

September 7, 1999

Todd Okun, Esq.

Styskal, Wiese & Melchione, LLP

550 North Brand Boulevard

Suite 550

Glendale, CA 91203

Re: FOIA Appeal, your letter dated August 5, 1999

Dear Mr. Okun:

On June 11, 1999, you filed a request pursuant to the Freedom of Information Act (FOIA) on behalf of your client, Bellco Federal Credit Union (Bellco). You requested records concerning Bellco's application and appeal to convert to a community charter. Dianne Salva, NCUA's FOIA Officer, responded to the request on July 9, 1999. Your request was granted in part and denied in part. Seven documents were withheld pursuant to exemption 5 of the FOIA. On July 23<sup>rd</sup>, you wrote to Ms. Salva concerning her July 9<sup>th</sup> response. Ms. Salva responded to your letter on August 13<sup>th</sup>. We received your FOIA appeal on August 6<sup>th</sup>. Your appeal is granted in part and denied in part. Portions of all pages withheld are now released. Enclosed are 23 pages released with redactions. The portions redacted continue to be withheld pursuant to exemption 5 of the FOIA.

The information redacted from the enclosed documents consists primarily of staff recommendations made prior to any action by either the Region I Office or the NCUA Board. Factual information in the documents is released. Exemption 5 of the FOIA protects "inter-agency or intra-agency memorandums or letters which would not be available by law to a party ... in litigation with the agency."

5 USC 552(b)(5). Included within exemption 5 is information subject to the deliberative process privilege. The purpose of this privilege is "to prevent injury to the quality of agency decisions." NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 151 (1975). Any one of the following three policy purposes have been held to constitute a basis for the deliberative process privilege: (1) to encourage open, frank discussions on matters of policy between subordinates and superiors; (2) to protect against premature disclosure of proposed policies before they are finally adopted; and (3) to protect against public confusion that might result from disclosure of reasons and rationales that were not in fact ultimately the grounds for an agency's action. Russell v. Department of the Air Force, 682 F.2d 1045 (D.C. Cir. 1982). The first and third rationales enumerated in Russell

apply in this case. The second enumerated rationale does not apply since the NCUA Board has taken final agency action in the Bellco appeal.

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'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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Enclosures