

Court Tells Agencies to Open Files

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The U.S. Court of Appeals handed down a key decision yesterday making it much tougher for government agencies to keep secrets under the Freedom of Information Act.

The decision sets detailed rules the government must follow if it wants to withhold information. It could provide a clue as to how the courts will rule in executive privilege cases—such as the Watergate investigation.

The court set these guidelines:

- Federal agencies must give the court a detailed analysis of reasons for any refusal to disclose information.

- Agencies are to establish an indexing system which divides documents into manageable parts that are cross-referenced.

- Trial courts can designate special examiners, called masters, to examine documents and evaluate an agency's contention of exemption so the court can handle "the enormous document-generating capacity of government agencies."

In handing down the decision, Circuit Court Judges Spotswood W. Robinson III and Malcolm R. Wilkey and District Judge Frank Kaufman said they hoped the ruling would "sharply stimulate what must be, in the last analysis, the simplest and most effective solution—for agencies voluntarily to disclose as much information as possible and to create internal procedures that will assure that disclosable information can be easily separated from that which is exempt."

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"A sincere policy of maximum disclosure would truncate many of the disputes that

are considered by this court. And if the remaining burden is mostly thrust on the Government, administrative ingenuity will be devoted to lightening the load," the judges said.

The case was brought by Ralph Nader's Freedom of Information Clearinghouse on behalf of Robert Vaughn, an American University law professor seeking to obtain access to Civil Service Commission reports evaluating the efficiency of federal agencies.

Commission officials claimed the material was exempt because it related to internal rules and practices of an agency, consisted of inter-agency memoranda and was composed of personal and medical files whose disclosures would constitute invasion of personal privacy.

The trial court dismissed the case without argument, in effect a victory for the government, and Vaughn appealed. Now the case will be sent back to the trial court for a decision based on the new guidelines.

The court said the government's refusal to disclose "seriously distorts the traditional adversary nature" of our legal system because "the person with the greatest interest in obtaining disclosure is at a loss to argue with desirable legal precision for the revelation of the concealed information."

The purpose of the Freedom of Information Act, the court said, was to permit citizens to see most government records. It said that the present approach of government is "in clear contravention of the statutory mandate."

Vaughn's attorney, Ronald Plessner, director of Nader's Freedom of Information Clearinghouse, called the decision "one of the most important ones of the decade because now citizens can more easily fathom the secrets of their government."