

May 8, 2006

Lewis W. Page, Jr.  
Page Law Firm, LLC  
1933 Building, Suite 100  
1933 Richard Arrington, Jr. Blvd. South  
Birmingham, AL 35209-1262

Re: FOIA Appeal dated March 27, 2006

Dear Mr. Page:

On January 23, 2006, you filed a Freedom of Information Act (FOIA) request for documents dating from January 1, 2003 to the present, related to the former B.F. Goodrich Employees Federal Credit Union (now the Credit Union of Alabama Federal Credit Union). You requested documents concerning the FCU's field of membership and any attempt by the FCU to change its name. On March 24, 2006, Dianne Salva, NCUA's FOIA Officer, sent you a response indicating there were 93 pages of responsive documents. Redactions were made from 20 of the 93 pages pursuant to exemptions 4, 6, and 8 of the FOIA, 5 U.S.C. 552(b)(4), (6), & (8). You wrote to Ms. Salva on March 27<sup>th</sup> setting forth several questions about her response. You do not question the applicability of the FOIA exemptions, rather you believe there are documents responsive to your request that were not reviewed or provided. Hence you question the search made for responsive documents. You also request a more specific listing of withheld documents. You specifically note that your letter is not a FOIA appeal. On April 10<sup>th</sup>, you spoke with Hattie Ulan of this Office. You agreed that your letter should be treated as a FOIA appeal and documented your intent in a letter to Ms. Ulan dated April 10, 2006. Your appeal is granted in part and denied in part. We have identified eleven additional pages of responsive documents (letters and e-mail). Nine of the pages are released in full and are enclosed. Three internal e-mails (two pages) are withheld pursuant to exemption 5 of the FOIA as described below. We have not provided a detailed listing of withheld documents (commonly referred to as a "Vaughn index") and that portion of your appeal is denied.

You also set forth questions related to the documents you requested. Although some of your questions specifically concern the search for documents responsive to your FOIA request, others are not technically FOIA issues. We will attempt to address all of the issues you raise. However, as noted in the last paragraph of this letter, your right of appeal to U.S. District Court only applies to the specific FOIA issues.

1. You state that the FOIA Officer's summary of your request is broad and that you attempted to be more specific in your original request for documents. Although Ms. Salva did not repeat the specific types of documents noted in your original FOIA request in her response to you, your original request was forwarded to NCUA staff who did the search for responsive documents.
2. You note that you received "93 releasable pages" and question whether there were other non-releasable pages. You also state your belief that the law requires an agency to specify documents withheld and the basis for such withheld documents. Twenty of the 93 pages were redacted. Six of those pages were withheld in full. Of the six pages completely withheld, two pages contained financial information and were withheld pursuant to exemption 8 of the FOIA and the other four contained business and marketing information and were withheld pursuant to exemption 4 of the FOIA. The law does not require a detailed index of withheld documents (Vaughn index) at this point in the FOIA process. It is well-settled law that a requester is not entitled to a Vaughn index during the administrative process. Schwarz v. United States Department of the Treasury, 131 F. Supp. 2d 142, 147, (D.D.C. 2000).
3. You believe certain documents exist within our records that were not provided in our response to your original request. You request that we again search our files to identify any such responsive documents. We have identified several additional responsive documents, some are enclosed and others withheld, as described below.

First, you asked whether NCUA had any correspondence between it and the Alabama credit union regulator. We have identified a letter dated April 8, 2005 from Glenn Latham, Alabama Credit Union Administrator, to Tim Hornbrook, NCUA Region III Deputy Regional Director. It is enclosed. Second, you asked if NCUA has any record of complaint concerning the change in the name of BF Goodrich Employees Federal Credit Union. We have identified a letter from Ben F. Hayley to Mr. Carruth at BF Goodrich FCU, dated March 28, 2005. It is enclosed. We previously supplied you with the March 31, 2005 response to this letter, written by Barry V. Frederick, an attorney for the Alabama Credit Union FCU (former BF Goodrich Employees FCU). We have also identified two letters from Steve Swofford to Alonzo Swann, dated March 31, and April 25, 2005. These are also enclosed. Third, you asked if NCUA's Region III Director consulted any documents in making his decision to grant the name change to BF Goodrich FCU. We have identified three responsive internal e-mails. The e-mails are exempt from disclosure pursuant to exemption 5 of the FOIA, as described below.

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Last, you asked for an explanation of the circumstances of a letter you received in response to your FOIA request dated May 1, 2003 from NCUA to Mr. William G. Roberts, Chairman of the Credit Union of Alabama Federal Credit Union (formerly BF Goodrich Employees FCU). You note that BF Goodrich Employees FCU did not obtain its name change until 2005. You are correct that the name change did not take place until 2005. The version of the May 1, 2003 letter provided in response to your FOIA request was not the version that was originally sent out. The version you received was a printout of an electronic copy where updates had been made to reflect the FCU's new name and field of membership. This is done electronically so that forthcoming letters contain current information. It did not reflect the original letter that was mailed out. We have now enclosed a paper copy of the letter that was mailed out on May 1, 2003. You will note that handwritten initials and dates appear in the right margin and there is information in the top margin indicating how the letter was mailed. This information indicates it is a copy of the letter that was mailed on May 1, 2003. We apologize for any confusion this caused.

#### Exemption 5

Internal e-mail is withheld pursuant to exemption 5. 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 U.S.C. §552(b)(5). Included within exemption 5 is information subject to the deliberative process privilege. The purpose of the deliberative process 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 policies enumerated in Russell apply in this case; hence the internal e-mail is withheld pursuant to exemption 5.

Pursuant to 5 U.S.C. 552(a)(4)(B) of the FOIA, you may seek judicial review of the determination by filing suit against the NCUA. Such a suit may be filed in the United States District Court in the district where you reside, where your principle place of business is located, where the documents are located (the Eastern District of Virginia) or the District of Columbia. We note here that your appeal rights specifically apply to the FOIA search, Vaughn index issue and exemption 5

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as applicable to the e-mails withheld. If you have concerns with the other non-FOIA issues discussed in this letter, please contact NCUA's Region III Office.

Sincerely,

/S/

Robert M. Fenner  
General Counsel

Enclosures

GC/HMU:bhs  
06-0416  
06-FOI-00041