

December 21, 1998

David Mickelson, President

Greenwich Research Inc.

Brookside Park - P.O. Box 405

Greenwich, CT 06836-0405

Re: FOIA Appeal, your letter dated November 18, 1998

Dear Mr. Mickelson:

On October 5, 1998 you filed a Freedom of Information Act (FOIA) request for the names, last-known addresses, social security numbers and amounts due to all Manhattan Cluster Federal Credit Union members whose present whereabouts are unknown, and whose individual entitlements exceed \$1000. You also requested the length of time each member's whereabouts have been unknown. In addition, you requested the names of all Federal credit unions which have been liquidated in the last ten years and the names of members of those credit unions for which the Federal government is still holding undistributed funds of \$1000 or more. On October 30, 1998 J. Leonard Skiles, President of NCUA's Asset Management and Assistance Center, denied your request pursuant to exemption 6 of the FOIA. We received your November 18 appeal on November 20. Your appeal is granted in part. Enclosed is a list of all Federal credit unions that have been liquidated in the last ten years. The remainder of the information you requested continues to be withheld pursuant to exemption 6 of the FOIA.

Exemption 6 of the FOIA (5 U.S.C. 552(b)(6)) protects information about individuals in "personnel and medical files and similar files" where the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy." Application of exemption 6 requires a balancing of the public's right to disclosure against the individual's right to privacy. Department of the Air Force v. Rose, 425 U.S. 352, 372 (1976). First, it must be ascertained whether a protected privacy interest exists which would be threatened by disclosure. If no privacy interest is found, further analysis is unnecessary, and the information must be disclosed. Ripskis v. HUD, 746 F.2d 1,3 (1984). On the other hand, if a privacy interest is found to exist, the public interest in disclosure, if any, must be weighed against the privacy interest in nondisclosure. Id. If no public interest exists, the information should be protected. Similarly, if the privacy interest outweighs the public interest, the information should be withheld. If the public interest outweighs the privacy interest, the information should be released.

Courts have held that a privacy interest exists in names, addresses and social security numbers in cases similar to your fact scenario. See National Ass'n. of Retired Fed. Employees v. Horner, 879 F.2d 873 (D.C. Cir. 1989), cert. denied, 494 1090 (1990), and Pennies from Heaven, Inc. v. Department of the Treasury, No. 88-1808 (D.D.C. Aug. 14, 1992). We believe a strong privacy interest exists in all of the information you requested except for the names of credit unions liquidated within the last ten years. In Department of Justice v. Reporters Committee for the

Freedom of the Press, 489 U.S. 749 (1989), the Supreme Court limited the public interest under the FOIA to the "core purpose" for which Congress enacted it: "to shed ... light on an agency's performance of its statutory duties." at 773. Your stated purpose for release of the information is to attempt to locate the depositors of unclaimed funds. Courts have held that agencies may not distinguish between requesters nor limit the use to which disclosed information is put. Therefore an analysis of the consequences of disclosing a mailing list cannot turn on the identity or purpose of the requester. *See National Ass'n. of Retired Fed. Employees* at 875. There is little, if any, public interest in your stated purpose. *See Pennies from Heaven*. Clearly the individuals' privacy interest in the information requested outweighs any public interest. The requested information on depositors remains withheld pursuant to exemption 6 of the FOIA.

In addition to the information on Manhattan Cluster Federal Credit Union, you requested the names of all Federal credit unions liquidated within the past ten years. As previously mentioned, the requested list is enclosed. Certain information not responsive to this part of your request has been redacted from the enclosed list.

Pursuant to 5 U.S.C. 552(a)(4)(B), 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 in the district where you reside, where your principle place of business is located, the District of Columbia, or where the documents are located (Austin, Texas).

Sincerely,

Robert M. Fenner

General Counsel

GC/HMU:bhs

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Enclosure

cc: President, AMAC