

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA
CIRCUIT

Davy v. Central Intelligence Agency

384 U.S. App. D.C. 49 (D.C. Cir. 2008) · No. No. 07-5200 · Decided December 19, 2008

SUMMARY

The D.C. Circuit held that William Davy was entitled to attorney's fees and costs under the Freedom of Information Act after substantially prevailing in litigation against the CIA. The court concluded that the district court improperly assessed the public-benefit, commercial-interest, and agency-reasonableness factors and remanded for entry of an appropriate fee award.

CASE DETAILS

COURT	United States Court of Appeals for the District of Columbia Circuit
WRITING FOR THE COURT	Rogers, Circuit Judge; Tatel, Circuit Judge; Randolph, Senior Circuit Judge
JURISDICTION	Federal
DECIDED	December 19, 2008
DOCKET	No. 07-5200
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Second appeal from the denial of attorney's fees and costs under the Freedom of Information Act after the district court denied fees on remand.
STANDARD OF REVIEW	Abuse of discretion review of the district court's application of the four-factor FOIA attorney's-fee entitlement test.
PRECEDENTIAL VALUE	Published precedential decision of the United States Court of Appeals for the District of Columbia Circuit.
PARTIES	William A. Davy, Jr. v. Central Intelligence Agency

TOPICS

administrative law

remedies

appellate procedure

standard of review

statutory interpretation

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the district court abused its discretion in applying the four-factor test for awarding attorney's fees and costs to a substantially prevailing FOIA litigant.
2. Whether Davy's scholarly and journalistic interest in records concerning a matter of public importance was improperly treated as a purely commercial interest.
3. Whether the agency demonstrated a colorable or reasonable legal basis for withholding or delaying disclosure of the requested records.
4. Whether Davy was entitled to an award of attorney's fees and costs under 5 U.S.C. § 552(a)(4)(E).

HOLDINGS

1. A substantially prevailing FOIA litigant's entitlement to attorney's fees is assessed under four factors: the public benefit derived from the case, the commercial benefit to the plaintiff, the nature of the plaintiff's interest in the records, and the reasonableness of the agency's withholding.
2. A plaintiff's intention to publish a book and possible expectation of compensation do not, by themselves, establish a purely commercial interest or bar an award of FOIA attorney's fees; scholarly, journalistic, and public-interest interests may support an award when the plaintiff is seeking to increase public knowledge rather than obtain a private pecuniary advantage.
3. To obtain the benefit of the fourth FOIA fee factor, the agency must demonstrate at least a colorable or reasonable legal basis for failing to disclose the requested material before litigation; the requester need not affirmatively prove that the agency acted unreasonably.
4. Davy was entitled to an award of reasonable attorney's fees and costs because the public-benefit factor favored him, his interest was scholarly rather than purely commercial, and the agency failed to establish a reasonable basis for its delayed disclosure.

KEY QUOTATIONS

"With this understanding, the court has directed the district court to consider at least four criteria in determining whether a substantially prevailing FOIA litigant is entitled to attorney's fees: (1) the public benefit derived from the case; (2) the commercial benefit to the plaintiff; (3) the nature of the plaintiff's interest in the records; and (4) the reasonableness of the agency's withholding of the requested documents." (1159)

"For the agency to receive the benefit of the fourth factor it must present at least a "colorable basis in law" for its failure to respond to Davy's second request, and it has not done so." (1163)

"Accordingly, because the record reflects that he is the type of requester Congress contemplated when it sought "to lower the 'often ... insurmountable barriers presented by court costs and attorney fees to the average person requesting information under the FOIA,'" Tax Analysts, 965 F.2d at 1095 (quoting Cuneo,

553 F.2d at 1363-64), and because no factor weighs in the agency's favor, a balancing of the factors can only support the conclusion that Davy is entitled to an award of attorney's fees.” (1163)

FACTUAL BACKGROUND

Davy submitted FOIA requests seeking records related to CIA projects and alleged CIA involvement in the investigation of President Kennedy's assassination. The agency initially refused to confirm or deny the existence of responsive records and later failed to provide a legal basis for delaying its response to Davy's second request. After Davy filed suit, the district court adopted a schedule for production, and the agency released documents that had not been provided before litigation. Davy sought attorney's fees and costs, asserting that the records had scholarly and public informational value and that his book generated only minimal income.

PROCEDURAL HISTORY

Davy filed FOIA requests seeking records concerning CIA activities and related historical matters. After the CIA failed to disclose records in response to the second request, Davy sued; the district court ordered a disclosure schedule, the agency produced some documents, and the district court ultimately granted the agency's superseding summary-judgment motion. The district court denied Davy's motion for attorney's fees. In Davy I, the court of appeals held that Davy had substantially prevailed and was eligible for fees, remanding for application of the four-factor entitlement test. On remand, the district court again denied fees, leading to this appeal.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The district court shall enter an appropriate order awarding Davy attorney's fees and costs as to all matters on which he prevailed.

CASES CITED

- Davy v. CIA, 456 F.3d 162 (D.C. Cir. 2006)
- Tax Analysts v. U.S. Department of Justice, 965 F.2d 1092 (D.C. Cir. 1992)
- Kickapoo Tribe v. Babbitt, 43 F.3d 1491 (D.C. Cir. 1995)
- Nationwide Building Maintenance, Inc. v. Sampson, 559 F.2d 704 (D.C. Cir. 1977)
- LaSalle Extension University v. FTC, 627 F.2d 481 (D.C. Cir. 1980)
- Chesapeake Bay Foundation v. USDA, 11 F.3d 211 (D.C. Cir. 1993)
- Chesapeake Bay Foundation v. USDA, 108 F.3d 375 (D.C. Cir. 1997)
- Cotton v. Heyman, 63 F.3d 1115 (D.C. Cir. 1995)
- Allen v. CIA, 636 F.2d 1287 (D.C. Cir. 1980)
- Founding Church of Scientology v. Smith, 721 F.2d 828 (D.C. Cir. 1983)
- Fenster v. Brown, 617 F.2d 740 (D.C. Cir. 1979)

- Goldstein v. Levi, 415 F. Supp. 303 (D.D.C. 1976)
- Campbell v. U.S. Department of Justice, 164 F.3d 20 (D.C. Cir. 1998)
- Aronson v. U.S. Department of Housing & Urban Development, 866 F.2d 1 (1st Cir. 1989)
- National Treasury Employees Union v. Griffin, 811 F.2d 644 (D.C. Cir. 1987)
- Cuneo v. Rumsfeld, 553 F.2d 1360 (D.C. Cir. 1977)
- Kay v. Ehrler, 499 U.S. 432 (1991)
- Buckhannon Board & Care Home, Inc. v. West Virginia Department of Health & Human Resources, 532 U.S. 598 (2001)
- Duncan's Point Lot Owners Association v. FERC, 522 F.3d 371 (D.C. Cir. 2008)
- NLRB v. Sears, Roebuck & Co., 421 U.S. 132 (1975)
- Sterling Drug, Inc. v. FTC, 450 F.2d 698 (D.C. Cir. 1971)
- Hensley v. Eckerhart, 461 U.S. 424 (1983)
- Anderson v. SHHS, 80 F.3d 1500 (10th Cir. 1996)