

June 7, 1999

Jonathan M. Mastrangelo, Esq.

Wilmer, Cutler & Pickering

2445 M Street, NW

Washington, DC 20037

Re: FOIA appeal, your letter dated May 7, 1999

Dear Mr. Mastrangelo:

You wrote to appeal NCUA's initial determinations to Freedom of Information Act (FOIA) requests made by John Mirvish of your firm. Your appeal concerns the initial determinations dated April 7, 1999, April 13, 1999, April 15, 1999 and April 30, 1999. These initial determinations were made by Dianne Salva, NCUA's FOIA Officer. On May 27, 1999, you spoke to both Ms. Salva and Hattie Ulan of my staff regarding your appeal letter. Pursuant to the telephone conversation, Ms. Salva is reviewing the redactions made from the field of membership worksheets enclosed with the April 7, 1999 initial determination. Ms. Salva will send you new copies of the worksheets with less information redacted.

You are not appealing the use of specific exemptions, but rather, are requesting more information on the documents (and portions of documents) withheld. Your objection is that the "initial determinations do not satisfactorily describe the withheld information or provide reasons justifying nondisclosure." Below, we provide you with the types of documents withheld pursuant to each exemption noted in the four initial determinations subject to your appeal. We have not provided detailed information on each of the documents (and portions of documents) withheld.

The FOIA requires that an initial decision inform the requester of the reasons for the denial. 5 U.S.C. 552(a)(6)(A)(i). There is no statutory requirement for specific information on each document withheld. Nor does the NCUA FOIA regulation require any further explanation. *See* 12 U.S.C. part 792, subpart A. Ms. Salva did provide you with the exemptions applicable to information withheld. The information was withheld pursuant to exemptions 4, 5, 6, and 8. 5 U.S.C. 552(b) (4), (5), (6) and (8). Ms. Salva's letters noted what types of information each exemption protects. We will expand briefly in identifying some of the specific types of documents that were withheld pursuant to each exemption noted. Exemption 4 was used to protect business and marketing plans, financial analyses and budget projections. Exemption 5 was used to protect internal NCUA memoranda. Exemption 6 was used to protect home addresses and home telephone numbers. Exemption 8 was used to protect information found in examination reports.

Production of a detailed index describing the withheld information would be extremely burdensome and is not required at this stage of FOIA processing. Cases interpreting the FOIA

have held that agencies need not provide a Vaughn Index (*see Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973)) unless ordered by a court after a FOIA plaintiff has exhausted the administrative process. *Judicial Watch, Inc. v. Clinton*, 880 F.Supp. 1 (D.D.C. 1995).

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 the requester resides, where the requester's principle 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

GC/HMU:bhs

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