

April 3, 2012

Mr. Napoleon FosterXXXX
XXXX
XXXX

RE: 12 - FOI - 00042; 2012 – APP – 00005

Dear Mr. Foster:

You submitted a request under the Freedom of Information Act (FOIA) to the National Credit Union Administration (NCUA) by letter dated February 3, 2012, in which you asked for copies of any records or data contained in our files that pertained to you. You also sought copies of various records and evidence of insured status pertaining to XXXX, located in Illinois. Your letter also raised questions about the status of XXXX's compliance with certain provisions of Federal law, including the Federal Credit Union Act (FCU Act). Finally, you sought information about NCUA's leadership history and procedures for filing a complaint against XXXX.

By letter dated February 15, 2012, NCUA Staff Attorney Linda Dent responded to your request. Ms. Dent provided you with copies of XXXX's Application and Agreement for Insurance of Accounts, along with an official certification confirming that XXXX obtained Federal share insurance from the NCUA effective on September 13, 1972, and that it remained insured as of February 13, 2012, the date of the certification. Ms. Dent also provided you with copies of several sections of the FCU Act and several pages from NCUA's website showing the leadership history of NCUA since 1934, the date of enactment of the FCU Act.

Ms. Dent's letter explained that any records we might have concerning compliance by XXXX with requirements of the FCU Act would be contained in reports of examination, which are specifically exempt from disclosure under FOIA. Her letter advised that NCUA had no other documents responsive to your request, and she explained that FOIA does not provide for or require an agency to respond to questions, conduct research, analyze data or in any way create records in order to respond to a request. She also explained that XXXX is a state-chartered institution and she provided you with contact information for the Illinois Department of Financial and Professional Regulation in the event you elected to seek records or pursue a complaint against XXXX.

By letter dated March 15, 2012 (received by us on March 26, 2012), you appealed Ms. Dent's determination. In your appeal, you specifically challenged the decision to withhold information relating to XXXX's compliance with the FCU Act.

Your appeal is denied. As Ms. Dent's letter correctly explained, the only responsive materials we have on XXXX's compliance with the FCU Act is contained in reports of

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examination prepared by NCUA examiners, in collaboration with Illinois state examiners since XXXX is chartered by the state. An explicit exemption in FOIA restricts the release of 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).

Courts have interpreted exemption 8 broadly and have declined to restrict its all-inclusive scope. See *Consumers Union of United States, Inc. v. Heimann*, 589 F.2d 531 (D.C. Cir. 1978). In general, all records, regardless of the source, of a financial institution’s financial condition and operations that are in the possession of a federal agency responsible for its regulation or supervision are exempt. See *McCullough v. FDIC*, No. 79-1132, 1980 U.S. Dist. LEXIS 17685, at 7-8 (D.D.C. 1980). This principle of broadly construing exemption 8 was confirmed in another recent case decided by the District Court for the District of Columbia. See *Judicial Watch, Inc. v. United States Dep’t of the Treasury*, 2011 U.S. Dist. LEXIS 74121 (D.D.C. 2011).

The responsive material in this case falls squarely within the statutory language in exemption 8 and the judicial opinions that interpret it. Your appeal is, therefore, denied.

Pursuant to 5 U.S.C. §552(a)(4)(B) of the FOIA, you may seek judicial review of this determination by filing suit against the NCUA. Such a suit may be filed in the United States District Court where you reside, where your principal place of business is located, or the District of Columbia.

Sincerely,

Michael J. McKenna
General Counsel

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