

June 12, 2006

Mr. Robert Tice
(b)(6)

Re: Your FOIA appeal dated May 7, 2006 (06-FOI-00044)

Dear Mr. Tice:

On January 20, 2006, you e-mailed NCUA a Freedom of Information Act (FOIA) request for copies of 1) all complaints filed in regard to the Columbia Community Credit Union; 2) a copy of the "conversion" report issued regarding the attempt by the board of directors of the Columbia Credit Union; and 3) a copy of the investigation reports by the individual investigators that were made during the investigation of that conversion attempt. Staff attorney Linda Dent responded to your FOIA request. You received approximately 81 releasable pages of complaints filed in regard to the Columbia Community Credit Union. Redactions were made to 33 of these pages pursuant to exemptions 5, 6, and 8 of the FOIA. 12 U.S.C. §552(b)(5), (6), and (8). Approximately 757 pages of documents, consisting of investigations, investigative reports and backup investigatory information, were withheld pursuant to exemptions 4, 5, 6 and 8 of the FOIA.

We received your May 7, 2006 FOIA appeal on May 12th. Your appeal is granted in part and denied in part. Several pages of responsive complaint documents that were not originally identified are now released and enclosed. All 757 pages of investigatory information continue to be withheld pursuant to exemptions 4, 5, 6, and 8 of the FOIA. Starting with the third paragraph of your appeal letter, you raise eleven issues (one in each consecutive paragraph) concerning the response to your FOIA request. These issues are addressed in numbered paragraphs 1 through 11 below. The remaining paragraphs of your letter focus on withholding all of the investigatory materials. That issue and others that you raise are dealt with below the numbered paragraphs. In addition, you now ask for responses to the complaint documents, more recent complaint documents, and a copy of the Settlement Agreement. Your request for these additional documents will be treated as a new FOIA request separate from this appeal. A response to your request for additional documents will be sent to you separately. Please contact staff attorney Linda Dent if you have any questions concerning your request for additional documents.

1. You state that on the copy of Harry D. Hurless' letter to William F. Byrd, III, dated January 20, 2004, the center of page 1 is distorted. Enclosed is a clean copy of the 3-page letter.
2. You state you received 2 copies of the first 2 pages of Steve Straub's 4-page letter, dated December 31, 2003. Please disregard the redundancy.
3. You state you received 2 copies of a 2-page fax sent by Clifford D. Hathaway, dated December 22, 2003. Please disregard the redundancy.
4. You inquire whether a response was sent to Eric H. Renaud's request dated November 12, 2003. Your original FOIA request asked for complaint letters only. As noted above, we will treat your request for additional documents as a new FOIA request.
5. You state you received 2 identical copies of Markus Stein's e-mail dated November 13, 2003. Please disregard the redundancy.
6. You state that page 7 of 7 of your December 30, 2003 letter to David Doss, CEO of Columbia Credit Union, is missing. Enclosed is a new copy of the entire 7-page letter.
7. You state you received page 1 only of the letter from Douglas Schafer's law firm to Steven E. Turner of Miller Nash LLP. Enclosed is a new copy of the 3-page letter with a 1-page enclosure.
8. You request a copy of the Settlement Agreement of February 5, 2004 between Washington State Department of Financial Institutions and Columbia Community Credit Union and the amendment and supplement thereto. As noted above, we will treat your request for additional documents as a new FOIA request.
9. You state that NCUA's January 2004 letter to Ms. Karen Martel was not provided to you. This January 29, 2004 letter was provided with the response to your original request. A new copy of the 8-page letter is enclosed.
10. You request more recent complaints concerning Columbia Credit Union. As noted above, we will treat your request for additional documents as a new FOIA request.
11. You request responses to complaints and other correspondence. As noted above, we will treat your request for additional documents as a new FOIA request.

We did identify several additional pages of documents responsive to your initial FOIA request for complaints. The following additional documents are enclosed. A 1-page complaint letter from Roslyn Ward, dated December 19, 2003; an 8-page document listing members and their complaints; and a 3-page document listing members and their complaints (first page, but not second two were previously supplied).

At the bottom of page 2 of your appeal letter you state that FOIA exemptions 5 and 6 were used and that you requested no documents containing the type of

information to which these exemptions would apply. Exemption 5 is used in part for internal documents. There were NCUA internal notations on some of the complaint letters that were redacted pursuant to exemption 5. Exemption 6 is used for personnel, medical and other similar information including home addresses and telephone numbers. Exemption 6 was used when home addresses and telephone numbers were redacted from documents you received.

Exemption 8

The rest of your appeal letter addresses the application of exemption 8 to the 757 pages of investigatory documents withheld. 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). All of the investigatory materials withheld qualify pursuant to exemption 8.

The courts have discerned two major purposes for exemption 8 from its legislative history: 1) to protect the security of financial institutions by 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 v. FDIC, No. 79-1113, 1980 U.S. Dist. LEXIS 17793, at *4 (D.D.C. Feb. 13, 1980). The purposes of exemption 8 are met; therefore, all of the investigatory materials continue to be withheld pursuant to exemption 8.

Exemptions 4, 5 and 6 were also used for some portions of some of the investigatory documents withheld. Since exemption 8 is all inclusive as explained above, it covers all of the investigatory information withheld. However, a brief explanation of exemptions 4, 5, and 6 is also provided.

Exemption 4

Certain commercial and financial information were withheld pursuant to exemption 4 as well as exemption 8. Exemption 4 protects, in part, commercial or financial information obtained from a person and privileged or confidential. 5 U.S.C. 552(b)(4). The information withheld pursuant to exemption 4 falls into the category of commercial/financial information. The term "commercial" has been interpreted to include anything "pertaining or relating to or dealing with commerce. American Airlines, Inc. v. National Mediation Board, 588 F.2d 863,

870 (2d Cir. 1978). Information “obtained from a person” has been held to include information obtained from a corporation. Nadler v. FDIC, 92 F.3d 93, 95 (2d Cir. 1996). Information obtained from a credit union meets the standard of obtained “from a person” under Nadler. The financial and commercial information withheld qualifies under exemption 4 and continues to be withheld.

Exemption 5

Internal notations, memoranda and e-mail were withheld pursuant to exemption 5 as well as exemption 8. 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; therefore the material withheld remains exempt from disclosure.

Exemption 6

Home addresses, telephone numbers and account information were withheld pursuant to exemption 6 as well as exemption 8. 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 minimal, if any, public interest in disclosing this personal information. The individuals’ privacy interests outweigh any public interest in disclosure. Therefore the personal information continues 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 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

Enclosures

GC/HMU:bhs
06-0531
FOI-6-00044