

September 5, 2006

Mr. Mark W. Miller
(b)(6)

Re: Your FOIA Appeal dated August 15, 2006, received August 21, 2006.

Dear Mr. Miller:

You are appealing the agency's determination on your Freedom of Information Act (FOIA) request, dated June 20, 2006, in which you sought release of a Suspicious Activity Report (SAR). Specifically, you sought release of a SAR that may have been submitted by Amway Employees Credit Union of Ada, Michigan, within the time frame of January 1993 to June 1994, pertaining to a theft of a member account belonging to (b)(6). By letter dated July 28, 2006, Staff Attorney Linda Dent responded to your FOIA request stating the agency would not confirm or deny the existence of any record of this type and, further, that any record of this type would be exempt under exemption (b)(8) of the FOIA. 12 U.S.C. §552(b)(8). Your appeal is denied.

The Bank Secrecy Act provides, among other matters, that financial institutions may be required to file reports the Secretary of the Treasury determines to be useful in criminal investigations and proceedings. 12 U.S.C. §1829b, 12 U.S.C. §§1951-59, and 31 U.S.C. §§5311-31. Regulations implementing the Bank Secrecy Act require financial institutions, including credit unions, to submit SARs to report crimes or suspected crimes in accordance with regulations and instructions accompanying the SAR form. 12 C.F.R. §748.1. As such, SARs are protected from release under FOIA by 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).

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For your information, we are also enclosing a statement from the Financial Crimes Enforcement Network of the Department of the Treasury regarding the unauthorized disclosure of SARs. *See also, Whitney National Bank v. Karam*, 306 F.Supp.2nd 678, 680 (S.D. Tex. 2004) (“Courts have noted that the disclosure of a SAR could compromise an ongoing law enforcement investigation, provide information to a criminal wishing to evade detection, or reveal the methods by which banks are able to detect suspicious activity”).

Under 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. You may file suit in the United States District Court where you reside, where your principal place of business is located, the District of Columbia, or in the Eastern District of Virginia.

Sincerely,

Robert M. Fenner
General Counsel

GC/SAA:bhs
06-0831
Enclosure