

CIA Exemption Dealt a Setback In Data Suits ^{1st} 8/24/78

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The Central Intelligence Agency will be liable to judicial challenge when it claims "national security" exemptions from Freedom of Information requests, the U.S. Court of Appeals has ruled.

The court Thursday returned two disputed FOI cases to the U.S. District Court with instructions that the judges may ask the agency for more justification on why it is withholding documents under "national security" or "investigative" exemptions.

It also ruled the judges may demand to inspect the files in private if they are not satisfied by the CIA's explanations.

Involved were Freedom of Information requests lodged by:

- John Marks, a former State Department official who came under CIA investigation as co-author of an uncomplimentary book on the agency.
- Ellen L. Ray and William H. Schaap, who sued CIA Director Stansfield Turner to find out what the agency had on them in its files.

Marks left the department in 1970 and, in 1972, joined former CIA officer Victor Marchetti in writing "The CIA and the Cult of Intelligence." The CIA got court permission to censor the book, but only partially.

In 1975, Marks requested all information the CIA had on him as a private citizen, as a State Department employe and, later, as a congressional aide. The CIA identified 41 documents but released only 12 in their entirety.

Marks appealed to the U.S. District Court in Washington, but it accepted the CIA's claim the withheld materials were exempt under various security regulations. The three-justice appeals court Thursday ordered the lower court to restudy the claimed exemptions and ask to see the disputed material if necessary.

In the second, somewhat similar, case the appeals court said the district court had erred in not asking the CIA for clarification of why Ray and Schaap were denied certain materials.