OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM 92-50 July 20, 1992

TO : All Regional Directors

FROM : William G. Stack, Associate General Counsel

SUBJECT: Right to Financial Privacy Act of 1978 - Notice, Motion, and Certification Forms

In an unnumbered memorandum dated April 5, 1982 and in Memorandum OM 91-110, dated December 26, 1991, you were advised of the applicability of the Right to Financial Privacy Act of 1978 to your efforts to subpoena financial records of customers of financial institutions. You were also advised of your obligation to serve the customer with a copy of the subpoena and a notice concerning the customer's right to object to the production of records and the procedures for making such objections.

In order to ensure compliance with the Act, we have drafted a form notice for your use. (See 12 U.S.C. Sec. 3405.) We have also drafted a form motion and accompanying affidavit which should be sent to customers along with the notice. In addition, we have drafted a form certification which should be sent to the financial institution 10 days after actual service of the notice, or 14 days after mailing the notice, assuming the customer has not filed a motion to quash the subpoena in federal district court within that time. (See 12 U.S.C. Secs. 3403(b), 3411.) In the event that a customer files a motion to quash, you can expect that pursuant to 12 U.S.C. Sec. 3410(b), the district court will order that a sworn response be filed.

Any questions concerning this memorandum should be brought to the attention of your Assistant General Counsel.

W. G. S.

Attachments: Form notice, motion, affidavit, certification

[send on regional letterhead]

CUSTOMER NOTICE

Dear _____:
(Customer)

Records or information concerning your transactions held by the financial institution named in the attached subpoena are being sought by the National Labor Relations Board in accordance with the Right To Financial Privacy Act of 1978, 12 U.S.C. Sections 3401-3422, for the following purpose(s):

_____

_____.
(describe legitimate law enforcement inquiry)

If you desire that such records or information not be made available, you must:

(1) Fill out the accompanying motion paper and sworn statement (as indicated by the instructions beneath each blank space) or write one of your own, stating that you are the customer whose records are being requested by the Government, and either giving the reasons you believe that the records are not relevant to the legitimate law enforcement inquiry stated in this notice or any other legal basis for objecting to the release of the records.

(2) File the motion and sworn statement by mailing or delivering them to the Clerk of any one of the following United States District Courts:

_____

_____

_____

_____

(It would simplify the proceeding if you would include with your motion and sworn statement a copy of the attached summons, subpoena or formal written request, as well as a copy of this notice.)

(3) Serve the Government authority requesting the records by mailing (by registered or certified mail) or by delivering a copy of your motion and sworn statement to _____

_____.

(4) Be prepared to come to court and present your position in further detail.

(5) You do not need to have a lawyer, although you may wish to employ one to represent you and protect your rights.

If you do not follow the above procedures, upon the expiration of ten days from the date of service or fourteen days from the date of mailing of this notice, the records or information requested therein may be made available. These records may be transferred to other Government authorities for legitimate law enforcement inquiries, in which event you will be notified after the transfer.

Very truly yours,

Dated:

(include name and title of official, address and telephone number)

Enclosures: Subpoena
Motion Form
Sworn Statement Form

IN THE UNITED STATES DISTRICT COURT

FOR THE _____ DISTRICT OF _____
(name of district) (state in which court is located)

_____ (your name) Movant,	)	MOTION TO QUASH ADMINISTRATIVE SUBPOENA
v.	)	
NATIONAL LABOR RELATIONS BOARD, Respondent.	)	

_____ hereby moves this
(your name)

Court, pursuant to Section 1110 of the Right To Financial Privacy Act of 1978, 12 U.S.C. Section 3410, for an order preventing the National Labor Relations Board from obtaining access to my financial records.

My financial records are held by _____.
(name of financial institution)

In support of this motion, the Court is respectfully referred to my sworn statement filed with this motion.

Respectfully submitted,

_____ _____
(signature)

_____
(address)

_____
(name)

_____
(telephone number)

CERTIFICATE OF SERVICE

I have mailed or delivered a copy of this motion and the attached sworn statement to _____
(name of official listed at item 3 of Customer Notice)

on _____ _____, 19__.

_____
(Signature)

IN THE UNITED STATES DISTRICT COURT

FOR THE _____ DISTRICT OF _____
(name of district) (state in which court is located)

_____ (customer's name) Movant,	)	No. _____ (will be filled in by court clerk)
v.	)	
NATIONAL LABOR RELATIONS BOARD, Respondent.	)	SWORN STATEMENT OF MOVANT

I, _____, am presently/was previously
(customer's name) (indicate one)

a customer of _____,
(name of financial institution)

and I am the customer whose records are being requested by the Government.

The financial records sought by the National Labor Relations Board are not relevant to the legitimate law enforcement inquiry stated in the Customer Notice that was sent to me because

_____

_____, and/or

should not be disclosed because there has not been substantial compliance with the Right to Financial Privacy Act of 1978 in that _____

_____

_____

and/or should not be disclosed on the following other legal basis: _____

_____.

(you may draft your own sworn statement if you require additional space)

I declare under penalty of perjury that the foregoing is true and correct.

_____ _____, 19___ _____

(Date) (Signature)

[send on regional letterhead]

CERTIFICATE OF COMPLIANCE WITH
THE RIGHT TO FINANCIAL PRIVACY ACT OF 1978

To: _____
(name of financial institution)

Re: Request for information concerning
_____
(account number and customer name)

I hereby certify, pursuant to Section 1103(b) of the Right to Financial Privacy Act of 1978, 12 U.S.C. Sec. 3403(b), that the provisions of the Act have been complied with as to the above request for account information and that good faith reliance upon this certificate relieves your institution and its agents and employees of any liability to the customer in connection with the disclosure of this account information.

_____

_____
(name and title of official)

Dated:

_____
(signature)

NATIONAL LABOR RELATIONS BOARD