

August 5, 1996

Andrew W. Cohen

Squire, Sanders & Dempsey

P.O. Box 407

Washington, D.C. 20044-0407

Re: FOIA Appeal

(Your Letter dated June 26, 1996)

Dear Mr. Cohen:

On November 8, 1995, your client Robert Cohen filed a request under the Freedom of Information Act (FOIA) for certain documents (set forth in four categories) concerning the now liquidated Barnstable Community Federal Credit Union. Robert Cohen's request was granted in part and denied in part. (*See* May 10 and June 3, 1996 letters to you from Richard S. Schulman, NCUA's FOIA Officer.) The documents denied were described in category 4 of the original FOIA request and were denied by Mr. Schulman pursuant to exemptions 5 and 6 of the FOIA (5 U.S.C. 552(b)(5) and (6)). On June 26, 1996, we received your appeal of the denied category 4 documents. On July 23, 1996, we notified you of a 10-day extension for determination on your appeal pursuant to Section 792.6 of the NCUA Rules and Regulations (12 C.F.R. 792.6). Your appeal is granted in part and denied in part. Redacted documents are enclosed and explained below.

The records requested and denied were described as any documents relating to twenty-two real estate secured loans made to various trusts by Barnstable Community FCU where the identity of the beneficiary(ies) of any of the trusts was identified. According to the list identifying the loans subject to the request, the loans were recorded by the Barnstable County Registry of Deeds between January 1984 and March 1986. Upon further review of the documents originally identified as responsive to the request, we have now determined that none of these documents specifically indicates its relationship to the loans identified by the list submitted with the original request. There are only three documents which we can identify as even remotely responsive to the request. One document contains information about xxxxxxxxxxxx xxxxxx (highlighted on page 4 of the list with original request), but there is no information concerning a 1985 loan made by Barnstable Community FCU. We have deleted personal information (including the identity of the beneficiary of the trust) pursuant to exemption 6 of the FOIA, and enclosed the redacted document. A discussion of exemption 6 follows the description of all of the enclosed documents. We have enclosed a second document containing information about xxxxxxxxxxxxxxxxxxxx (highlighted on page 4 of the list with original request). This document concerns a loan made in 1989 rather than 1985. However there is a handwritten note on the bottom of the document alluding to a 1985 loan. Again, personal information including the beneficiary of the trust is deleted pursuant to exemption 6 of the FOIA. The third and last document enclosed identifies xxxxxxxxxxxx (highlighted on page 4 of the list with original request), its trustee/borrower and beneficiary. There was no information at all identifying a particular xxxxxxxxxx loan. Again, the personal information (trustee and beneficiary identification and net loss information) is deleted pursuant to exemption 6 of the FOIA.

Exemption 6 of the FOIA permits NCUA to withhold all information about an individual in "personnel and medical files and similar files" where the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy."

5 U.S.C. 552(b)(6). The courts have held that all information which applies to a particular individual meets the threshold requirement for exemption 6 protection. United States Department of State v. Washington Post Co., 456 U.S. 595 (1982). Personal financial information contained in loan documents clearly meets the threshold requirement for exemption 6 information. Once a privacy interest is established, application of exemption 6 requires a balancing of the

public's right to disclosure against the individual's right to privacy. Department of the Air Force v. Rose, 425 U.S. 352, 372 (1976). The public interest in the information is to "shed light on an agency's performance of its statutory duties." United States Department of Justice v. Reporters Committee, 489 U.S. 749 (1989). The burden of establishing that disclosure would serve the public interest is on the requester. Carter v. United States Department of Commerce, 830 F.2d 388, 391 (D.C. Cir. 1987). The court in Reporters Committee held that the interest of the individual FOIA requester is not to be considered in the balancing. The privacy interest of the individual is to be balanced against the public interest generally in disclosure. 489 U.S. at 771-772. We believe there is no public interest in disclosure of individual financial information in the loan documents requested. The FOIA requester noted in his original request that information identifying the beneficiaries could be redacted to protect individual privacy interests. These privacy interests extend to the other information redacted (loan amounts, individual borrowers, etc.) Therefore, this information is withheld pursuant to exemption 6 of the FOIA and the redacted documents are released. Although the original FOIA request was denied pursuant to exemptions 5 and 6, we believe that exemption 6 provides the basis for redacting the documents, exemption 5 is not applicable.

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 you 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 the requester's 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

Enclosures

GC/HMU:bhs

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