Researchers Win Fight With U.S. on Documents

By Linda Greenhouse, Special To the New York Times

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The Court backs a right to information without a fee.

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The Supreme Court today rebuffed the Federal Government's attempt to charge processing fees to a private group that collects Government documents for use by researchers and the news media.

The Government had sought to charge the same hourly fees to the National Security Archive that it charges commercial users for processing requests for documents under the Freedom of Information Act, arguing that the archive was not a member of the news media and so was not eligible for exemption from the payments.

But the Justices, without comment, refused to hear the Bush Administration's appeal of a lower court ruling that the group was in fact a ''representative of the news media.''

The National Security Archive was set up by a group of investigative reporters here three years ago as a nonprofit library of Government documents on foreign policy and national security. It has been battling Federal agencies much of that time over fees the Government sought to charge for processing its requests under the Freedom of Information Act.

Fees Can Be Huge

Congress has exempted educational institutions and news organizations from the fees of up to $75 an hour that agencies charge for processing Information Act requests from commercial users. For requests involving many documents, or those that entail close review for the removal of classified information, the fees can come to $100,000 or more.

In a ruling last July, the United States Court of Appeals for the District of Columbia Circuit held that the National Security Archive was ''unambiguously'' part of the news media because in addition to collecting Government documents, it also publishes them. The organization has published two compilations of documents, a 678-page chronology of the Iran-contra affair and a two-volume set of documents on United States policy toward El Salvador, and is working on other compilations.

The Bush Administration filed a strongly worded appeal to the Supreme Court, arguing that the National Security Archive is ''not a member of the 'news media' in any accepted meaning of that term.'' The appeal warned that the Court of Appeals opinion ''opens a sizable loophole'' in the Information Act's fee structure.

In his opinion for the Court of Appeals, Judge Douglas H. Ginsburg defined a ''representative of the news media'' as ''a person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.''

The definition is expected to be helpful to freelance journalists who, lacking an organizational affiliation, are now sometimes refused waivers of the processing fees by Government agencies.

Brief Reflects Annoyance

The Supreme Court's refusal to hear the appeal, U.S. Department of Defense v. National Security Archive, No. 89-1204, was notable in two respects. First, it is relatively rare for the Justices to refuse to hear a Government case. While the Government does not always prevail on the merits, it can almost always count on the Court's willingness to hear its arguments.

And second, the National Security Archive is one of the major users of the Freedom of Information Act, a fact that the Government's brief underscored with evident annoyance. The brief described the archive as having ''flooded'' Government agencies and as seeking ''carte blanche'' to continue a ''deluge'' of wide-ranging requests for documents. The brief also described the archive's publications as ''rather ponderous.''

The brief listed more than 1,000 requests that the archive had filed with the Defense Department in the last three years, and it noted that the 599 requests that the archive had pending at the State Department at the beginning of this year constituted more than half of the department's Freedom of Information Act caseload.

Brennan Ill and Absent

The Court returned today from a two-week recess. Justice William J. Brennan Jr. was not on the bench; Court officials said he was suffering from stomach flu and planned to return later this week.

The Court acted on more than 200 cases today, turning down 27 appeals from death row inmates. Justice Brennan and Justice Thurgood Marshall, who believe that the death penalty is unconstitutional under all circumstances, dissented in each case. Justice Harry A. Blackmun also noted his dissent in one case.

This was an unusually high number of death penalty cases for the Court to act on at one time. Most of the appeals had been pending for months, some since the Court's last term, because they incorporated none or more legal issues similar to those posed by cases the

Court had accepted for review. Over the last month, the Court decided several of those cases, rejecting the death row inmates' arguments.

One of the appeals the Court turned down today was that of William G. Bonin, known in California as the ''freeway killer.'' He was convicted and sentenced to death for the murders of 14 men and boys, whose bodies he left along California freeways. Justices Marshall and Brennan said the Court should have heard his arguments that the lawyer who represented him had a conflict of interest. The California Supreme Court upheld his conviction (Bonin v. Calif., No. 88-7381).

The Court also ordered the North Carolina Supreme Court today to reconsider the death sentences imposed on 11 convicted murderers. All had been sentenced under a death penalty law that the Justices ruled two weeks ago was constitutionally flawed. Some 70 North Carolina death row inmates are expected to receive new sentencing hearings as a result of that ruling.

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