

July 8, 1997

Michael Crotty

Deputy General Counsel for Litigation

1120 Connecticut Avenue, N.W.

Washington, D.C. 20036

Re: FOIA Appeal, your letter dated June 6, 1997

Dear Mr. Crotty:

On May 13, 1997, you submitted a Freedom of Information Act (FOIA) request to NCUA's Region V Director on behalf of the American Bankers Association. You requested the following documents: 1) the portion of Holyoke Community Federal Credit Union's charter that contains its current field of membership; and 2) any and all correspondence since August 1, 1996, between the Holyoke Community Federal Credit Union or its predecessor(s) and the National Credit Union Administration which pertains in any way to any changes, proposed, approved, rejected or pending, to the credit union's field of membership. The credit union did apply for a field of membership expansion prior to the August 1, 1996 date noted in your request. There has not yet been final agency action on the application. Phillip R. Crider, the Region V Director, responded to your request on May 16, 1997. You were provided with a current copy of section 5 of the credit union's charter. Section 5 of the charter sets forth the field of membership. All other requested documentation (that noted in item 2 above) was denied pursuant to exemption 5 of the FOIA. We received your June 6, 1997 appeal on June 9. Your appeal is granted in part and denied in part. The responsive documents (some with redactions) are enclosed. We have included some correspondence prior to August 1, 1996 as it relates to the outstanding field of membership expansion request.

The enclosed documents constitute the credit union's application package for a field of membership expansion. Only one two-page document was withheld in full pursuant to exemption 4. As you can see from the enclosed documents, very little information has been redacted. Information was withheld and redacted pursuant to exemptions 4 and 6 of the FOIA as explained below.

Exemption 4

The information withheld pursuant to exemption 4 consists of certain strategic planning information contained in correspondence the credit union submitted to NCUA. One two-page document is withheld in full. Exemption 4 of the FOIA covers two categories of information: (1) trade secrets; and (2) information which is commercial or financial, obtained from a person and privileged or confidential. 5 U.S.C. 552(b)(4). All of the information withheld is within the commercial/financial category. The term "commercial" has been interpreted to include anything "pertaining or relating to or dealing with commerce", American Airlines, Inc. v. National Mediation Board, 588 F.2d 863, 870 (2d Cir. 1978), and information obtained from a corporation is included as information obtained from a person. Nadler v. FDIC, 92 F.3d 93,95 (2d Cir. 1996).

The third requirement of exemption 4 is met if information is "privileged or confidential." In Critical Mall Energy Project v. NRC, 975 F.2d 871 (D.C. Cir. 1992), cert. denied,

507 U.S. 984 (1993), the court established two distinct standards to be used in determining whether commercial/financial information submitted to an agency is "confidential" under exemption 4. Information which is required to be submitted is subject to a stricter standard than information which is voluntarily submitted. Under the stricter "required to be submitted" standard, information is confidential if it meets one of the two prongs of National Parks & Conservation Association v. Morton, 498 F.2d 765 (D.C. Cir. 1974). The information is confidential under National Parks if its release would (1) impair the Government's ability to obtain necessary information in the future; or

(2) cause substantial harm to the competitive position of the person from whom the information was obtained. National Parks at 770. We believe that the commercial information withheld meets the second prong of National Parks.

Exemption 6

Exemption 6 of the FOIA protects 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). The information withheld pursuant to exemption 6 consists of home addresses and two home telephone numbers of persons submitting letters in support of expansion of the credit union's field of membership. Copies of the letters, with home addresses and telephone numbers redacted, are enclosed. The redacted information clearly meets the threshold privacy requirement for exemption 6 personal information. Home addresses and telephone numbers apply to a particular individual. Once a privacy interest is established, application on 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). According to the courts, 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 (D.C. Cir. 1987). We do not believe there is any public interest in disclosing the home addresses and telephone numbers. Disclosure of this information would not shed light on NCUA's performance of its statutory duties. Therefore, no balancing is necessary and the information is withheld pursuant to exemption 6. National Association of Retired Federal Employees v. Horner, 879 F.2d 873 (D.C. Cir. 1989), cert. denied, 494 U.S. 1078 (1990).

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 and portions of documents withheld 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 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

SSIC 3212

97-0615

Enclosures

cc: Region V Director