

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

NATIONAL SECURITY ARCHIVE,

Plaintiff,

v.

Civil Action No. 88-0501

CENTRAL INTELLIGENCE AGENCY,

Defendant.

**FILED**

JAN 30 1990

MEMORANDUM

CLERK, U.S. DISTRICT COURT  
DISTRICT OF COLUMBIA

This case is before the Court on the parties' cross motions for summary judgment. After careful consideration of the motions, the oppositions thereto, and the entire record in the case, the Court concludes that plaintiff's motion for summary judgment must be granted in part and denied in part and defendant's motion for summary judgment must be denied.

The facts may be briefly stated. Plaintiff, the National Security Archive ("Archive"), is a nonprofit public interest scholarly research institute and library in Washington, D.C. The purpose of the Archive is to collect and disseminate comprehensive government documentation pertaining to selected issues of major public concern in the areas of foreign, defense, intelligence, and international economic policy. This case arises from the denial by defendant, the Central Intelligence Agency ("CIA"), of the Archive's request under the Freedom of Information Reform Act of 1986 ("FIRA"), Pub. L. No. 99-570, §§ 1802, 1803, 100 Stat. 3207-48, 3207-49 (1986), for a waiver of fees pertaining to its Freedom of Information Act ("FOIA"), 5 U.S.C.A. § 552(a)(4) (West Supp. 1989), request for certain CIA

records.

FIRA amends FOIA by providing for reduced fees for certain types of document requests made by any entity that qualifies as an educational institution or as a representative of the news media. In its view, the Archive was eligible for this preferred fee status based on its status as either an educational institutional or a representative of the news media. The CIA, however, disagreed and instead categorized the Archive as a commercial requester subject to fees for search, review and copying of requested records. The Archive seeks declaratory and injunctive relief to enjoin the CIA from denying its pending fee waiver requests on the ground that the Archive is a commercial requester. Additionally, the Archive seeks a reversal of the CIA determination that it is ineligible for waiver of search, review, and copying fees. Finally, the Archive requests the entry of a declaratory judgment that plaintiff is per se eligible for, and entitled to waiver of all search and review fees based on its status as a "noncommercial educational institution" and "representative of the news media".

This case turns on the interpretation and application of FIRA's fee limitation provisions, i.e. whether the Archive is a "commercial use" requester subject to denial of its public interest fee waiver request. Subsequent to the parties' briefing of their cross motions for summary judgment, the Court of Appeals for the District of Columbia Circuit decided National Security Archive v. U.S. Dept. of Defense, 800 F.2d 1381 (D.C. Cir. 1989).

In National Security Archive, the Archive similarly challenged the Department of Defense's denial of its request for preferential pricing under the FOIA and sought to have itself classified as an educational institution or a representative of the news media. Moreover, the Department of Defense advanced the same argument the CIA asserts herein, i.e. that the Archive is a commercial user not entitled to a fee waiver. In considering the FIRA, the court examined its text and conducted an exhaustive analysis of the statute's legislative history. The court held that the Archive was not an educational institution, id. at 1385, but agreed with the Archive's alternative contention that it is entitled to preferred fee status under the FIRA as a representative of the news media. Id. at 1387.

In so holding, the court viewed the Archive as a representative of the news media by reason of its publication activities. Id. at 1388. The court noted that the Archive does not simply "make information available" as would a data broker. Id. at 1386. Rather, the Archive "gets the [FOIA requested] documents for its own purpose, which is to assemble them, along with documents for other sources, into an encyclopedic work that it will then offer to the public." Id. at 1387. Thus, the court associated the publication activities carried out by the Archive with its intended distribution of these document sets. Id. at 1386. The court further held that when the Archive's intention is to publish such works, or document sets, from the documents it requests, it is not a commercial requester within the meaning of

FOIA's fee waiver provisions. Id. at 1388.

The issues to be decided in this case are identical to those addressed in National Security Archive and need no further elaboration. In addition, the facts of this case are substantially identical to those underlying the National Security Archive opinion. Most importantly, in the instant case the Archive has also stated an intention to use the information it requests for publication of indexed, cross-referenced "document sets". This is precisely the type of activity which the court in National Security Archive found sufficient to qualify the Archive as a representative of the news media. The rulings set forth in National Security Archive are, therefore, controlling and dispositive of the issues currently before this Court. Accordingly, under the reasoning set forth in National Security Archive, this Court concludes that the Archive is a representative of the news media within the meaning of FIRA by reason of its publication activities. Thus, the Archive is entitled to preferred fee status. On the other hand, the Archive is not an educational institution. Thus, the Archive's motion for summary judgment must be granted in part and denied in part, and the CIA's motion for summary judgment must be denied.

An appropriate Order accompanies this Memorandum.

DATE: \_\_\_\_\_

1990

  
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 JOHN GARRETT PENN  
 UNITED STATES DISTRICT JUDGE

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FOR THE DISTRICT OF COLUMBIA

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O R D E R

CLERK, U.S. DISTRICT COURT  
DISTRICT OF COLUMBIA

Upon consideration of the parties' cross motions for summary judgment, the oppositions thereto, and the record in this case, the Court concludes for the reasons discussed in an accompanying Memorandum, it is hereby

ORDERED that plaintiff's motion for summary judgment is granted in part and denied in part; and it is further

ORDERED that judgment is entered in favor of plaintiff; and it is further

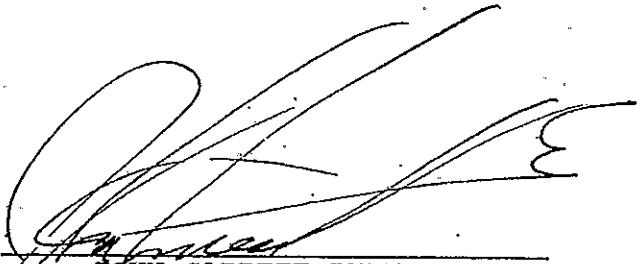
ORDERED that defendant's motion for summary judgment is denied; and it is further

ORDERED that defendant's determination that plaintiff is not entitled to a fee waiver under 5 U.S.C. § 552(a)(4)(A)(ii)(II) is reversed; and it is further

ORDERED that defendant is hereby enjoined from denying plaintiff's pending fee waiver requests on the ground that plaintiff is a "commercial requester" under 5 U.S.C. §552 (a)(4)(A)(ii) ; and it is further

ORDERED that defendant must treat plaintiff as a  
"representative of the news media," within the meaning of  
5 U.S.C. 552(a)(4)(A)(ii)(II).

DATE: JAN 30 1990



JOHN GARRETT PENN  
UNITED STATES DISTRICT JUDGE