

February 2, 2009

Marc Godino, Esq.
Glancy Binkow & Goldberg LLP
1801 Avenue of the Stars, Suite 331
Los Angeles, CA 90067

Re: Revised FOIA Request

Dear Mr. Godino:

You originally 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 you an interim response on September 9th enclosing 39 pages of responsive documents. These pages consisted of a listing of properties located in Lee County, Florida with construction loans from Norlarco Credit Union, Huron River Area Credit Union and New Horizons Community Credit Union. Pursuant to exemption 6 of the FOIA, all personal information was redacted in the listing (only county and state appeared; names, account numbers, street addresses, and towns were redacted). 5 U.S.C. §552(b)(6). On September 10th, Ms. Dent sent the final response denying in full the remainder of the request pursuant to exemptions 4, 5, 6 and 8 of the FOIA. 5 U.S.C. §552(b)(4), (5), (6) & (8). You appealed the denial on September 25, 2008 and we responded on October 16, 2008. We were unable to issue a final response to your appeal because the amount of responsive records was prohibitively large; we were unable to adequately review the records.

You then contacted this Office to discuss how you could limit your request in order to enable NCUA to review responsive documents within a reasonable period of time. You requested that NCUA continue to process your request on the appeal level, rather than start the process over with a new request. On November 26 and December 11, 2008, in e-mails to Hattie Ulan of this office, you revised your request to include the following three items:

1. A list of the street addresses, city and state for all properties noted in Linda Dent's response of September 9, 2008 and referred to in her response of September 10.
2. Any records concerning any material loss review being done by the NCUA concerning the three above-mentioned credit unions, including any such review being done by the NCUA's Office of Inspector General.
3. Any documentation of agreements (or any discussion leading to agreements) between the NCUA, the three above-mentioned credit unions and Hovnanian

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(including K. Hovnanian or Hovnanian Builders) concerning the above noted properties (including property transfer and property insurance and documentation or agreements concerning interest payments on loans for the referenced properties) both before and after liquidation of the three credit unions, but only up until January 1, 2008. Request includes formal agreements and correspondence, but not e-mails.

We forwarded item 2. to NCUA's Office of Inspector General (OIG). The Office of Inspector General informed you that the complete, unredacted material loss review report of Huron River Area Credit Union is available on-line on the NCUA website. You indicated to the OIG that if you wished to pursue other records, you would do that in a separate FOIA request. To date, the Office of Inspector General has not received any further FOIA requests from you.

As you know, we are continuing to process item 3. On January 23, 2009, we sent out a submitter notice (with a copy to you) concerning this item. We will send you our final response for this item, including any releasable pages and your appeal rights, once the submitter process is complete.

Enclosed are the releasable pages for item 1. We have released the street addresses for all of the properties owned by NCUA. This includes addresses for approximately 300 properties. The addresses for the other properties remain withheld pursuant to exemption 6 of the FOIA as discussed below.

Street addresses for the properties that are not owned by NCUA are withheld pursuant to exemption 6. Exemption 6 protects information about an individual in "personnel and medical files and similar files" where the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. 552(b)(6). The courts have held that all information that applies to a particular individual meets the threshold requirement for privacy protection. United States Department of State v. Washington Post Co., 456 U.S. 595 (1982). Once a privacy interest is established, application of exemption 6 requires a balancing of the public's right to disclosure against the individual's right to privacy. Department of the Air Force v. Rose, 425 U.S. 352, 372 (1976). The withheld information meets the requirement for exemption 6 protection. There is a privacy interest in the street addresses of these properties, even if the names of the owners are not released. The public interest, which the Supreme Court has deemed the core purpose of the FOIA, is to shed light on an agency's performance of its statutory duties. See U.S. Department of Justice v. Reporters Committee for Freedom of the Press, 489 U.S. 749, 774-775 (1989) We believe that the release of approximately 300 addresses gives enough information in order for any requestor to determine if an agency, NCUA in this case, is performing its statutory duties. Disclosure of additional addresses is not made because the public interest has been met by release of addresses for NCUA-owned properties. The addresses for the additional properties continue to be withheld pursuant to exemption 6.

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Pursuant to 5 U.S.C. 552(a)(4)(B) of the FOIA, you may seek judicial review of this determination on item 1. above, 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

08-0936
2009-APP-00001

Enclosure