

July 15, 2010

Russell Carollo, Journalist
(b)(6)

Re: FOIA Appeal dated June 2, 2010; addendum dated June 11, 2010

Dear Mr. Carollo:

In a letter dated January 23, 2010, you made a Freedom of Information Act (FOIA) request for copies of all databases containing information related in any way to travel by NCUA employees and/or financed by NCUA; your request included travel paid for by other entities, public or private. You requested that responsive records be generated up to the date of the final response. You also requested a record layout (data dictionary) describing all database fields as well as any training/instructional material associated with the database. By letter dated May 20, 2010, Linda Dent, staff attorney in NCUA's Office of General Counsel, granted your request in part and denied it in part, enclosing a CD-Rom containing a database with certain fields on employee travel expense information for 2003 – 2009. The CD you received did not include all fields of information maintained by NCUA; it included city and state, voucher date, expense category, expense description, expense total, and travel year and month. Ms. Dent noted that the entire database includes approximately two million megabytes of information including personal, confidential information and sensitive agency information that may be subject to exemption under the FOIA. The partial denial was due to an unreasonable search request. Ms. Dent also noted that we did not have a data dictionary or training/instructional material. The database provided did not include any information on travel paid for by outside entities.

You submitted an appeal dated June 2, 2010 (received June 7th) and then submitted an addendum to the appeal dated June 11th (received June 16th) once you were able to access the information in the CD. Your June 2nd letter addresses six issues and your June 11th letter addresses four issues; some of the items overlap. On July 2nd Hattie Ulan of this Office spoke to you concerning your appeal. Among other things, you noted that you did not want database information provided in a piecemeal fashion.

This is an interim reply to your appeal. Your appeal is granted in part as explained below. Record layout information is enclosed with this letter. A revised database including information up until the date of the search will be sent once it is compiled by technical staff and reviewed by FOIA staff. You will again receive appeal rights when that additional information is sent.

June 2nd letter

Item 1. You requested a record layout (data dictionary) describing all database fields, including withheld fields as well as any training/instructional material associated with the database. Based on her exchange with staff familiar with the database, Ms. Dent responded

that we did not have a data dictionary or training/instructional material for the database. After clarifying to additional staff familiar with the database that the request included either a data dictionary or record layout, one page was located and identified as a record layout; it is enclosed. We have confirmed that there is no further data dictionary and no training or instructional materials associated with the database.

Items 2 – 4. You requested that we justify each deletion separately by reference to specific FOIA exemptions (including individual computer fields) and asked that all reasonably segregable portions (including field names) be released. We assume your reference to “computer fields” describes the same information as the term “database fields” used earlier in your letter. We will review our denial of database field names once an updated database is generated. Ms. Dent noted that the database contained approximately two million megabytes of information, including exemptible personal confidential information and sensitive agency information. Unfortunately the volume of responsive records was miscommunicated in Ms. Dent’s response. Rather than 2 million megabytes of information, our technical staff estimates that there are 2 million lines of information (or 2 million data processing records of information) in the unredacted database. This part of your request was denied in that it was a request requiring an unreasonable search. Courts have held that an agency must conduct a reasonable search and that the reasonableness of such a search depends upon the facts of each case. *Zemansky v. EPA*, 767 F.2d 569, 571-73 (9th Cir. 1985). Agencies are not required to conduct unreasonably burdensome searches for records. *Solar Sources, Inc. v. United States*, 142 F.3d 1033, 1039 (7th Cir. 1998). We estimate that it would take an NCUA employee familiar with FOIA exemptions at least six months of full time work to do a line-by-line review of the 2 million lines of information or data processing records in the unredacted database. Such a review is necessary because employees may have entered information subject to exemption in the fields withheld. Given our limited FOIA resources and the amount and types of requests we receive, we can devote only one to two hours per week to review the information that was requested and withheld. Please contact Ms. Dent after you receive the newly generated database if you wish to pursue this option.

Item 5. This item concerned format of the data you received. According to your June 11th letter, this issue has been resolved.

Item 6. Your request included database information on travel paid for by entities other than NCUA, both public or private. It is NCUA’s longstanding policy not to accept payments for travel from any other entities, public or private; hence there are no responsive records to this part of your request.

June 11th letter

Item 1. You state that the names of individual travelers were not provided in the database you received. After receipt of your request, Ms. Dent spoke with you to clarify exactly what type of information you were requesting. It was her understanding that you were not interested in the names of individual travelers. Prior to providing you with a new database we will determine whether the names of the individual travelers will be included.

Item 2. You note that numerous fields were left out of the database you received without explanation; you also again request that a specific FOIA exemption be noted for each deletion. These issues are addressed above. You again request a data dictionary and any

training/instructional materials. As noted above, the record layout information is enclosed. In your conversation with Ms. Ulan, you clarified that you wanted the original "relational database" from which the flat table database that you received was created. We cannot provide you with our relational database. The size of the relational database is approximately 46 gigabytes; it is much larger than the database provided and it presents a clearly unreasonable search request, as discussed above.

Item 3. You argue that your request does not present an unreasonable burden. This issue is addressed above.

Item 4. You requested records generated up to the date of our final response. We provided records from 2003 – 2009; Ms. Dent's response was dated May 20, 2010. Courts have held that a "date of search" cutoff date rather than a "date of release" cutoff date is a reasonable one. *Edmonds Inst. v. US. Department of the Interior*, 383 F. Supp. 2d 105,110-11 (D.D.C. 2005). The new database that will be provided will include information up until the "date of search." It is not reasonable to include information up to the "date of release." Technical staff outside of NCUA's FOIA Office is responsible for generating the database. There will always be some time lag between when this type of information is generated (date of search) and the appropriate FOIA response can be prepared and released (date of release).

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).

As discussed with Ms. Ulan, once the new database is generated and a decision is made on any additional release of field names and individual traveler names, we will send you our final response with the new database enclosed, along with your appeal rights for the final release.

Sincerely,

Robert M. Fenner
General Counsel

Enclosure

GC/HMU:bhs
10-0627
10-FOI-00049

September 7, 2010

Russell Carollo
(b)(6)

Re: FOIA Appeal dated June 2, 2010; addendum dated June 11, 2010;
follow-up dated July 19, 2010

Dear Mr. Carollo:

This is the follow-up to our July 15, 2010 interim response to your June 2, 2010 Freedom of Information Act (FOIA) appeal, as amended on June 11th. On July 15th, we sent you an interim reply, granting it in part. You responded on July 19th, noting that you are represented in all matters related to your request and appeal by attorney Robert S. Hart, however in an e-mail dated July 27th you requested that correspondence be sent to you directly. This is our final response to your appeal which is granted in part and denied in part, as described below.

In a letter dated January 23, 2010, you made a Freedom of Information Act (FOIA) request for copies of all databases containing information related in any way to travel by NCUA employees and/or financed by NCUA; the request included information on travel paid for by other entities, public or private. You requested responsive records generated up until the date of the response and you also requested a record layout (data dictionary) describing all database fields as well as any training/instructional material associated with the database. By letter dated May 20, 2010, Linda Dent, staff attorney in NCUA's Office of General Counsel, granted the request in part and denied it in part, enclosing a disk containing a database with certain fields on employee travel expense information for 2003 – 2009. The disk did not include all fields of information maintained by NCUA. Ms. Dent noted that the entire database was quite large, and included personal, confidential information and sensitive agency information subject to exemption under the FOIA. The database would require a line-by-line review that presented an unreasonable search request.

You submitted an appeal dated June 2, 2010 (received June 7th) and then submitted an addendum to the appeal dated June 11th (received June 16th) once you were able to access the information on the disk. On July 15th, we sent an interim reply to the appeal, granting it in part. We noted that NCUA does not accept payment for travel from any other entities; hence no information on such payment was included in the database. Enclosed with the interim reply was a one page listing of field names, some of which were contained in the database previously provided. We noted we would send a revised database once it was compiled and reviewed.

The revised database file is now enclosed, in the form of a disk (DVD). The database file contains information from January 1, 2003 until July 15, 2010, the date the database file was generated by technical staff. Not all travel information through July 15, 2010 is included; it includes only information from travel vouchers in the system as of that date. As noted in our June 15th response, courts have held that a "date of search" cutoff date rather than a "date of release" cutoff date is a reasonable one. See *Edmonds Inst. v. US. Department of the Interior*, 383 F. Supp. 2d 105,110-11 (D.D.C. 2005). As noted in our July 15th letter, there will always be some time lag between when this type of information is

generated (date of search) and the appropriate FOIA response can be prepared and released (date of release). Additional fields including the name of the traveler are contained in this revised database file. Also included are several pages of record layout describing the fields from which the database file was generated; all field names are disclosed.

The enclosed redacted flat database file was generated from our travel system's central data repository. This central repository consists of two related data tables in our core financial system. Our core financial system is SAP, a large Enterprise Resource Planning system, which encompasses much more than just travel. The size of the entire core financial system, as referenced in our July 15th letter, is approximately 46 gigabytes. We have only provided the redacted flat file as providing greater parts of our core financial system would present a clearly unreasonable search. Provision of additional information would require further review and redaction before any release could be made. As noted in our July 15th response, courts have held that an agency must conduct a reasonable search and that the reasonableness of such a search depends upon the facts of each case. *Zemansky v. EPA*, 767 F.2d 569, 571-73 (9th Cir. 1985). Agencies are not required to conduct unreasonably burdensome searches for records. *Solar Sources, Inc. v. United States*, 142 F.3d 1033, 1039 (7th Cir. 1998).

Both the unredacted and redacted versions of the flat database file contain approximately 2 million records. Each line of the unredacted version is larger in that it contains several fields (redacted fields as discussed below) that do not appear in the redacted version. We estimate that it would take an NCUA employee familiar with FOIA exemptions at least six months of full time work to do a line-by-line review of the in the unredacted flat database file. Such a review is necessary because in some cases the redacted fields contain information subject to exemption. The withheld fields that contain either personal or credit union exempt information are EComment, Billing type, Billing description, CU number and Justification. Personal information is subject to exemption 6 of the FOIA; specific credit union information is subject to exemption 8 of the FOIA. Other exemptions may also apply as well, but we cannot make a determination until the information is reviewed. Given our limited FOIA resources and the amount and types of requests we receive, we can devote only one to two hours per week to review the information in these fields. Please contact Ms. Dent if you wish to pursue this option. The Postdocnum, ExpenseID, and Empnum fields were withheld as they contain internal information subject to exemption 2 of the FOIA. This is high 2 information. We note that low 2 information is released, for example information found in the MANDT, TCP and NCUAPosition fields. Below is a brief discussion of exemptions 2, 6 and 8.

Exemption 2

As noted, the material withheld under this exemption is found in the Postdocnum, ExpenseID and Empnum fields. All information in these fields is internal and is used in our accounting system. Exemption 2 of the FOIA exempts from mandatory disclosure records that are "related solely to the internal personnel rules and practices of an agency." 5 U.S.C. §552(b)(2). The courts have interpreted exemption 2 to encompass two distinct categories of information: trivial matters referred to as "low 2" information and more substantial internal matters referred to as "high 2" information. See *Schiller v. NLRB*, 964 F.2d 1205, 1207 (D.C. Cir. 1992). As noted above, low 2 information found in the MANDT, TCP and NCUAPosition fields is released. The information withheld under exemption 2 was "high 2"

information. *Crooker v. ATF*, 670 F.2d 1051 (D.C. Cir. 1981) (en banc), is the lead case interpreting the “high 2” exemption and it encompasses protection for internal agency information the sensitivity of which is readily recognized. *Crooker* established a 2-part test for determining which sensitive materials are exempt from mandatory disclosure. The test requires that: 1) a requested document be predominantly internal; and 2) its disclosure significantly risks circumvention of agency regulations or statutes. The entire database is internal so the first test is met. Courts have held that the high 2 exemption can be applied when there is a determination of reasonably expected harm. See *Judicial Watch, Inc. v. United States Department of Commerce*, 83 F. Supp. 2d 105, 110 (D.D.C. 1999). High 2 has been applied when the consequences of disclosure could be harmful to the effective operation of government offices. *Pinnavaia v. FBI*, No. 03-112, slip opinion at 8 (D.D.C. Feb. 25, 2004) (withholding of beeper numbers and cell phone numbers). The release of information withheld pursuant to exemption 2 could be harmful to the effective operation of NCUA in that disclosure might disrupt official business and would serve no public benefit. The information continues to be withheld pursuant to exemption 2.

Exemption 6

Personal information about NCUA employees is contained in the following fields: EComment, Billing type, Billing description and Justification. Although many lines under these fields are left blank, personal information is contained in some. We have only reviewed a very limited number of lines containing information entered in these fields. 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). It includes any personal information. 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. The standard of public interest to consider is one specifically limited to the FOIA’s core purpose of shedding light on an agency’s performance of its statutory duties. *Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989). There is minimal, if any, public interest in disclosing personal information that may be contained in the aforementioned fields. The individuals’ privacy interests outweigh any public interest in disclosure. Therefore all information in these fields is withheld because any personal information is subject to exemption 6.

Exemption 8

Information subject to exemption 8 is contained in the CUNumber field and may be contained in the EComment, BillingDesc and Justification fields. 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). See also

Snoddy v. Hawke, No. 99-1636, slip op. at 2 (D. Colo. Dec. 20, 1999). A credit union can be identified by its CUNumber and its financial condition may be specifically noted or implied from its CUNumber along with information found in the additional above noted fields. Therefore the information in these fields is subject 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 at *4. The information contained in the fields noted is within the scope of exemption 8 pursuant to Consumers Union and McCullough. Withholding the information meets the purposes of exemption 8; therefore, all of the information in these fields is withheld pursuant to exemption 8. 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 (Disk and record layout)

GC/HMU:bhs
10-0627
10-FOI-00049