

Janine R. Menhennet, Esq.

Ott & Horowitz

700 North Central Avenue

8th Floor

Glendale, CA 91203

Re: Freedom of Information Act Appeal -

(Your letter dated November 15, 1995)

Dear Ms. Menhennet:

On September 1, 1995, Patrick Carey of your lawfirm filed a Freedom of Information Act (FOIA) request with Daniel Murphy, NCUA Region VI Director. The request was forwarded to NCUA's Central Office. Richard Schulman, NCUA's FOIA Officer, responded to the request on October 26, 1995. Mr. Schulman denied the request in full pursuant to exemptions 5, 6, and 8 of the FOIA. The denial was also made pursuant to the "no disclosure without consent" rule of the Privacy Act (12 USC 552a(b)). We received your November 15 appeal on November 22, 1995. We have determined that portions of documents responsive to the FOIA request should be released. Mr. Schulman's denial is reversed in part and your appeal is granted in part. Exemption 7 of the FOIA, although not used in the original denial, is invoked to withhold certain responsive information. Documents responding to the FOIA request include portions of two letters and two internal memoranda, and a portion of an NCUA regional management report. The two letters are withheld pursuant to exemption 7 (*see* discussion below.) The two memoranda and segment of the management report are redacted and enclosed. The enclosed documents have been redacted to eliminate non-responsive material as well as material withheld pursuant to exemption 7. Some of the redacted portions may also have been withheld from disclosure pursuant to other exemptions, but since they are not responsive to the request, we will not address the applicable exemptions.

The request was for "all records in the possession of the NCUA regarding any complaints or allegations regarding that have been received between January 1, 1994 and the present" (September 1, 1995). Enclosed with your appeal was a Privacy Act Request signed by for all information concerning her. requests the same records as Mr. Carey does in the original FOIA response. The September 1, 1995 FOIA request did not identify as the requester. We will consider as the requester for purposes of this appeal.

Exemption 6

Exemption 6 permits the government to withhold all information about individuals in "personnel, medical and similar files" where the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy." 5 USC 552(b)(6). Generally, exemption 6 of the FOIA does not apply to the individual about whom the requested information concerns. The exemption 6 information withheld concerned When Mr. Schulman issued his October 26 denial to Mr. Carey's FOIA request, he was not aware that was involved in the FOIA request. Since has now submitted a request for the documents originally requested, she is treated as the FOIA requester. The information is releasable to her. We note that the information released is personal and would be subject to exemption 6 if the requester were someone other than .

Exemptions 5 and 8

We note that some of the material released could be withheld under exemptions 5 and 8 of the FOIA. We have, however, determined to release the material under our discretionary authority. We see no foreseeable harm in its disclosure. There is no need to discuss these exemptions, but we note that the decision to disclose in this case in no

way precludes NCUA from using exemptions 5 and 8 in the future, in similar requests for information.

Privacy Act

Mr. Schulman's October 26 letter included the "no disclosure without consent" rule of the Privacy Act as an additional basis of denial of your FOIA request. The Privacy Act is only triggered when information is found in a system of records, that is "a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual." 5 USC 552(a)(5). None of the documents responding to the FOIA request are found within a system of records. Therefore the Privacy Act is not triggered. We note that the "no disclosure without consent" provision of the Privacy Act is found at 5 USC 552a(b) rather than 5 USC 552(a)(2) as cited in Mr.

Schulman's letter.

Exemption 7

Exemption 7 (D) of the FOIA protects from disclosure "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information ... (D) could reasonably be expected to disclose the identity of a confidential source ..." 5 U.S.C. 552(b)(7). The exemption 7(D) information requested is contained in the enclosed two internal NCUA memoranda and management report. The 7(D) information has been redacted. Two additional letters are withheld in full pursuant to exemption 7(D).

Courts have held that the "law" to be enforced includes both civil and criminal statutes, as well as statutes authorizing administrative (regulatory) proceedings. See Cappabianca v. Commissioner, United States Customs Service, 847 F. Supp. 1558 (M.D. Fla. 1994) and Center for National Policy Review on Race & Urban Issues v. Weinberger, 502 F.2d 370 (D.C. Cir. 1974). NCUA has all three types of authority pursuant to various provisions of the Federal Credit Union Act (*see e.g.* Sections 120, 202, 205, & 206 of the Federal Credit Union Act, 12 U.S.C. 1766, 1782, 1785 & 1786). The documents withheld were part of NCUA's law enforcement function.

Exemption 7(D) protects against disclosure of information pertaining to confidential sources. No balancing of the public interest is involved under exemption 7(D). See Jones v. FBI, 41 F.3d 238 (6th Cir. 1994). Exemption 7(D) has been interpreted broadly by the courts. Part of the rationale for exemption 7(D) is to ensure that cooperating citizens will not be harassed and will continue to cooperate. Helmsley v. United States Dept. of Justice, No. 90-2413, slip op. at 13 (D.D.C. Sept. 24, 1992). Exemption 7(D) is intended to avert the drying up of sources. Providence Journal Co. v. United States Dept. of the Army, 981 F. 2d 552 (1st Cir. 1992). More than the name and address of a confidential source may be withheld. Courts have held that an agency may withhold any portion of a document that would reveal the identity of the confidential source. Church of Scientology v. IRS, 816 F. Supp. 1138 (W.D. Tex. 1993). Specific identifying information has been redacted from the enclosed documents. Two letters are withheld in their entirety since they, or any substantial segment of them, could be used to identify the source of the information.

The information concerning is released and enclosed, information subject to exemption 7(D) is withheld.

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 you requested 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, where your principal place of business is located,

the District of Columbia, or where the documents are located (the Eastern District of Virginia).

Sincerely,

Robert M. Fenner

General Counsel

Enclosures

GC/HMU:bhs

95-1133

SSIC 3212