

October 16, 2008

Lionel Z. Glancy, Esq.
Glancy Binkow & Goldberg LLP
1801 Avenue of the Stars, Suite 331
Laos Angeles, CA 90067

Re: FOIA Appeal dated September 25, 2008

Dear Mr. Glancy:

Marc Godino of your law firm filed a Freedom of Information Act (FOIA) request with the National Credit Union Administration (NCUA) on July 18, 2008. The request was later modified and NCUA staff attorney Linda Dent sent Mr. Godino an interim response on September 9th enclosing 39 pages of responsive documents. On September 10th, Ms. Dent sent the final response denying in full the remainder of the request. The final response stated that responsive records consisted of approximately 150 megabytes held in electronic form and 160 boxes of paper documents. The request was denied pursuant to exemptions 4, 5, 6 and 8 of the FOIA. 5 U.S.C. §552(b)(4), (5), (6) & (8). We received your appeal of the denial on September 25th. We are unable to issue a final response to your appeal because the records have not been adequately reviewed.

In the original request Mr. Godino noted that your law firm was willing to pay all reasonable expenses associated with the request and to notify him in advance if the fees would exceed \$2500. No fees were charged for the processing of the request. Unfortunately the volume of responsive records was miscommunicated in Ms. Dent's September 10th response. Rather than 150 megabytes of responsive records, our field staff estimated that there are 150 gigabytes of responsive records. This is 1000 times the volume that Ms. Dent noted. In addition there are approximately 4000 imaged files, each which could contain multiple pages, and approximately 160 boxes of paper documents as noted in Ms. Dent's response. Pursuant to the FOIA and implementing NCUA Regulations, commercial requesters are responsible for the payment of the cost of search and review time as well as the cost of duplication of records. (See 5 U.S.C. §552(a)(4)(A)(i) – (ii) and 12 C.F.R. §792.19 – 21.

Field staff has indicated that a fairly large portion of the responsive records may be duplicative. We also note that a large portion of the responsive records may be withheld pursuant to the exemptions 4, 5, 6, and 8 of the FOIA as noted in Ms. Dent's response. Since many of the records contain commercial information that has been obtained from a third party, they are also subject to submitter notice procedures as set forth in §792.29 of the NCUA Regulations (12 C.F.R. §792.29)

We have not reviewed the responsive records, but only a miniscule sampling of them. The resources needed to review the responsive records are huge. Field staff estimates that it would take an employee familiar the responsive records between one and two years of full time effort to initially review the records. The cost for this would be well beyond the \$2500 you indicated would

Mr. Glancy

Page 2

be available. In addition, we cannot dedicate a full-time staff person to this request, even if you agreed to pay for it. At this point we suggest that if you wish to pursue review of the records, a new request be filed that is significantly more narrow than the modified request filed by Mr. Godino. We can then work out an estimate of cost of review as well as an approximation of how much time the review would take. We can probably dedicate a few hours of staff time per week to this request. We would also need to discuss the amount of funds your law firm (or your client) would be willing to commit in order to determine the extent of the review.

Please contact Ms. Dent at 703-518-6567 if you wish to pursue of new, more limited request.

Sincerely,

Robert M. Fenner
General Counsel

OGC/hmu
08-0936