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May 31, 1977

Robert N. Ford, Esquire
Chief, Civil Division
Office of the United States Attorney
United States Courthouse
Washington, D. C. 20001

Re: Attorneys' fee award in Aviation Consumer
Action Project v. CAB, Civ. No. 73-413 (D.D.C.)

Dear Mr. Ford:

This letter is to request that the Government stipulate to an award of reasonable attorneys' fees to plaintiff pursuant to 5 U.S.C. § 552(a)(4)(E) in the above entitled Freedom of Information Act (FOIA) case. We are writing to you as Chief of the Civil Division because Mr. George A. Stohner, who previously handled the case for your office, has left your employ.

Plaintiff substantially prevailed both on his original complaint (412 F. Supp. 1029) and in subsequent proceedings initiated by defendant (418 F. Supp. 634). The required disclosures of CAB international route decisions at a time prior to Presidential action, so that the public still has the opportunity to make its views known, has significant public benefits, and is a result which the American Bar Association has long sought. See, e.g., ABA Report With Legislative Recommendation (Pl. Exh. E-1); ABA Resolution, adopted 1974 (Pl. Exh. E-2). However, a portion of the fees in this case predated the effective date of the amendment to the FOIA allowing awards of attorneys fees, and since the parties disagreed as to the retroactive effect of that fee provision, the parties stipulated on December 8, 1976, to a continuance of the costs and fees issue pending the outcome in the Court of Appeals for the District of Columbia Circuit of Cunco v. Runsfeld, No. 75-2219, which concerned that issue. On March 24, 1977, the Court of Appeals held that the attorneys' fee provision is retroactive, and

this month the Government's petition for rehearing was denied. We thus urge you to agree to pay plaintiff's reasonable attorneys' fees and other costs as outlined below.

This litigation began over four years ago, and has three times been appealed to the Court of Appeals, although the Government dismissed both of the latter two appeals. Mr. Ronald Plesser originally had principal responsibility for the case and Mr. Alan Morrison has continuously had supervisory responsibility. I took over principal responsibility for the case at the time of the first appeal in the fall of 1973 which resulted in a reversal of the dismissal of this action and a remand for further proceedings on the merits. To the best of my knowledge, the three of us, individually and as a group, have more FOIA litigation experience than any other three attorneys in private practice in the country.

Mr. Plesser, who is presently the General Counsel of the Federal Privacy Protection Study Commission, was the first private attorney in the country to work full time on Freedom of Information Act matters. He joined the Freedom of Information Clearinghouse in April 1972 and left in October 1974. He has in the past been active in the activities of the District of Columbia Bar (Unified), and is a past member of the Steering Committee for Division I (Administrative Law).

Mr. Morrison is and has been for the past five years the Director of the Public Citizen Litigation Group, and he has wide experience in FOIA matters. He was formerly the Assistant Chief of the Civil Division of the United States Attorney's Office for the Southern District of New York, and prior to that he was associated with the law firm of Cleary, Gottlieb, Steen and Hamilton in New York City. He is presently a member of the Board of Governors of the District of Columbia Bar. Similarly, I am presently the Chairperson of the Administrative Law Division of the District of Columbia Bar, and I have previously served as Chairperson and Vice-Chairperson of the Division's Committee on Access to Government Information. I have personally worked on over 30 FOIA cases, and I have lectured all across the country on freedom of information matters.

Mr. Morrison's present hourly rate for cases is \$90, Mr. Ellsworth's is \$65, and Mr. Plesser's would be a comparable figure if he were presently in private practice. These rates are in line with those charged by other attorneys of similar

experience in Washington law firms having primarily a Federal practice. However, we recognize that the rates have increased significantly over the period of this action, both because of a general increase in rates and, more importantly, because of the increasing experience and expertise which we have gained in the area. Therefore, for all but the most recent actions, the proposed hourly rates, set forth below, are charged at much lower levels.

Since February, 1975 when the FOIA attorneys' fee provision took effect, I have kept daily records of the time I have expended on this case. In addition, I have reconstituted time records for the time expended prior to the effective date, and the other attorneys have reconstituted the records of their work. My reconstituted records show, for example, that I expended 232-1/2 hours on this case prior to February, 1975, and 101-1/4 hours after that date. These figures do not include time expended on this fee application. My contemporaneous time records show that I actually spent 163 hours on the case during the latter time period, indicating that my reconstituted records are very conservative. Nonetheless, for purposes of settlement, we have adopted this very conservative method for figuring our time on the case whenever we do not have contemporaneous time sheets.

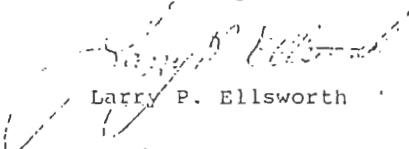
There have been several distinct stages of this litigation, and for convenience we have broken the work down into them:

	<u>Attorney</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
<u>District Court I:</u> (March-July, 1973)	Ronald Plesser	48-1/4	\$50	\$2,412.50
	Alan Morrison	6-1/2	\$75	\$ 487.50
<u>Court of Appeals I:</u> (August, 1973 - September, 1974)	Larry Ellsworth	171-1/2	\$40	\$6,860.00
	Ronald Plesser	16-1/2	\$50	\$ 825.00
	Alan Morrison	31	\$75	\$2,325.00
<u>District Court II:</u> (November, 1974- May, 1976)	Larry Ellsworth	138	\$60	\$8,280.00
	Alan Morrison	16-1/4	\$85	\$1,381.25
<u>Court of Appeals II:</u> (July-November, 1976)	Larry Ellsworth	2	\$65	\$ 130.00
<u>District Court III:</u> (June-December, 1976)	Larry Ellsworth	23	\$65	\$1,495.00
	Alan Morrison	3	\$90	\$ 270.00
Taxable Costs (Filing and Marshall's Fees)				13.00
Total				<u>\$24,479.25</u>

These figures do not include the time which we have already expended on the attorneys' fee issue, including this letter, and the time spent assisting counsel in Cuneo v. Rumsfeld in their appeal on the retroactivity issue. Nor does it include the time expended by a law student on one aspect of this litigation, nor that of Reuben B. Robertson III of this office who has acted in an advisory capacity throughout the litigation. Of course, if it becomes necessary to seek an award from the court, we will probably seek payment for these items, as well as the additional time we will expend on such an application.

The award we seek -- \$24,479.25 -- is fair and reasonable for this case. Thus, we hope that you will promptly agree to bring this litigation to an end by stipulating to pay such an award. If you have any questions, please call me.

Yours truly,


Larry P. Ellsworth