

Would You Believe \$75,000? Okay, \$23,500

Justice Dept. Is Caught Inflating Cost of FOIA Compliance

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The Justice Department has been caught inflating the costs of complying with the Freedom of Information Act, Rep. Robert E. Wise Jr. (D-W.Va.) said yesterday.

Ordinary citizens are usually the victims when government agencies inflate the cost to discourage FOIA requestors. The Justice Department example is particularly egregious, Wise said, because the target of the misrepresentation was the Supreme Court.

The issue arose last year when Tax Analysts, a weekly magazine, asked the department for copies of federal district court tax opinions regularly compiled by the agency's Tax Division.

Officials at Justice refused to make the records available under the Freedom of Information Act, saying the rulings were already publicly available at courthouses around the country. But the U.S. Court of Appeals here held that the department's copies, regularly identified in weekly logs, were covered by the FOIA and had been "improperly withheld."

Seeking relief in the Supreme Court, the department told the court that making the rulings avail-

able would "impose enormous administrative costs" on the government and would cost nearly \$75,000 a year "for search time alone."

The \$75,000 estimate, then-Solicitor General Charles Fried said, was based on "an actual experiment" in which it took "an experienced paralegal" 80 hours to track down 29 of the court opinions cited in one of Tax Analysts' weekly lists.

The Supreme Court ruled 8 to 1 last summer that the department was required by law to make copies of the tax decisions available to anyone who wants them.

Wise, chairman of the House subcommittee on government information, then asked the General Accounting Office to check on the costs "because there have been persistent complaints that agencies overstate the costs of responding to FOIA requests."

"An agency that does not want to release documents sometimes tells a requestor that the costs will be enormous," Wise said. "This is a game that agencies play to discourage the use of the FOIA."

GAO auditors found that instead of having paralegals engage in frenetic searches, the Tax Division simply duplicates all of the tax rulings it gets and sends them to a

central reading room open to the public twice a week. The cost, GAO found, is expected to be \$23,500 a year, including space rental and duplication costs. That is less than a third of what the Supreme Court was told it would cost just to find the rulings. In addition, revenues from making copies for the public at 10 cents a page will offset somewhat "less than a third" of the expense.

"The GAO report," Wise said, "shows that the Justice Department played this same game at the Supreme Court . . . The lesson to be drawn," he concluded, "is that no court anywhere in the country should accept or rely upon any cost figures provided by the Justice Department in an FOIA case. The GAO report suggests that the department's zeal to win cases and to deny information to the public is so strong that the department is not providing reasonable or accurate cost estimates."

Asked to comment, department spokesman Dan Eramian said, "I can't speak for other agencies but the reading room is up and running and the annual costs will be substantially less than the \$75,000 we estimated . . . The fact that we have done this, I think, makes the accusation groundless."