

May 25, 2007

Eugenia Zacks-Carney
Attorney and Counselor at Law
4555 Marlborough
Okemos, MI 48864

Re: FOIA Appeal dated April 23, 2007

Dear Ms. Zacks-Carney:

On March 20, 2000, you made a two-part Freedom of Information Act (FOIA) request for: 1) complaints and investigations regarding the cancellation and/or termination of life insurance policies offered to credit union members by Michigan State University Federal Credit Union; and 2) fee income generated by the credit union since January 1, 1982 in relation to its marketing and offering of life insurance policies to members. Staff attorney Linda Dent responded to your request on April 20, 2007. She identified 47 pages of documents responsive to your request. All documents were withheld pursuant to exemptions 5, 6, and 8 of the FOIA. 5 U.S.C. 552(b)(5), (6), & (8). We note that all of the documents withheld were responsive to the first part of your request (complaints and investigations). There were no documents found on fee income. NCUA does not generally collect this type of information.

We received your April 23, 2007, FOIA appeal on April 27th. You do not believe that documents should have been withheld pursuant to exemptions 5 and 8 of the FOIA. With regard to exemption 6 (the personal privacy exemption) you state that you did not seek identification of any person in your FOIA request. You believe that NCUA should have redacted any personal information and released the documents. Your appeal is granted in part and denied in part. Enclosed are approximately 40 pages of responsive documents. Most of the pages have had some information redacted pursuant to exemption 6 of the FOIA. Four pages are withheld in full, 3 pursuant to exemption 5 and one pursuant to exemption 6. We also note that 3 of the original 47 responsive pages were duplicate pages, reducing the total number of responsive pages to approximately 44. An explanation of exemptions 5 and 6 follows.

Exemption 5

Internal memoranda, drafts of NCUA documents and notes were 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 to the documents withheld pursuant to the deliberative process privilege of exemption 5.

Exemption 6

Personal identifying and confidential financial information, and home addresses and telephone numbers were 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 minimal, if any, public interest in disclosing this personal information. The individuals' privacy interests outweigh any public interest in disclosure. The personal information continues to be withheld pursuant to exemption 6.

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,

/S/

Robert M. Fenner
General Counsel

Enclosures

GC/HMU:bhs
07-0501
07-FOI-00104
2007-APP-00003