

July 20, 2006

Steven R. Bisker
Attorney at Law
2800 Eisenhower Avenue, Suite 100
Alexandria, VA 22314

Re: FOIA Appeal dated June 20, 2006

Dear Mr. Bisker:

On May 12, 2006, you made a Freedom of Information Act (FOIA) request for a copy of all correspondence between DFCU Financial Federal Credit Union (DFCU) and/or its legal counsel and the National Credit Union Administration concerning DFCU's special meeting of members. There were 21 pages of documents responsive to your request. Staff attorney Linda Dent responded to your request on June 15, 2006. All 21 pages of responsive documents were withheld pursuant to exemption 8 of the FOIA, 5 U.S.C. §552(b)(8). We received your June 20, 2006 FOIA appeal on June 21st. Your appeal is denied and the responsive documents continue to be withheld pursuant to exemption 8.

Exemption 8

Exemption 8 applies to 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."

5 U.S.C. §552(b)(8). Courts have interpreted exemption 8 broadly and have declined to restrict its all-inclusive scope. Consumers Union of United States, Inc. v. Heimann, 589 F.2d 531 (D.C. Cir. 1978). In general, all records, regardless of the source, of a financial institution's financial condition and operations that are in the possession of a federal agency responsible for their regulation or supervision are exempt. McCullough v. FDIC, No. 79-1132, 1980 U.S. Dist. LEXIS 17685, at **7-8 (D.D.C. July 28, 1980). Courts have generally not required agencies to segregate and disclose portions of documents unrelated to the financial condition of the institution. See Atkinson v. FDIC, No. 79-1113, 1980 U.S. Dist. LEXIS 17793, at *4-5 (D.D.C. Feb. 13, 1980). 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 at *4. The responsive records concern DFCU's operations and are in the possession of NCUA. They are within the scope of exemption 8 pursuant to Consumers Union and McCullough. Withholding

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the responsive documents meets the second purpose of exemption 8. Therefore, the documents continue to be withheld pursuant to exemption 8. We note the case cited in your appeal letter¹ concerned an individual's attempt to obtain documents from a financial institution, rather than a regulatory agency. The court noted that supervisory correspondence would fall within the scope of exemption 8 of the FOIA and should be sought from the appropriate government agency. It held that other correspondence between the financial institution and its regulatory agencies should be disclosed to the plaintiff. Again, we believe the documents responsive to your FOIA request and appeal are supervisory correspondence subject to exemption 8's broad, inclusive scope.

Pursuant to 5 U.S.C. 552(a)(4)(B) of the FOIA, 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 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

GC/HMU:bhs
06-0631
06-FOI-00122
06-APP-00003

¹ Feinberg v. Hibernia Corp., No. 90-4245, 1993 U.S. Dist. LEXIS 47 (E.D. La. Jan 6, 1993)