

October 27, 2011

Mr. Richard Villar
XXXX (b)(6)

RE: 11-FOI-0007; 2012- APP-00001

Dear Mr. Villar:

You submitted a request under the Freedom of Information Act (FOIA) to the National Credit Union Administration (NCUA) by letter dated August 31, 2011, in which you sought a copy of the certificate of insurance for St. Mary's Bank, located in Hudson, New Hampshire. You also asked us to specify the date the insurance was obtained and to confirm that the institution was insured on April 18, 2006. Finally, you asked for copies of any records or data contained in our files that pertained to you.

By letter dated September 22, 2011, NCUA Staff Attorney Linda Dent responded to your request. Ms. Dent provided you with a certification, on NCUA official letterhead and signed by the Acting Director of Supervision for NCUA's Regional Office in Albany, New York. The certification confirmed that St. Mary's Bank Credit Union (St. Mary's)¹ obtained federal share insurance from the NCUA effective on March 7, 1977 and that it remained insured as of September 21, 2011, the date of the certification. Ms. Dent's letter also confirmed that NCUA did not maintain any records within its systems of records that pertain to you.

By letter dated September 26, you appealed Ms. Dent's determination. In your appeal, you acknowledge having received the certification from NCUA but you assert that NCUA failed to provide any other information or documentation relevant to your request. Your appeal asks that NCUA be compelled to respond with "up to date information and documentation" responsive to your request. You have also asserted that NCUA and its personnel have breached a fiduciary duty to be truthful because, allegedly, you possess documentation relevant to St. Mary's that is contrary to what NCUA provided to you.

Your appeal is denied. St. Mary's is not a Federal credit union. It was chartered by the State of New Hampshire, not the NCUA. As a result, the NCUA does not possess any documents relating to the original charter of St. Mary's, including specifically its original certificate of insurance. In response to a proper request, the FOIA requires an agency to provide copies of responsive material in its possession. It does not require an agency to create documents or opinions in response to an individual's request for information or to take steps to obtain copies of documents in the possession of third parties. *Hudgins v. IRS*, 620 F. Supp. 19 (D.D.C. 1985); *United States Department of*

¹ Despite its name, St. Mary's is a credit union, not a bank.

Mr. Richard Villar
XXXX(b)(6)
October 27, 2011
Page 2

Justice v. Tax Analysts, 492 U.S. 136, 144-145 (1989) (noting that one prerequisite to a document constituting an agency record for purposes of the FOIA is that “the agency must be in control of the requested materials at the time the FOIA request is made”).

In an effort to accommodate you, Ms. Dent provided you with a document certifying that St. Mary’s is an institution whose accounts have been insured by the National Credit Union Share Insurance Fund since March 4, 1977. Even though this document is not the original certificate of insurance, it contains information that is responsive to your request. Should you require additional information or copies of original documents, we suggest you contact the New Hampshire Banking Department.

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, or the District of Columbia.

Sincerely,

/S/

Lara K. Rodriguez
Deputy General Counsel

11-FOI-00007; 2012 – APP – 0001

11-1053

GC/RPK/bhs