

June 3, 1999

Re: Freedom of Information Act Appeal, Your letter dated April 28, 1999

Dear:

On February 18, 1999, you wrote concerning the failure of Franklin Community Federal Credit Union (Franklin FCU). We treated your letter as a request under the Freedom of Information Act (FOIA). Dianne Salva, the FOIA Officer, responded to your request on April 19, 1999. Enclosed with her response was a draft copy of the Report to the NCUA on the Reconstruction of Records concerning Franklin FCU prepared by the Financial Advisory Group. Fifteen pages of exhibits to the draft report were withheld pursuant to exemption 6 of the FOIA (5 U.S.C. 552(b)(6)). On April 28, 1999, you wrote appealing the decision to withhold the fifteen pages. Your appeal is granted in part and denied in part. The enclosed fifteen pages are released with redactions. The portions redacted continue to be 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 which applies to a particular individual meets the threshold requirement for exemption 6 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, 272 (1976).

The fifteen pages that were originally withheld consist of copies of promissory notes and agreements, a share certificate, loan forms, checks issued by Franklin FCU, and an account activity sheet. Share and loan documents reflect members' personal financial affairs. The documents contain Franklin FCU members' names, addresses, telephone and account numbers as well as other identifying information. These documents clearly meet the threshold for exemption 6 protection. Individuals have a strong privacy interest in their own financial affairs.

The Supreme Court has held that the public interest in exemption 6 information is to "shed light on an agency's performance of its statutory duties." United States Department of Justice v. Reporters Committee, 489 U.S. 749 (1989). The burden of establishing that disclosure would serve the public interest is on the requester. Carter v. United States Department of Commerce, 830 F.2d 388, 391 (D.C. Cir. 1987). You state in your appeal: "I fail to see why the public interest would not be served by disclosing this information." This statement does not meet the burden of establishing that disclosure will serve the public interest. We do believe, however, that the documents can be disclosed with all of the exemption 6 information redacted. The personal and identifying information (names, addresses, account and telephone numbers, etc.) has been redacted from the documents pursuant to exemption 6 of the FOIA. The redacted documents are enclosed.

Pursuant to 5 U.S.C. 552(a)(4)(B), 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 in the district

where you reside, where your principle place of business is located, in the District of Columbia, or where the documents are located (the Eastern District of Virginia).

Sincerely,

Robert M. Fenner
General Counsel

Enclosures
GC/HMU:bhs

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