

October 16, 2008

Lionel Z. Glancy, Esq.
Glancy Binkow & Goldberg LLP
1801 Avenue of the Stars, Suite 331
Laos Angeles, CA 90067

Re: FOIA Appeal dated September 25, 2008

Dear Mr. Glancy:

Marc Godino of your law firm filed a Freedom of Information Act (FOIA) request with the National Credit Union Administration (NCUA) on July 18, 2008. The request was later modified and NCUA staff attorney Linda Dent sent Mr. Godino an interim response on September 9th enclosing 39 pages of responsive documents. On September 10th, Ms. Dent sent the final response denying in full the remainder of the request. The final response stated that responsive records consisted of approximately 150 megabytes held in electronic form and 160 boxes of paper documents. The request was denied pursuant to exemptions 4, 5, 6 and 8 of the FOIA. 5 U.S.C. §552(b)(4), (5), (6) & (8). We received your appeal of the denial on September 25th. We are unable to issue a final response to your appeal because the records have not been adequately reviewed.

In the original request Mr. Godino noted that your law firm was willing to pay all reasonable expenses associated with the request and to notify him in advance if the fees would exceed \$2500. No fees were charged for the processing of the request. Unfortunately the volume of responsive records was miscommunicated in Ms. Dent's September 10th response. Rather than 150 megabytes of responsive records, our field staff estimated that there are 150 gigabytes of responsive records. This is 1000 times the volume that Ms. Dent noted. In addition there are approximately 4000 imaged files, each which could contain multiple pages, and approximately 160 boxes of paper documents as noted in Ms. Dent's response. Pursuant to the FOIA and implementing NCUA Regulations, commercial requesters are responsible for the payment of the cost of search and review time as well as the cost of duplication of records. (See 5 U.S.C. §552(a)(4)(A)(i) – (ii) and 12 C.F.R. §§792.19 – 21.

Field staff has indicated that a fairly large portion of the responsive records may be duplicative. We also note that a large portion of the responsive records may be withheld pursuant to the exemptions 4, 5, 6, and 8 of the FOIA as noted in Ms. Dent's response. Since many of the records contain commercial information that has been obtained from a third party, they are also subject to submitter notice procedures as set forth in §792.29 of the NCUA Regulations (12 C.F.R. §792.29)

We have not reviewed the responsive records, but only a miniscule sampling of them. The resources needed to review the responsive records are huge. Field staff estimates that it would take an employee familiar the responsive records between one and two years of full time effort to initially review the records. The cost for this would be well beyond the \$2500 you indicated would Mr. Glancy

be available. In addition, we cannot dedicate a full-time staff person to this request, even if you agreed to pay for it. At this point we suggest that if you wish to pursue review of the records, a new request be filed that is significantly more narrow than the modified request filed by Mr. Godino. We can then work out an estimate of cost of review as well as an approximation of how much time the review would take. We can probably dedicate a few hours of staff time per week to this request. We would also need to discuss the amount of funds your law firm (or your client) would be willing to commit in order to determine the extent of the review.

Please contact Ms. Dent at 703-518-6567 if you wish to pursue a new, more limited request.

Sincerely,

Robert M. Fenner
General Counsel

OGC/hmu
08-0936

February 2, 2009

Marc Godino, Esq.
Glancy Binkow & Goldberg LLP
1801 Avenue of the Stars, Suite 331
Los Angeles, CA 90067

Re: Revised FOIA Request

Dear Mr. Godino:

You originally filed a Freedom of Information Act (FOIA) request with the National Credit Union Administration (NCUA) on July 18, 2008. The request was later modified and NCUA staff attorney Linda Dent sent you an interim response on September 9th enclosing 39 pages of responsive documents. These pages consisted of a listing of properties located in Lee County, Florida with construction loans from Norlarco Credit Union, Huron River Area Credit Union and New Horizons Community Credit Union. Pursuant to exemption 6 of the FOIA, all personal information was redacted in the listing (only county and state appeared;

names, account numbers, street addresses, and towns were redacted). 5 U.S.C. §552(b)(6). On September 10th, Ms. Dent sent the final response denying in full the remainder of the request pursuant to exemptions 4, 5, 6 and 8 of the FOIA. 5 U.S.C. §552(b)(4), (5), (6) & (8). You appealed the denial on September 25, 2008 and we responded on October 16, 2008. We were unable to issue a final response to your appeal because the amount of responsive records was prohibitively large; we were unable to adequately review the records.

You then contacted this Office to discuss how you could limit your request in order to enable NCUA to review responsive documents within a reasonable period of time. You requested that NCUA continue to process your request on the appeal level, rather than start the process over with a new request. On November 26 and December 11, 2008, in e-mails to Hattie Ulan of this office, you revised your request to include the following three items:

1. A list of the street addresses, city and state for all properties noted in Linda Dent's response of September 9, 2008 and referred to in her response of September 10.
2. Any records concerning any material loss review being done by the NCUA concerning the three above-mentioned credit unions, including any such review being done by the NCUA's Office of Inspector General.
3. Any documentation of agreements (or any discussion leading to agreements) between the NCUA, the three above-mentioned credit unions and Hovnanian Mark Godino, Esq.

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(including K. Hovnanian or Hovnanian Builders) concerning the above noted properties (including property transfer and property insurance and documentation or agreements concerning interest payments on loans for the referenced properties) both before and after liquidation of the three credit unions, but only up until January 1, 2008. Request includes formal agreements and correspondence, but not e-mails.

We forwarded item 2. to NCUA's Office of Inspector General (OIG). The Office of Inspector General informed you that the complete, unredacted material loss review report of Huron River Area Credit Union is available on-line on the NCUA website. You indicated to the OIG that if you wished to pursue other records, you would do that in a separate FOIA request. To date, the Office of Inspector General has not received any further FOIA requests from you.

As you know, we are continuing to process item 3. On January 23, 2009, we sent out a submitter notice (with a copy to you) concerning this item. We will send you our final response for this item, including any releasable pages and your appeal rights, once the submitter process is complete.

Enclosed are the releasable pages for item 1. We have released the street addresses for all of the properties owned by NCUA. This includes addresses for approximately 300 properties. The addresses for the other properties remain withheld pursuant to exemption 6 of the FOIA as discussed below.

Street addresses for the properties that are not owned by NCUA are 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 a privacy interest in the street addresses of these properties, even if the names of the owners are not released. The public interest, which the Supreme Court has deemed the core purpose of the FOIA, is to shed light on an agency’s performance of its statutory duties. See U.S. Department of Justice v. Reporters Committee for Freedom of the Press, 489 U.S. 749, 774-775 (1989) We believe that the release of approximately 300 addresses gives enough information in order for any requestor to determine if an agency, NCUA in this case, is performing its statutory duties. Disclosure of additional addresses is not made because the public interest has been met by release of addresses for NCUA-owned properties. The addresses for the additional properties continue to be withheld pursuant to exemption 6.

Mark Godino, Esq.

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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 on item 1. above, 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

08-0936

2009-APP-00001

Enclosure

February 23, 2009

Marc Godino, Esq.
Glancy Binkow & Goldberg LLP
1801 Avenue of the Stars, Suite 331
Los Angeles, CA 90067

Re: Clarification of Revised FOIA Request and Final Response

Dear Mr. Godino:

This is our final response concerning your Freedom of Information Act (FOIA) appeal dated September 25, 2008. We issued an interim response to your appeal on October 16, 2008; after discussion with my staff and staff from NCUA's Asset Management and Assistance Center, you limited your request to three items and we agreed to continue to process your request for these three items on the appeal level. Each of the three items and an explanation of how it was handled appear below.

1. A list of the street addresses, city and state for all properties noted in Linda Dent's response of September 9, 2008 and referred to in her response of September 10th.

On February 2, 2009, we provided the requested information for the approximately 300 properties owned by NCUA along with an explanation as to why the other addresses were withheld and your appeal rights for the withheld information. On February 9, 2009, you requested the following three points of clarification on the information provided:

- a) if the list of properties noted in Linda Dent's response included the properties on the list provided to you on February 2nd;
- b) whether the list of properties sent to you on February 2nd includes all of the properties responsive to your request that NCUA has ever owned or only those owned on a certain date; and
- c) at what point during the foreclosure process a property is considered owned by NCUA. You note two properties that were quit-claimed to NCUA in November 2008 were not included on the list.

Although a response to your request for clarification is not required pursuant to the FOIA, we provide the following information. The list of addresses maintained by NCUA is updated and reflects property currently owned by NCUA. Newly obtained properties are added to the list and properties sold are deleted from the list. Marc Godino, Esq.

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However, changes to the list are not made instantaneously upon acquisition or sale of a property. The list is updated on a flow basis. A reasonable period of time (perhaps several weeks) may elapse before a newly acquired property is added to the list or a sold property is deleted from the list.

In answer to your specific questions:

a) The listing of properties (county and city only) provided to you on September 9, 2008, included the properties (street address, county, city and state) sent to you on February 2, 2009, if they were owned by NCUA and had been added to the list when provided by Ms. Dent;

b) the properties listed in our February 2, 2009 letter include only those properties owned on a date sometime prior to December 4, 2008, the date the list was generated; and

c) NCUA owns a property once it obtains legal title. The two properties you note as being quit-claimed to NCUA in November 2008 had not yet been added to the December 4, 2008 generated list.

2. Any records concerning any material loss review being done by the NCUA concerning the three named credit unions (Norlarco Credit Union, Huron River Credit Union and New Horizons Community Credit Union), including any such review being done by the NCUA's Office of Inspector General.

We forwarded this item to NCUA's Office of Inspector General for their direct response. The Inspector General directed you to responsive information on NCUA's website and advised you to contact them for further information.

3. Any documentation of agreements (or any discussion leading to agreements) between the NCUA, the three above-mentioned credit unions and Hovnanian (including K. Hovnanian or Hovnanian Builders) concerning the above noted properties (including property transfer and property insurance and documentation or agreements concerning interest payments on loans for the referenced properties) both before and after liquidation of the three credit unions, but only up until January 1, 2008. Request includes formal agreements and correspondence, but not e-mails.

We sent out a submitter's notice on January 23, 2009 in regard to this item. There are approximately seventeen pages of responsive records consisting of an agreement and a term sheet for the agreement. All of the records are withheld pursuant to exemption 4 of the FOIA. Exemption 4 protects, in part, commercial or financial information obtained from a person that is privileged or confidential. 5 U.S.C. §552(b)(4). The term "commercial" has been broadly interpreted to include anything "pertaining or relating to or dealing with commerce." American Marc Godino, Esq.

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Airlines, Inc. v. National Mediation Board, 588 F.2d 863, 870 (2d Cir. 1978). All information being withheld meets this standard of commercial/financial information. Information "obtained from a person" has been held to include information obtained from a wide range of entities including individuals, associations, corporations and public and private entities, other than agencies. Nadler v. FDIC, 92 F.3d 93, 95 (2nd Cir. 1996). All of the commercial/financial information withheld pursuant to exemption 4 meets the standard of obtained "from a person" under Nadler.

In Critical Mass Energy Project v. NRC, 975 F.2d 871 (D.C. Cir. 1992), cert. denied, 507 U.S. 984 (1993), the court established two distinct standards to be used in determining whether commercial/financial information submitted to an agency is "confidential" under exemption 4. According to Critical Mass, information that is voluntarily submitted is categorically protected provided it is not customarily disclosed to the public by the submitter. Information required to be submitted to an agency is confidential if its release would (1) impair the Government's ability to obtain necessary information in the future; or (2) cause substantial harm to the competitive position of the person from whom the information was obtained. See National Parks & Conservation Association v. Morton, 498 F.2d 765 (D.C. Cir. 1974). The information here was voluntarily submitted and would not customarily be disclosed to the public by the submitter. Hence the Critical Mass standard for voluntarily submitted information has been met. We also believe the stricter National Parks standard has been met because release of the commercial/financial information would impair NCUA's authority to obtain necessary information in the future. The commercial/financial information is withheld pursuant to exemption 4.

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

GC/HMU:bhs
09-APP-00001
08-0936 FOIA Appeal Feb 09

March 4, 2009

VIA FACSIMILE AND US MAIL

Lionel C. Glancy, Esq.
Glancy Binkow & Goldberg LLP
1801 Avenue of the Stars, Suite 331
Los Angeles, CA 90067

Re: FOIA Appeal - Your letter of February 27, 2009

Dear Mr. Glancy:

We received your February 27, 2009 response to our February 23rd letter to Marc Godino of your law firm. As set forth in the February 23rd letter (enclosed), pursuant to exemption 4 of the Freedom of Information Act (FOIA), we denied the request for seventeen pages of responsive records consisting of an agreement and a term sheet for the agreement. You now ask that we reconsider the denial and further ask for our response by March 4, 2009 in that you will commence litigation on March 6th if we do not produce the documents requested.

We have not changed our position on the denial. The records are withheld pursuant to exemption 4 of the FOIA, as set forth in our February 23rd letter. The documents consist of commercial information obtained from a person. Although we believe the information was voluntarily submitted and is categorically protected since it would not be customarily disclosed to the public by the submitter, we also believe the standard for withholding information required to be submitted is met. Please refer to the discussion of the FOIA and applicable case law set forth in the enclosed letter. We believe further that the documents may be withheld pursuant to exemption 8 of the FOIA, applicable to records contained in or related to examination reports.

Sincerely,

/S/

Robert M. Fenner
General Counsel

Enclosure
GC/HMU:bhs
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