

Court Supports NSA Stance on Withholding Data

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The U.S. Court of Appeals ruled here yesterday that the supersecret National Security Agency does not have to give a detailed public explanation for its refusal to disclose documents sought by the public under the Freedom of Information Act.

According to the 3-to-0 ruling, federal judges should accept without question the agency's statements to the judge explaining why disclosure of documents obtained by its monitoring of worldwide communications could be harmful to the national security. In addition, there is no need for judges to examine the documents themselves before ruling in NSA's favor, the court said.

The ruling, written by U.S. Circuit Court Judge Malcolm R. Wilkey, sets a higher burden on the public in FOIA suits against NSA than exists in similar suits against the Central Intelligence Agency. The ruling fully condones a procedure under which NSA submits affidavits secretly to the judge explaining its reasons for refusing to disclose documents.

"The present case is one example where some of the interests of the adversary process are outweighed by the

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nation's legitimate interests in secrecy and orderly process for disclosure," Wilkey wrote for the court.

The ruling came in a suit filed against NSA by activists Jane Fonda and Thomas E. Hayden, who were told that the agency had located foreign intelligence reports in its files concerning them but refused to give them the material.

Once the suit was filed, the agency told the court disclosure of the information would jeopardize its mission of collecting intelligence through the monitoring of foreign electromagnetic signals.

The NSA filed a secret 20-page statement with the judges refusing even to itemize the documents it was withholding from the plaintiffs. U.S. District Court Judge Howard F. Corcoran read the statement and ruled in NSA's favor without reading the materials compiled on the plaintiffs.

The appellate court noted that a higher standard of secrecy exists in connection with NSA because, among other reasons, persons with access to the material might be able to determine what channels the agency is monitoring.

"After reading the classified affidavit, we find . . . that it was reasonable, in the interests of national security, to conclude that the information was sensitive and properly classified," Wilkey wrote.

In another FOIA ruling yesterday affecting public access to materials in the nation's intelligence community, a federal judge ruled that persons seeking documents from the CIA should not be billed by the agency for processing the request if release of the information would benefit the general public.

U.S. District Court Judge Aubrey E. Robinson Jr. said the fees for handling the material can be charged only if the person requesting the material is the only one who will benefit.