

Jin, on recovering costs in 75-1996

HW 7/17/76

Instead of using the "substantial compliance" language of the amended FOIA I'd invoke the spirit, if you have to invoke anything, and I recommend against even spirits. Let them invoke and cite and protest. It will help us. Our argument, as I see it, is very simple. Let them argue against that - but be ready with what Leventhal says in Sam American in his concurrent, which does not agree that only the wealthy can sue because the law is written to make suit and recovery of costs possible.

We filed a proper FOIA request 4/15/75. We allowed more time that the government claims is required by the most overloaded component of respondent DJ. Only after there was not even acknowledgment of the appeal and after the lapse of more than seven months did we file a Complaint. And not until after that did we get a single piece of paper. It has since been dribbled to us as we make official positions untenable. After 14 months and motions directed to them in particular some components have neither responded nor provided any records that without doubt they have. The government has claimed this case is moot since 2/11/76. Five months - later you received the largest single batch of papers we have received to date. We have been stonewalled in every conceivable way, from being foreclosed from responding by the non-filing of countless motions and affidavits that were promised in court. We are still being stonewalled. But there is no doubt that there was no reason for us to have to file other than an official violation of the law accompanied by what it is not without doubt is an official determination to frustrate the law. This imposes considerable costs on us that under the law are improper. We are, the government knows, both without regular income or subsidy. There is no labor or AGU group behind us. We have undertaken what the appeals court recognizes - actually says - is a national service in the nation's interest. Therefore we now and at periodic intervals if this stonewalling continues ask for the recovery of those costs the court recognizes.

With you this should include a fee (take the Bryant case as your hourly rate) and actually cash costs.

With me it should include actual cash costs plus an hourly rate I would ask be that of an experienced (paid contract provision for DJ, with an estimate of the value of the fringe benefits added to the salary. (If there is any dispute over this ask if they'd prefer that of an experienced FBI agent, the DJ having certified to another Court that I am more of an expert than anyone they now have.)

The only way I can come up with a figure is by estimating from the number of pages I've written. I'd also have to estimate the time required to consult files and think. The latter, however, will be less than the time it took to communicate/consult with you. I'd take this to mean beginning after the filing of the Complaint, not prior to it. If you think this is not a proper basis, let me know. After I go over the new material I'll do some estimating. If we get busy I'm sure it is not less than 500 hours.

This is a no-lose for us. It puts pressure on them, it is justified, and if the judge tells us to hold off we can then ask for help on what is to come. I think this will include hearing or depositions.

For my part, I'll sign over any check I get to you for you to use only on FOIA. I'd even authorize it to be given to you instead of me so there can't be any claim that I am making anything out of this. I do read the way Leventhal discussed this question of recovery to not be limited to lawyers' fees and costs.

Best,