NATIONAL SECURITY ARCHIVE v. CENTRAL INTELLIGENCE AGENCY et al Doc. 12 Att. 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THE NATIONAL SECURITY ARCHIVE, Plaintiff, v. CENTRAL INTELLIGENCE AGENCY, *et al.*, Defendants.	)	No. 06-CV-1080 (GK)

[PROPOSED] ORDER

Plaintiff National Security Archive ("Archive") filed this action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the Administrative Procedure Act, 5 U.S.C. § 702, against Defendants Central Intelligence Agency, General Michael V. Hayden, in his official capacity as Director of the Central Intelligence Agency, and Scott A. Koch, in his official capacity as Information and Privacy Coordinator of the Central Intelligence Agency, claiming that the Archive qualifies as a "representative of the news media" within the meaning of the FOIA and is therefore exempt from paying search costs for non-commercial FOIA requests.

This matter is now before the Court on Plaintiff's Motion for Summary Judgment. Upon consideration of the Motion, Opposition, Reply, and the entire record herein, it is hereby

ORDERED that Plaintiff's Motion is **GRANTED**, and judgment is entered in favor of Plaintiff; it is further

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ORDERED that Defendants' determinations that Plaintiff National Security Archive does not qualify as a "representative of the news media" under 5 U.S.C. § 552(a)(4)(A)(ii)(II) are reversed; it is further

ORDERED that Defendants must treat Plaintiff as a "representative of the news media" within the meaning of 5 U.S.C. § 552(a)(4)(A)(ii)(II) and that Defendants are hereby enjoined from refusing to recognize Plaintiff as a "representative of the news media" under that provision for pending and future FOIA requests not made for a commercial use; it is further

ORDERED that Defendants must process immediately the Plaintiff's pending FOIA requests for records and accord those requests the place in the processing queue they would have had but for Defendants' improper refusal to recognize Plaintiff as a "representative of the news media"; it is further

ORDERED that the definition of "representative of the news media" promulgated by Defendant Central Intelligence Agency and set forth at 32 C.F.R. § 1900.02(h)(3) is set aside as contrary to law; and it is further

ORDERED that Defendants are hereby enjoined from relying upon the definition of "representative of the news media" set forth at 32 C.F.R. § 1900.02(h)(3) in determining the appropriate fee categories for pending and future FOIA requests from Plaintiff or any other requester.

SO ORDERED this _____ day of _____, 2006.

_____

Hon. Gladys Kessler
United States District Judge

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