

June 16, 2017

**FEDERAL EXPRESS OVERNIGHT DELIVERY**

Mr. Robert Faturechi  
ProPublica  
155 Avenue of the Americas, 13<sup>th</sup> Floor  
New York, NY 10013

RE: 17 FOI – 00052; 17 – App – 00004

Dear Mr. Faturechi:

By letter dated May 12, 2017, you submitted a request under the Freedom of Information Act (FOIA) seeking to obtain copies of all correspondence since April 1, 2017, sent to NCUA by any member or members of Congress writing on behalf of the Financial Services Committee of the House of Representatives.

By letter of June 6, 2017, NCUA's FOIA Officer responded to your request. The FOIA Officer advised that there were no responsive agency records subject to disclosure under FOIA, and that your request was therefore denied. By email to NCUA of June 9, 2017, you submitted an appeal of this denial. In your appeal, you assert that records were withheld that had been sent to NCUA from a congressional committee, which in your view rendered them "agency records" and thus subject to release pursuant to FOIA.

In her initial response to your request, the FOIA Officer cited two cases from the United States Court of Appeals for the D.C. Circuit, both of which generally stand for the proposition that Congress has the authority to designate documents it has generated, as well as responsive documents generated by third parties, including federal agencies, as Congressional records that are not subject to release under FOIA.<sup>1</sup> In your appeal, you did not specifically challenge these cases or attempt to distinguish their applicability to the present circumstances. Moreover, apart from the applicability and impact of these and similar cases, it turns out that our search for responsive records located no documents in our possession that meet the criteria you have specified. In the absence of responsive documents, your request was properly denied. Accordingly, your appeal is also denied.

---

<sup>1</sup> See *ACLU v. CIA*, 823 F. 3d 655 (D.C. Cir. 2016); *cert. denied* 2017 WL 1427589 (April 24, 2017); *Judicial Watch, Inc. v. Secret Service*, 726 F. 3d 208 (D.C. Cir. 2013).

Mr. Robert Faturechi

June 16, 2017

Page 2

Pursuant to 5 U.S.C. §552(a)(4)(B) of 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, the District of Columbia, or where the documents are located (the Eastern District of Virginia).

The 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS in any of the following ways:

Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road - OGIS  
College Park, MD 20740-6001 E-mail: [ogis@nara.gov](mailto:ogis@nara.gov)  
Web: <https://ogis.archives.gov>  
Telephone: 202-741-5770; Toll-free: 877-684-6448  
Fax: 202-741-5769

Sincerely,

Michael J. McKenna  
General Counsel

17-0648