

National Credit Union Administration
Annual Freedom of Information Act Report
for
Fiscal Year 2009

The following Annual Freedom of Information Act report covers the Period 10/01/2008 through 09/30/2009, except as indicated below for Part XII of the report, as required by 5 U.S.C. 552. The URL for this report is:

<http://www.ncua.gov/GenInfo/FOIA/Reports.aspx>.

I. BASIC INFORMATION REGARDING REPORT

1. If you have any questions regarding this report, you may contact Linda Dent, Staff Attorney, 1775 Duke Street, Alexandria, Virginia 22314, (703) 518-6540.
2. The report is available on-line at <http://www.ncua.gov/GenInfo/FOIA/Reports.aspx>. You can click on any underlined term to link directly to the corresponding document on the NCUA website.
3. To obtain a copy of this report in paper form, you may come to the NCUA reading room located in room 6076B, at 1775 Duke Street, Alexandria, Virginia 22314-3428, from 8 a.m. to 5:00 p.m. Monday through Friday, or call (703) 518-6540 to request that a copy be sent to you.

II. MAKING A FOIA REQUEST

You can consult the publication entitled, "A Handbook for Obtaining Information from NCUA" for information on making a FOIA request. The Handbook is available on the Internet at <http://www.ncua.gov/GenInfo/FOIA/Files/FOIAhandbook04.pdf>, or you can request a copy from the Office of Public and Congressional Affairs by calling (703) 518-6330.

1. FOIA requests may be submitted to one of two NCUA offices, both of which are located at 1775 Duke Street, Alexandria, Virginia 22314-3428. For records maintained by the Office of Inspector General (OIG) direct your request to the OIG at the above address. You may also send a request to the OIG by facsimile at (703)518-6349, or by e-mail to OIGmail@ncua.gov. For all other requests, submit your request to the Freedom of Information Act Officer at the above address. You may also send such requests by facsimile to (703) 518-6569 or by e-mail to FOIA@ncua.gov.

2. Brief Description of why some requests are not granted:

Generally, exempt information includes credit union examination reports; records which if released, would cause an unwarranted invasion of personal privacy; confidential proprietary business information; internal communications regarding proposed NCUA policies; and law enforcement investigative records.

III. DEFINITIONS OF TERMS AND ACRONYMS USED IN THE REPORT

1. No agency-specific acronyms or terms are used in this Report.

2. The following are definitions of terms used in this report:

- a. **Administrative Appeal** – a request to a federal agency asking that it review at a higher administrative level a FOIA determination made by the agency at the initial request level.
- b. **Average Number** – the number obtained by dividing the sum of a group of numbers by the quantity of numbers in the group. For example, of 3, 7, and 14, the average number is 8.
- c. **Backlog** – the number of requests or administrative appeals that are pending at an agency at the end of the fiscal year that are beyond the statutory time period for a response.
- d. **Component** – for agencies that process requests on a decentralized basis, a “component” is an entity, also sometimes referred to as an Office, Division, Bureau, Center, or Directorate, within the agency that processes FOIA requests. The FOIA now requires that agencies include in their Annual FOIA Report data for both the agency overall and for each principal component of the agency.
- e. **Consultation** – the procedure whereby the agency responding to a FOIA request first forwards a record to another agency for its review because that other agency has an interest in the document. Once the agency in receipt of the consultation finishes its review of the record, it responds back to the agency that forwarded it. That agency, in turn, will then respond to the FOIA requester.
- f. **Exemption 3 Statute** – a federal statute that exempts information from disclosure and which the agency relies on to withhold information under subsection (b)(3) of the FOIA.

- g. **FOIA Request** – a FOIA request is generally a request to a federal agency for access to records concerning another person (i.e., a “third-party” request), or concerning an organization, or a particular topic of interest. FOIA requests also include requests made by requesters seeking records concerning themselves (i.e., “first-party” requests) when those requesters are not subject to the Privacy Act, such as non-U.S. citizens. Moreover, because all first-party requesters should be afforded the benefit of both the access provisions of the FOIA as well as those of the Privacy Act, FOIA requests also include any first-party requests where an agency determines that it must search beyond its Privacy Act “systems of records” or where a Privacy Act exemption applies, and the agency looks to FOIA to afford the greatest possible access. All requests which require the agency to utilize the FOIA in responding to the requester are included in this Report. Additionally, a FOIA request includes records referred to the agency for processing and direct response to the requester. It does not, however, include records for which the agency has received a consultation from another agency. (Consultations are reported separately in Section XII of this Report.)
- h. **Full Grant** – an agency decision to disclose all records in full in response to a FOIA request.
- i. **Full Denial** – an agency decision not to release any records in response to a FOIA request because the records are exempt in their entireties under one or more of the FOIA exemptions, or because of a procedural reason, such as when no records could be located.
- j. **Median Number** – the middle, not average, number. For example, of 3, 7, and 14, the median number is 7.
- k. **Multi-Track Processing** – a system in which simple requests requiring relatively minimal review are placed in one processing track and more voluminous and complex requests are placed in one or more other tracks. Requests granted expedited processing are placed in yet another track. Requests in each track are processed on a first in/first out basis.
- i. **Expedited Processing** – an agency will process a FOIA request on an expedited basis when a requester satisfies the requirements for expedited processing as set forth in the statute and in agency regulations.
- ii. **Simple Request** – a FOIA request that an agency using multi-track processing places in its fastest (non-expedited) track based on the low volume and/or simplicity of the records requested.
- iii. **Complex Request** – a FOIA request that an agency using multi-track processing places in a slower track based on the high volume and/or complexity of the records requested.

- l. **Partial Grant/Partial Denial** – in response to a FOIA request, an agency decision to disclose portions of the records and to withhold other portions that are exempt under the FOIA, or to otherwise deny a portion of the request for a procedural reason.
 - m. **Pending Request or Pending Administrative Appeal** – a request or administrative appeal for which an agency has not taken final action in all respects.
 - n. **Perfect Request** – a request for records which reasonably describes such records and is made in accordance with published rules stating the time, place, fees (if any) and procedures to be followed.
 - o. **Processed Request or Processed Administrative Appeal** – a request or administrative appeal for which an agency has taken final action in all respects.
 - p. **Range in Number of Days** – the lowest and highest number of days to process requests or administrative appeals.
 - q. **Time Limits** – the time period in the statute for an agency to respond to a FOIA request (ordinarily twenty working days from receipt of a perfected FOIA request).
3. The following are concise descriptions of the nine FOIA exemptions:
- a. **Exemption 1:** classified national defense and foreign relations information
 - b. **Exemption 2:** internal agency rules and practices
 - c. **Exemption 3:** information that is prohibited from disclosure by another federal law
 - d. **Exemption 4:** trade secrets and other confidential business information
 - e. **Exemption 5:** inter-agency or intra-agency communications that are protected by legal privileges
 - f. **Exemption 6:** information involving matters of personal privacy
 - g. **Exemption 7:** records or information compiled for law enforcement purposes, to the extent that the production of those records (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal

privacy, (D) could reasonably be expected to disclose the identity of a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, or (F) could reasonably be expected to endanger the life or physical safety of any individual.

h. **Exemption 8:** information relating to the supervision of financial institutions

i. **Exemption 9:** geological information on wells

IV. EXEMPTION 3 STATUTES

| Statute | Type of Information Withheld | Case Citation | Number of Times Relied Upon | Total Number of Times Relied Upon |
|------------------|-------------------------------------|--|-----------------------------|-----------------------------------|
| 31 U.S.C. § 5319 | Suspicious Activity Report(s) (SAR) | <u>Berger v. IRS</u> , 487 F. Supp. 2d 482, 496-97 (D.N.J. 2007), <u>aff'd on other grounds</u> , 288 F. App'x 829 (3d Cir. 2008), <u>cert. denied</u> , 129 S. Ct. 2789 (U.S. 2009); <u>Sciba v. Bd. of Governors of the Fed. Reserve Sys.</u> , No. 04-1011, 2005 WL 3201206, at *6 (D.D.C. Nov. 4, 2005). | 1 | 1 |

V. FOIA REQUESTS

A. Received, Processed and Pending FOIA Requests

| | Number of Requests Pending as of Start of Fiscal Year | Number of Requests Received in Fiscal Year | Number of Requests Processed in Fiscal Year | Number of Requests Pending as of End of Fiscal Year |
|-----------------------|---|--|---|---|
| AGENCY OVERALL | 5 | 193 | 184 | 14 |

B.(1) Disposition of FOIA Requests – All Processed Requests

| | Number of Full Grants | Number of Partial Grants/ Partial Denials | Number of Full Denials Based on Exemptions | Number of Full Denials Based on Reasons Other than Exemptions | | | | | | | | | Total |
|-----------------------|-----------------------|---|--|---|---|-------------------|--------------------|----------------------------------|--|-------------------|-------------------|-------|-------|
| | | | | No Records | All Records Referred to Another Component or Agency | Request Withdrawn | Fee-Related Reason | Records not Reasonably Described | Improper FOIA Request for Other Reason | Not Agency Record | Duplicate Request | Other | |
| AGENCY OVERALL | 60 | 81 | 7 | 18 | 0 | 8 | 1 | 1 | 2 | 3 | 3 | 0 | 184 |

B.(2) Disposition of FOIA Requests – “Other” Reasons for “Full Denials Based on Reasons Other than Exemptions” from Section V, B(1) Chart

| Component | Description of “Other” Reasons for Denials from Chart B(1) & Number of Times Those Reasons Were Relied Upon | TOTAL |
|-----------------------|---|-------|
| AGENCY OVERALL | There were no “other” reasons for full denials at the close of the fiscal year. | 0 |

B.(3) Disposition of FOIA Requests – Number of Times Exemptions Applied

| | Ex. 1 | Ex. 2 | Ex. 3 | Ex. 4 | Ex. 5 | Ex. 6 | Ex. 7(A) | Ex. 7(B) | Ex. 7(C) | Ex. 7(D) | Ex. 7(E) | Ex. 7(F) | Ex. 8 | Ex. 9 |
|-----------------------|-------|-------|-------|-------|-------|-------|----------|----------|----------|----------|----------|----------|-------|-------|
| AGENCY OVERALL | 0 | 8 | 1 | 34 | 24 | 60 | 2 | 0 | 2 | 0 | 0 | 0 | 39 | 0 |

VI. ADMINISTRATIVE APPEALS OF INITIAL DETERMINATIONS OF FOIA REQUESTS

A. Received, Processed and Pending Administrative Appeals

| Number of Appeals Pending as of Start of Fiscal Year | Number of Appeals Received in Fiscal Year | Number of Appeals Processed in Fiscal Year | Number of Appeals Pending as of End of Fiscal Year |
|---|--|---|---|
| 0 | 12 | 10 | 2 |

B. Disposition of Administrative Appeals – All Processed Appeals

| Number Affirmed on Appeal | Number Partially Affirmed & Partially Reversed on Appeal | Number Completely Reversed on Appeal | Number of Appeals Closed for Other Reasons | TOTAL |
|----------------------------------|---|---|---|--------------|
| 8 | 2 | 0 | 0 | 10 |

C.(1) Reasons for Denial on Appeal – Number of Times Exemptions Applied

| Ex. 1 | Ex. 2 | Ex. 3 | Ex. 4 | Ex. 5 | Ex. 6 | Ex. 7(A) | Ex. 7(B) | Ex. 7(C) | Ex. 7(D) | Ex. 7(E) | Ex. 7(F) | Ex. 8 | Ex. 9 |
|--------------|--------------|--------------|--------------|--------------|--------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|--------------|--------------|
| 0 | 2 | 0 | 7 | 5 | 8 | 0 | 0 | 0 | 0 | 0 | 0 | 7 | 0 |

C.(2) Reasons for Denial on Appeal – Reasons Other than Exemptions

| No Records | Records Referred at Initial Request Level | Request Withdrawn | Fee-Related Reason | Records not Reasonably Described | Improper Request for Other Reasons | Not Agency Record | Duplicate Request or Appeal | Request in Litigation | Appeal Based Solely on Denial of Request for Expedited Processing | Other |
|------------|---|-------------------|--------------------|----------------------------------|------------------------------------|-------------------|-----------------------------|-----------------------|---|-------|
| 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

C.(3) Reasons for Denial on Appeal – “Other” Reasons from Section VI, C(2) Chart

| Description of “Other” Reasons for Denial on Appeal from Chart C(2) & Number of Times Those Reasons Were Relied Upon | TOTAL |
|--|-------|
| There were no “other” reasons for denying an appeal at the close of the fiscal year. | 0 |

C.(4) Response Time for Administrative Appeals

| Median Number of Days | Average Number of Days | Lowest Number of Days | Highest Number of Days |
|-----------------------|------------------------|-----------------------|------------------------|
| 21.5 | 30.7 | 16 | 110 |

C.(5) Ten Oldest Pending Administrative Appeals

There were two administrative appeals pending at the close of the fiscal year.

| | 10 th Oldest Appeal | 9 th | 8 th | 7 th | 6 th | 5 th | 4 th | 3 rd | 2 nd | Oldest Appeal |
|--|--------------------------------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|------------------|
| Date of Receipt of Ten Oldest Appeals | | | | | | | | | 9/29/09 | 9/10/09 |
| Number of Days Pending | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 14 |

VII. FOIA REQUESTS: RESPONSE TIME FOR PROCESSED AND PENDING REQUESTS

A. Processed Requests – Response Time for All Processed Perfected Requests

| | SIMPLE | | | | COMPLEX | | | | EXPEDITED PROCESSING | | | |
|-----------------------|-----------------------|------------------------|-----------------------|------------------------|-----------------------|------------------------|-----------------------|------------------------|-----------------------|------------------------|-----------------------|------------------------|
| | Median Number of Days | Average Number of Days | Lowest Number of Days | Highest Number of Days | Median Number of Days | Average Number of Days | Lowest Number of Days | Highest Number of Days | Median Number of Days | Average Number of Days | Lowest Number of Days | Highest Number of Days |
| AGENCY OVERALL | 9 | 11.4 | <1 | 47 | 22 | 27 | 0 | 76 | 42 | 42 | 22 | 62 |

B. Processed Requests – Response Time for Perfected Requests in Which Information Was Granted

| | SIMPLE | | | | COMPLEX | | | | EXPEDITED PROCESSING | | | |
|-----------------------|-----------------------|------------------------|-----------------------|------------------------|-----------------------|------------------------|-----------------------|------------------------|-----------------------|------------------------|-----------------------|------------------------|
| | Median Number of Days | Average Number of Days | Lowest Number of Days | Highest Number of Days | Median Number of Days | Average Number of Days | Lowest Number of Days | Highest Number of Days | Median Number of Days | Average Number of Days | Lowest Number of Days | Highest Number of Days |
| AGENCY OVERALL | 11.5 | 12.8 | <1 | 47 | 24 | 29.4 | 1 | 76 | 42 | 42 | 22 | 62 |

C. Processed Requests – Response Time in Day Increments

Simple Requests

| | 1-20 Days | 21-40 Days | 41-60 Days | 61-80 Days | 81-100 Days | 101-120 Days | 121-140 Days | 141-160 Days | 161-180 Days | 181-200 Days | 201-300 Days | 301-400 Days | 401+ Days | TOTAL |
|-----------------------|-----------|------------|------------|------------|-------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|-----------|-------|
| AGENCY OVERALL | 102 | 10 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 114 |

Complex Requests

| | 1-20 Days | 21-40 Days | 41-60 Days | 61-80 Days | 81-100 Days | 101-120 Days | 121-140 Days | 141-160 Days | 161-180 Days | 181-200 Days | 201-300 Days | 301-400 Days | 401+ Days | TOTAL |
|-----------------------|-----------|------------|------------|------------|-------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|-----------|-------|
| AGENCY OVERALL | 28 | 21 | 8 | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 62 |

Requests Granted Expedited Processing

| | 1-20 Days | 21-40 Days | 41-60 Days | 61-80 Days | 81-100 Days | 101-120 Days | 121-140 Days | 141-160 Days | 161-180 Days | 181-200 Days | 201-300 Days | 301-400 Days | 401+ Days | TOTAL |
|-----------------------|-----------|------------|------------|------------|-------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|-----------|-------|
| AGENCY OVERALL | 0 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 |

D. Pending Requests – All Pending Perfected Requests

| | SIMPLE | | | COMPLEX | | | EXPEDITED PROCESSING | | |
|-----------------------|----------------|-----------------------|------------------------|----------------|-----------------------|------------------------|----------------------|-----------------------|------------------------|
| | Number Pending | Median Number of Days | Average Number of Days | Number Pending | Median Number of Days | Average Number of Days | Number Pending | Median Number of Days | Average Number of Days |
| AGENCY OVERALL | 9 | 4 | 6.2 | 4 | 5 | 5.5 | 1 | 1 | 1 |

E. Pending Requests – Ten Oldest Pending Perfected Requests

| AGENCY OVERALL | 10 th Oldest Request and Number of Days Pending | 9 th | 8 th | 7 th | 6 th | 5 th | 4 th | 3 rd | 2 nd | Oldest Request and Number of Days Pending |
|-----------------------|--|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|---|
| DATE: | 9/29/09 | 9/25/09 | 9/25/09 | 9/24/09 | 9/21/09 | 9/21/09 | 9/21/09 | 9/15/09 | 9/10/09 | 9/2/09 |
| NO. OF DAYS | 1 | 3 | 3 | 4 | 7 | 7 | 7 | 11 | 14 | 19 |

VIII. REQUESTS FOR EXPEDITED PROCESSING AND REQUESTS FOR FEE WAIVER

A. Requests for Expedited Processing

| | Number Granted | Number Denied | Median Number of Days to Adjudicate | Average Number of Days to Adjudicate | Number of Adjudicated Within 10 Calendar Days |
|-----------------------|----------------|---------------|-------------------------------------|--------------------------------------|---|
| AGENCY OVERALL | 2 | 2 | 1 | 1.25 | 4 |

B. Requests for Fee Waiver

| | Number Granted | Number Denied | Median Number of Days to Adjudicate | Average Number of Days to Adjudicate |
|-----------------------|----------------|---------------|-------------------------------------|--------------------------------------|
| AGENCY OVERALL | 3 | 3 | .5 | 1.7 |

IX. FOIA PERSONNEL AND COSTS

| | Personnel | | | Costs | | |
|-----------------------|------------------------------------|---|--------------------------------------|------------------|--------------------------|--------------|
| | Number of Full-Time FOIA Employees | Number of Equivalent Full-Time FOIA Employees | Total Number of Full-Time FOIA Staff | Processing Costs | Litigation-Related Costs | Total Costs |
| AGENCY OVERALL | 0 | 1.39 | 1.39 | \$117,450 | 1,986.48 | \$119,436.48 |

X. FEES COLLECTED FOR PROCESSING REQUESTS

| | Total Amount of Fees Collected | Percentage of Total Costs |
|-----------------------|--------------------------------|---------------------------|
| AGENCY OVERALL | \$3,275.45 | 2.7% |

XI. FOIA REGULATIONS

[National Credit Union Administration Regulations May 2008](#)

From “Bookmarks” near the left margin, scroll down to find “Part 792” for section on FOIA Regulations.

XII. BACKLOGS, CONSULTATIONS AND COMPARISONS

A. Backlogs of FOIA Requests and Administrative Appeals

| | Number of Backlogged Requests as of End of Fiscal Year | Number of Backlogged Appeals as of End of Fiscal Year |
|-----------------------|--|---|
| AGENCY OVERALL | 0 | 0 |

B. Consultations on FOIA Requests – Received, Processed and Pending Consultations

| | Number of Consultations Received from Other Agencies that Were <u>Pending</u> at NCUA as of <u>Start</u> of Fiscal Year | Number of Consultations <u>Received</u> from Other Agencies During the Fiscal Year | Number of Consultations Received from Other Agencies that Were <u>Processed</u> by NCUA During Fiscal Year | Number of Consultations Received from Other Agencies that Were <u>Pending</u> at NCUA as of <u>end</u> of Fiscal Year |
|-----------------------|---|--|--|---|
| AGENCY OVERALL | 0 | 0 | 0 | 0 |

C. Consultations on FOIA Requests – Ten Oldest Consultations Received from Other Agencies and Pending at NCUA

| AGENCY OVERALL | 10th Oldest Request and Number of Days Pending | 9th | 8th | 7th | 6th | 5th | 4th | 3rd | 2nd | Oldest Request and Number of Days Pending |
|-----------------------|--|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|--|
| | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A |

D. Comparison of Number of Requests from Previous and Current Annual Report – Requests Received, Processed and Backlogged

| | Number of Requests <u>Received</u> | | Number of Requests <u>Processed</u> | |
|-----------------------|---|---|--|--|
| | Number Received During FY from Last Year's Annual Report | Number Received During FY from Current Annual Report | Number Processed During FY from Last Year's Annual Report | Number Processed During FY from Current Annual Report |
| AGENCY OVERALL | 149 | 193 | 153 | 184 |

| | Number of Backlogged Requests as of End of the FY from Previous Annual Report | Number of Backlogged Requests as of End of FY from Current Annual Report |
|-----------------------|--|---|
| AGENCY OVERALL | 0 | 0 |

E. Comparison of Numbers of Administrative Appeals from Previous and Current Annual Report – Appeal Received, Processed and Backlogged

| | Number of Appeals <u>Received</u> | | Number of Appeals <u>Processed</u> | |
|-----------------------|---|---|--|--|
| | Number Received During FY from Last Year's Annual Report | Number Received During FY from Current Annual Report | Number Processed During FY from Last Year's Annual Report | Number Processed During FY from Current Annual Report |
| AGENCY OVERALL | 3 | 12 | 3 | 10 |

| | Number of Backlogged Appeals as of End of the FY from Previous Annual Report | Number of Backlogged Appeals as of End of FY from Current Annual Report |
|-----------------------|---|--|
| AGENCY OVERALL | 0 | 0 |