

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

HAROLD WEISBERG,

Plaintiff-Appellant,

v.

CENTRAL INTELLIGENCE AGENCY, ET AL.,

Defendants-Appellees.

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NO. 79-1729

RESPONSE TO OPPOSITION TO AWARD OF
COSTS TO APPELLEES

On June 19, 1980, appellant filed an Opposition to Award of Costs to Appellees. For the reasons stated below, appellant's objections to the assessment of costs against him are not well-founded and should not be given credence.

Following full briefing and oral argument, this Court rendered a decision favorable to appellees, affirming a grant of summary judgment by the district court. Accordingly, appellees are entitled to their costs on appeal unless this Court orders otherwise and "except as otherwise provided by law." Rule 39(a), (b), F.R.A.P. The Government has timely filed its bill of costs, and accordingly an award of costs is appropriate.

Appellant's counsel asserts that Congress intended costs to be awarded against a FOIA requester only where the lawsuit is found to have been frivolous or to have been brought for harrassment purposes. In so stating, however, appellant has incorrectly and

misleadingly relied upon a portion of a Senate Report accompanying the 1974 Amendments to the Freedom of Information Act. ^{1/} When read in context, the Report language quoted by appellant shows only that in providing for an award of attorneys' fees and costs to a plaintiff who has substantially prevailed in a FOIA lawsuit, Congress added that a court's inherent power to assess costs and attorneys' fees against a plaintiff where a lawsuit is determined to be frivolous is not affected. ^{2/} The Report language preserving the inherent power of courts to assess costs in frivolous lawsuits does not, however, limit that power only to frivolous lawsuits.

The Government has timely filed its bill of costs, and nothing in FOIA prohibits that award. Furthermore, appellant has shown no unusual circumstances mitigating against the award.

For the foregoing reasons, appellees submit that an award of costs against appellant is entirely appropriate under F.R.A.P. 39, and should be entered forthwith.

Respectfully submitted,

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^{1/} See Opposition to Award of Costs to Appellees at 1.

^{2/} See, S. Rep. No. 93-854, 93rd Cong., 2d Sess. at 19-20, reprinted in Freedom of Information Act and Amendments of 1974: Source Book, at 171-72, for the context of the passage quoted by appellant at p. 1 of appellant's Opposition.

CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing Response to Opposition to Award of Costs to Appellees has been made this 25th day of June, 1980, by mailing copies thereof, postage prepaid, to appellant's counsel:

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