

August 3, 1992

Mr. Eric Zubel, Esq.  
101 Convention Center Drive  
Suite 1200  
Las Vegas, NV 89109

Re: Freedom of Information Act - Appeal

Dear Mr. Zubel:

This will acknowledge receipt of your Freedom of Information Act ("FOIA") appeal. Your letter was received by this Office on July 22, 1992.

On July 15, 1992, the National Credit Union Administration's (NCUA) Region VI Director denied your FOIA request for copies of annual audit reports for Network Federal Credit Union for calendar years 1989, 1990, 1991, and the current audit report for March 1992. Upon review of your request, we have determined that the documents described therein should be withheld pursuant to FOIA.

#### ANALYSIS

The documents you seek are within the scope of exemption 8 of FOIA (5 U.S.C. 522(b)(8)). Exemption 8 exempts from disclosure 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.

Section 792.3(a)(8) of the National Credit Union Administration 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 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 a report.

Exemption 8 has been given a very broad interpretation and all-inclusive scope by the courts. See, *McCullough v. FDIC*, 1 GDS 80,184 (D.D.C. 1980). Records including the findings of examination are exempt. *Atkinson*, supra. The courts do not require agencies to segregate and disclose portions of documents unrelated to the financial condition of the institution. An entire report relating to the financial condition of the institution may be withheld pursuant to exemption 8. See *Atkinson*, 1 GDS at 80,103.

We believe that both purposes of exemption 8 are met by all documents meeting your request. Therefore, the documents responsive to your request are withheld pursuant to exemption 8.

Pursuant to 5 U.S.C. ~552(a)(4)(B), you may seek judicial review of this appeal by filing suit to enjoin NCUA from withholding the documents you requested and to order production of such documents. Such a suit may be filed in United States District Court in the district where your client resides, where your client's principal place of business is located, or in the District of Columbia.

Sincerely,

Robert M. Fenner

General Counsel

GC/MJM:sg

SSIC 3212

92-0727

cc: Dan Murphy, Region VI Director