

July 19, 2005

Mr. Brian F. Thomas
(b)(6)

Re: Your FOIA Appeal dated June 24, 2005

Dear Mr. Thomas:

On May 23, 2005, you e-mailed a request pursuant to the Freedom of Information Act (FOIA) requesting copies of any orders, including supervisory orders and final enforcement orders, relating the United Federal Credit Union, Morgantown, West Virginia, or any of its directors, officers or employees that have been issued during the previous ten year period. Dianne M. Salva, NCUA, FOIA Officer/Staff Attorney, responded to your FOIA request on June 20, 2005. She stated that responsive documents were exempt from disclosure pursuant exemption 8 of the FOIA, 5 U.S.C. §552(b)(8). We received your June 24, 2005 appeal of Ms. Salva's determination on June 27, 2005. Your appeal is granted as we have identified one document responsive to your request.

In your appeal letter you list the types of documents requested to include enforcement orders and published letters of understanding and agreement. There have been no enforcement orders or published letters of understanding and agreement in the last ten years concerning United FCU. For your information, all formal enforcement orders and published letters of understanding and agreement are found on NCUA's website. (See www.ncua.gov/administrative_orders/Index.htm.) We have identified one investigative order which is responsive to your request. It is enclosed. The document Ms. Salva withheld pursuant to exemption 8 of the FOIA remains subject to that exemption, however, since it is neither an order nor a published letter of understanding and agreement, it is outside of the scope of your FOIA request. A short explanation of exemption 8 follows.

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). Examination reports as well as matters that are related to such reports have been held exempt from disclosure under exemption 8. Atkinson v. FDIC, No. 79-1113, 1980 U.S. Dist. LEXIS 17793 at *4 (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

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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 at *4. Courts have interpreted exemption 8 broadly and have generally not required agencies to segregate and disclose portions of documents unrelated to the financial state of the institution. Atkinson at **4-5.

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 the requestor resides, where the requestor's principal place of business is located, the District of Columbia, or where the documents are located (the Eastern District of Virginia).

Sincerely,

/s/

Robert M. Fenner
General Counsel

Enclosure

GC/HMU:bhs
05-0634