

December 22, 2011

Mr. Paul Thompson

XXX (b)(6)

RE: 12 – FOI – 00020; Appeal of Fee Waiver Denial

Dear Mr. Thompson:

On November 28, 2011, we received your undated letter appealing the determination made by Staff Attorney Linda Dent in her letter to you of November 23, 2011, denying your request for a waiver of fees under the Freedom of Information Act (FOIA) and NCUA regulations. You made the waiver request in connection with your initial FOIA request, seeking copies of NCUA and NCUSIF annual reports for the years 1970 – 1980.

The FOIA provides that fees may be lowered or waived “if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. §552(a)(4)(iii). Section 792.27 of NCUA’s FOIA regulation restates this test and sets forth the factors NCUA considers in making a determination on a fee waiver request. 12 C.F.R. §792.27(a). The rule specifies that NCUA will consider the following factors in making its determination of whether the public interest requirement is met:

- (1) Whether the subject of the requested records concerns identifiable operations or activities of the government, with a connection that is direct and clear;
- (2) Whether the disclosable portions of the requested records are meaningfully informative about government operations and activities in order to be likely to contribute to an understanding of government operations or activities. Information already in the public domain, either in a duplicate or substantially identical form where nothing new would be added to the public's understanding, would not be meaningfully informative;
- (3) Whether disclosure of the requested information will contribute to public understanding, meaning a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A

requester's expertise in the subject area and ability and intention to effectively convey information to the public will be considered. Representatives of the news media are presumed to satisfy this consideration; and

(4) Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities. The level of public understanding before disclosure must be enhanced by the disclosure to a significant extent.

Id. The rule further describes how, if the public interest requirement is met, the NCUA will then evaluate the relative importance of the requester's commercial interest in the requested materials. 12 C.F.R. §792.27(b). A fee waiver is available where the requester's commercial interest is not primary in comparison to the public interest in the release of the materials. 12 C.F.R. §792.27(c).

According to your initial FOIA request, you intend to use the identified annual reports as source material for a book you intend to publish about the modern history of the credit union movement in the United States. The book's primary focus will be the creation and activities of the NCUA. We acknowledge that the subject matter of the proposed book meets the criteria of being meaningfully informative about government operations and activities, even though the requested materials would contribute to that understanding in a historical, rather than a current, sense. We further acknowledge that the requested material will "contribute" toward the accomplishment of this purpose, in the sense that the material will provide context and continuity for the overall history of the agency. We note, in this respect, the relative dearth of readily accessible, independent reference material in the public domain concerning the history and origins of the agency and the insurance fund.

Similarly, we acknowledge that the material you have requested is not currently within the public domain. We note, however, that the annual reports were, at the time of their creation, released and distributed publicly. Based on your background in the credit union industry and the fact that you have already published one book involving credit unions, we accept that you are likely to succeed in your goal of bringing this new book to publication. By your own acknowledgement, the book is likely to appeal to a relatively limited audience of credit union officials. To the extent that those officials interact with credit union members and other members of the public, however, there is potential for a significant impact on the public's understanding of the history and operations of the NCUA. Accordingly, we think the first prong of the test for a fee waiver is met in your case.

In accordance with the applicable rule, we next evaluate whether the release of the requested documents will have a significant impact on your own commercial interest and whether that interest is more significant and substantial than the public interest being furthered by the release of the documents. You have stated that your contemplated book will be published at your own expense. We interpret this to mean

Mr. Paul Thompson
December 22, 2011
Page 3

that you do not have a publishing contract with any third party and will not be receiving an advance or other compensation from an outside source. Your commercial interest is, therefore, limited to revenue generated from the sale of the book. We note and accept your characterization that the book is likely to be purchased by a relatively limited universe consisting of credit union officials and directors and will, therefore, probably not result in a significant revenue stream to you. Given the relatively small impact the release of the requested documents will have on your commercial interest, we believe that interest is not primary in comparison with the public interest in the release of the documents.

We conclude that the two prongs of the fee waiver test, as established in our regulation, are met in this case. Accordingly, waiver of the fees associated with the production of the materials you have requested is appropriate in this case.

Sincerely,

/S/

Michael J. McKenna
General Counsel

12 – FOI – 00020

GC/RPK:bhs

11-1270