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FILED

AUG 15 1977

JAMES F. DAVEY, Clerk

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STEPHEN M. AUG :
Plaintiff :
v. : Civil Action No. 74-1054
NATIONAL RAILROAD PASSENGER :
CORPORATION :
Defendant :

MEMORANDUM ORDER

This matter is before the Court on plaintiff's motion for reconsideration or, in the alternative, for clarification of this Court's order of May 2, 1977 denying plaintiff's motion for reasonable attorney fees in the amount of \$26,536, pursuant to 5 U.S.C. § 552(a)(4)(E). The Court has reviewed plaintiff's motion, the opposition thereto, and plaintiff's reply and is familiar with the entire record herein.

This Court granted summary judgment for the plaintiff on March 30, 1976, ordering defendant National Railroad Passenger Corporation (Amtrak) to disclose all statements of policy, explanations thereof, and votes thereon contained in the meetings of its Board of Directors. There can be little doubt that the plaintiff "substantially prevailed" within the meaning of 5 U.S.C. § 552(a)(4)(E), and the Court so finds. The question is then whether the Court, in its discretion and after consideration of the relevant factors, shall award attorney fees to the prevailing plaintiff.

The Court has carefully considered the following factors in determining plaintiff's motion: (1) the public benefit deriving from the case; (2) the commercial benefit to the plaintiff; (3) the nature of the complainant's interest in the records sought; (4) whether the agency's withholding of the records had a reasonable basis in law; (5) whether prosecution of plaintiff's action

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could reasonably have been regarded as necessary; (6) whether the action had substantial causative effect on the release of the records.


The Court is also mindful of the factors and discussion set forth in Nationwide Building Maintenance, Inc. v. Sampson, Civil No. 76-1453 (D.C.Cir. decided April 18, 1977) and Cuneo, et al v. Rumsfeld, et al, Civil No. 75-2219 (D.C. Cir. decided March 24, 1977). The Court finds that plaintiff's request for attorney fees is timely and that the Court may assess attorney fees against the defendant Amtrak in an appropriate FOIA case. Moreover, the Court finds that the benefits to the public from the disclosure were substantial, that plaintiff in seeking the documents herein was not primarily motivated by commercial interest, and that an award of attorney fees in this instance is necessary in order to further the policies embodied in the FOIA. Thus, the Court concludes that the plaintiff is entitled to an award of attorney fees pursuant to 5 U.S.C. § 552(a)(4)(E). Since Amtrak had reserved, in its opposition to plaintiff's motion for attorney fees, the right to contest the amount of fees, the Court will allow defendant to file the appropriate papers solely on the issue of the amount of fees to be awarded.

Accordingly, it is by the Court this 12th day of August 1977,

ORDERED that plaintiff's motion for reconsideration of this Court's order of May 2, 1977 denying an award of reasonable attorney fees should be and hereby is granted; and it is further

ORDERED that plaintiff's motion for an award of litigation costs including reasonable attorney fees should be and hereby is granted with a determination as to amount to be reserved; and it is further

ORDERED that defendant shall file, if it so chooses,
within ten (10) days from the entry of this order the appropriate
papers with regard to the amount of attorney fees to be awarded.



JUNE L. GREEN
U.S. District Judge