NCUA's Region III Director denied the request pursuant to exemption 8 of the Freedom of Information Act, 5 U.S.C. 552 (FOIA), rather than the Privacy Act. The Privacy Act is only triggered when information is found in a system of records, that is "a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual." 5 U.S.C. 552(a)(5). As noted in the Region's response, there were no Privacy Act records responsive to (b)(6) request.

You appealed the Region III determination in a letter dated March 15, 1996. The letter was returned to you due to an insufficient address. You forwarded the March 15 letter to this office on April 15, 1996. We received your appeal on April 19, 1996. The records withheld pursuant to exemption 8 consist of Robins Federal Credit Union examination reports and related documents. We note that the exemption 8 documents do not contain any personal discussion of (b)(6). Technically, the documents are not responsive to (b)(6) FOIA request. For purposes of your appeal, we have, however, reviewed the applicability of exemption 8 to the documents withheld. Your appeal is denied pursuant to exemption 8 of the FOIA.

Although you label your request as an FOIA appeal, you do not discuss the applicability of exemption 8 to the documents withheld. You suggest that the documents requested be made available pursuant to authorization from NCUA and a protective order from the court to preserve their confidentiality. The FOIA does not provide for limited disclosure;

rather it provides for either disclosure or nondisclosure. Once documents are made available to one requester under the FOIA, they are generally available to any other requester. Information cannot be withheld if it has been the subject of prior official and documented disclosure. *See Afshar v. Department of State* 702 F.2d 1124, 1133 (D.C. Cir. 1983). We cannot make a limited disclosure under the FOIA. The following is our analysis of the application of exemption 8 to the documents withheld.

Exemption 8

Examination and examination related documents were withheld pursuant to exemption 8 of the FOIA. Exemption 8 exempts 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).

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 examination information. The NCUA regulation implementing exemption 8 of the FOIA is found at 12 C.F.R. 792.3(a)(8). Section 792.3(a)(8) repeats exemption 8 and states:

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.

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 keeping with the expansive construction of exemption 8, the *Atkinson* case held that agencies are not required to segregate and disclose portions of documents unrelated to the financial state of the institution. Examination reports and related information have been withheld from disclosure. We believe that the purposes

of exemption 8 are met. The examination documents continue to be withheld in their entirety pursuant to exemption 8.

Pursuant to 5 U.S.C. 552(a)(4)(B), you may seek judicial review of this determination by filing suit to enjoin NCUA from withholding the documents requested and to order production of the documents. Such a suit may be filed in the United States District Court in the district where the requester resides, where his 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

GC/HMU:bhs

96-0429

SSIC 3212

□