

High Fees in Information Suit Hit

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Citing a recent ruling in a Freedom of Information Act suit, Assistant U.S. Attorney Royce Lamberth claims to have a potent new weapon to use in his fight against "clearly excessive" attorneys fees awarded in FOIA cases, which he says have cost the government hundreds of thousands of dollars.

In a decision in an FOIA case handed down last week, U.S. District Judge Aubrey E. Robinson Jr. rejected a claim for \$17,000 in fees, accused the attorneys of "bad faith," and said, in effect, he was making an example out of the lawyers.

"Particularly in a time when our nation is seeking to stem wasteful government spending, an order . . . requiring the government to pay an excessive

sum in attorneys' fees would be unseemly," Robinson wrote. He denied any compensation for the lawyers, who worked four years on the case, even though he found in principle they were entitled to be paid.

Lamberth, chief of the U.S. Attorney's civil division for the District of Columbia which represents the government in many FOIA cases, said Judge Robinson's ruling would be cited as a precedent in future cases when the U.S. attorney's office seeks to throw out inflated or poorly documented claims for attorneys' fees.

FOIA, which was substantially broadened in 1974, allows anyone to request records and documents from federal agencies. The records must be furnished unless they fall into categor

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*This is absolutely
incredible!*

Judge Rejects High Fee In Information Lawsuit

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ies specifically exempted by the law, such as files on pending criminal investigations or certain intelligence data.

The law brought with it an entirely new type of suit because it allowed appeals to the U.S. District Court when an agency refused to turn over documents.

The U.S. Department of Justice estimates that there may be as many as 1,200 active FOIA suits in the courts nationwide (an estimate the U.S. Attorney's Office says may be somewhat high), with about half of them filed in the District of Columbia.

The law and subsequent court rulings have established that attorneys who win these suits may be awarded fees "at the market rate" for lawyers' time; the attorneys are to be paid by the government — provided the court finds the public interest was served by the disclosures and the plaintiffs didn't have a "commercial interest" that would enable them to profit from the information.

Lamberth estimates that hundreds of thousands of dollars in attorneys' fees have been awarded during the "last several years" in FOIA cases heard in Washington. He said that in many instances attorneys have billed clients for large blocks of time without documenting how the time was spent.

And in some cases, Lamberth said, attorneys have submitted "outra-

geous" claims for such items as the time they spent attending courses on how to handle FOIA lawsuits. "It's not our feeling we should be paying for those hours," he said.

Lamberth hopes that Judge Robinson's ruling will also cause private attorneys who "present . . . clearly excessive demands" to think twice about billing their time at more than \$100 an hour, instead of billing at about \$60 an hour, which he believes is more appropriate for the type of work performed in FOIA suits.

"My bottom line is protecting the taxpayer against excessive awards," Lamberth said.

The attorneys in the case decided by Judge Robinson said they will probably appeal the ruling.

The suit was filed in 1976 on behalf of a Georgetown University law student who was doing research for a law-review article and filed an FOIA request for a Justice Department policy manual used in setting standards for filing charges in criminal cases. He was denied access to the manual.

The Institute for Public Representation, which is run by the law school, filed the suit. The institute won, and the decision was upheld by the U.S. Court of Appeals for the District of Columbia.

Charles Halpern, a Georgetown University law professor who is now the institute's executive director, said, "It's very hard for me to understand the judge's ruling (on attorneys fees)—the request for fees was quite conventional."

And he noted that all of the fee money would have gone to the institute, not to individual attorneys. "No one would have made a nickel on this case," he said.

In response to the judge's statement that documentation for the number of hours billed was inadequate, Halpern said, "Our records, if not ideal, for the most part were certainly adequate."

In addition to finding that documentation was insufficient, Judge Robinson also denied the claim on the ground that fees had been billed for the time of unpaid "law clerks," and an hourly rate of \$125 billed for one attorney was "unprecedented and unsupportable."