

March 30, 2009

Anthony M. Minotti
Asset Recovery Consulting
Broadway Station
1701 Broadway #167
Vancouver, WA 98663

Re: FOIA Appeals dated March 5th and 7th, 2009

Dear Mr. Minotti:

On January 28, 2009, you made a Freedom of Information Act (FOIA) request for a list of any and all unclaimed deposits including name, exact amount and last known address. On February 2, 2009, you modified your request to include the owner's name, city and state and requested responsive records be grouped in various increments of amount held. On February 13th, you asked that zip codes be included. Staff attorney Linda Dent responded to your request on March 4, 2009. Your request was granted in part and denied in part. Ms. Dent enclosed four pages providing the owner's name, city, state, and the credit union's name where the funds were held for all accounts in excess of \$1000. Your request to have the information grouped into specific increments and for the owners' zip codes was denied pursuant to exemption 6 of the FOIA. 5 U.S.C. §552(b)(6).

We received two appeals from you, one dated March 5th and a second dated March 7th. The appeal letters are similar. You believe that providing information in increments does not constitute an invasion of privacy and that its release would serve the general public. In your March 7th letter you enclosed several reference letters and stated further that your request for information grouped in increments will help your clients and their heirs "decide if there is enough money involved to petition a court if probate becomes necessary." You set forth the following new incremental ranges for purposes of your appeal: \$1000 - \$4999; \$5000 - \$9999; \$10,000 - \$19,999; \$20,000 - \$29,999; \$30,000 - \$49,999; \$50,000 - \$99,000; and greater than \$100,000. You do not mention our withholding of zip code information in you appeal letters. We assume you do not wish to appeal our withholding of that information. Your appeal for the information grouped in increments is denied pursuant to exemption 6 as explained below.

Exemption 6 of the FOIA 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). For instance, a list of individuals who have funds held in a

particular institution and the individuals' cities and states would meet the threshold requirement for privacy protection. Unless a requestor could show a significant public interest, this personal information would be withheld pursuant to exemption 6.

Generally exemption 6 is used to protect individuals' privacy; individuals do not normally have an interest in public disclosure of their personal information. In cases involving unclaimed funds, however, the court has done a modified privacy analysis to include individuals' interest in disclosure. The court in Lepelletier v. FDIC, 164 F3d 37 (D.C. Cir. 1999) included the unclaimed accountholders' interest in disclosure as well as their privacy interest in non-disclosure because accountholders have an interest in obtaining their unclaimed funds. The court allowed for disclosure of unclaimed accountholder's names, but not the amount held in each account. The amount was withheld pursuant to exemption 6. We believe that the incremental range of amounts you request is personal information and the accountholder's interest in disclosure is met by release of the names only. We do not believe there is a public interest in disclosing the incremental amounts. Information concerning the incremental amounts held per individual remains withheld pursuant to exemption 6 using a Lepelletier analysis.

We also note that if a particular individual named (or his/her heirs) contacts us, information on that person's unclaimed funds (and the funds themselves) will be made available once identification is verified. Your stated argument that our release of incremental amounts will help your clients decide whether or not to petition a court if probate becomes necessary can be accomplished by having the named individuals (or their heirs) contact our Asset Management and Assistance Center (AMAC) directly. Your clients can either consult our website (<http://www.ncua.gov/AssetMgmtCent/unclaimed/unclaimed.html>) or contact AMAC via mail, telephone, fax or e-mail at **AMAC, 4807 Spicewood Springs Road, Suite 5100, Austin Texas 78759, Phone: 512-231-7900, FAX: 518-231-7920, e-mail: amacmail@ncua.gov**.

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

GC/HMU:bhs
09-0312
09-FOI-00049
09-APP-00006