

September 16, 1997

Peter Janangelo, Jr.

Manager, Sing Sing Employees Federal Credit Union

P.O. Box 38

Scarborough, NY 10510

Re: FOIA Appeal, your letter dated August 14, 1997

Dear Mr. Janangelo:

On July 17, 1997, you submitted a Freedom of Information Act (FOIA) request to NCUA's Region I Director for the Confidential Section of the examination report and the CAMEL Evaluation Form for the examination of Sing Sing FCU, effective April 30, 1997. On July 30, 1997, the Region I Director denied your request pursuant to exemption 8 of the FOIA. We received your August 14 appeal on August 18. The appeal letter was signed by both you and James E. Brown, Jr., President of Sing Sing FCU. The denial is upheld pursuant to exemption 8 of the FOIA as discussed below.

Exemption 8 of the FOIA (5 U.S.C. §552(b)(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.

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 an examination report.

NCUA has incorporated these dual purposes into its regulation. Section 792.3(a)(8) of the NCUA 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 CAMEL Evaluation Form contains your credit union's ratios for the CAMEL components, the parameter code and

its component and composite CAMEL ratings. This information fits squarely within exemption 8 of the FOIA, its release could harm the financial security of a credit union as well as interfere with the relationship between NCUA and the credit union. The Confidential Section of the examination contains information concerning the credit union's management and financial security. Its release could also cause the harms sought to be avoided by withholding the information under exemption 8. Although the Confidential Section may contain some additional information, courts do not require agencies to segregate and disclose those portions of documents that are unrelated to the financial condition of the institution. *See Atkinson*.

You argue in your appeal that the Confidential Section of the examination report should be disclosed to the credit union management (as opposed to a third party lacking privity with the credit union) so that management can verify the accuracy of the statements contained therein. Release of the Confidential Section to credit union management under the FOIA would require NCUA to release the information to any other FOIA requester. The identity of the FOIA requester is not relevant in this situation. Under the FOIA, once a document is disclosed to one requester, it is available to any such requester. Because both the CAMEL Evaluation Form and the Confidential Section of the examination report meet the requirements of and policies behind exemption 8, they are not available to any requester pursuant to the FOIA. Both documents continue to be withheld pursuant to exemption 8 of the FOIA. We note that the credit union ratios, and component and composite CAMEL ratings found in the CAMEL Evaluation Form are made available to credit union management in the examination overview.

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 withheld and to order production of the documents. Such a suit may be filed in the United States District

Court in the district where you reside, 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

97-0829

cc: Region I Director