



National Freedom of
Information Coalition

<http://nfoic.org/>

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NFOIC throws support behind three cases seeking to open up the CIA's process of handling FOIA requests

Public interest group seeks declaratory and injunctive relief that will find obstruction practices to be unlawful and forbid their future use.

COLUMBIA, Mo. (February 28, 2011) – A Virginia organization has won support from the Knight FOI Fund for lawsuits it has filed to challenge the manner in which the CIA handles information requests under the federal Freedom of Information Act (FOIA).

National Security Counselors, an Arlington-based public interest group, seeks government documents in the public's interest in order to publish them and has filed three lawsuits against the CIA for access to data about how the agency handles FOIA requests.

The three cases could shed light on how the CIA processes FOIA requests, what kinds of records are released, and how the CIA assigns cases when the requester changes.

The Knight FOI Fund grant, in the amount of \$1,050, was announced by the National Freedom of Information Coalition (NFOIC), which administers the Fund that was created by the John S. and James L. Knight Foundation. The grant was the first awarded in a federal case since the Knight FOI Fund was established, as well as the first awarded in advance of a case being filed with the court.

“We chose one of the primary perpetrators, the Central Intelligence Agency, for a three-pronged judicial assault on what we determined to be the most extreme institutional

violations of both the letter and spirit of FOIA,” said Kel McClanahan, executive director of National Security Counselors.

“It is our sincere hope that through this litigation, we will be able to go significantly beyond the traditional FOIA remedy of simply obtaining the records we seek; instead, we seek declaratory and injunctive relief from the court that will find these practices themselves to be unlawful and forbid their future use.”

“Everyone is taking the Agency's word that they are doing everything right when they are processing requests, but we don't actually have any empirical evidence of that,” McClanahan said. “The public has a right to know how the Agency is actually processing the public's FOIA requests on the ground and whether these practices measure up to the published reports.”

In the first case, National Security Counselors is seeking comments from FOIA analysts at the CIA about pending cases, training materials and guidelines provided to FOIA analysts. It also seeks documents that the CIA refuses to confirm or deny the existence of even though the documents themselves are unclassified and freely released by other agencies.

The second case involves the CIA's practice of refusing outright to process FOIA requests without notifying the requester and refusing to turn over aggregate data about FOIA requesters.

In the final case, the organization is seeking a decision about the CIA's refusal to allow a requester to assign his or her request to a third party without having to restart the process by filing a new FOIA request and going to the back of the line.

McClanahan said the three cases will show how the CIA has a practice of obstructing FOIA unlike any other intelligence agency. “Inside the Intelligence Community, the CIA is the only agency that has taken the FOIA exemptions that it has been given and run crazy with them,” he added.

The Knight FOI Fund award was made to defray the legal costs National Security Counselors will incur in their attempt to compel the CIA's compliance with FOIA requests that do not involve issues of national security.

“This is an unusual case for the Knight FOI Fund both because it is under the federal FOIA Act and because we don't really know what stories journalists aren't telling because of these practices and nondisclosures,” said Kenneth F. Bunting, executive director of NFOIC. “But we do know that it is not good for the public, not good for journalists and not good for the country if intelligence agencies are allowed to place themselves above the law or make up their own rules.”

“The fact that they deal with sensitive information can’t be used as a smokescreen to avoid all accountability,” Bunting added.

The Knight Fund award to McClanahan and National Security Counselors was strongly supported by the D.C. Open Government Coalition (DCOGC). Thomas Susman, president of the District of Columbia-based open government group coalition, said that “in challenging agency FOIA practices and policies rather than focusing narrowly on documents, these lawsuits focus on making the CIA more accountable to FOIA requesters across the board.”

Susman noted that victories in open government cases involving the CIA are “always less predictable, since judges are disinclined to second-guess even the most plainly erroneous arguments by the Agency. But in this instance, the subject matter hardly impinges on national security.”

Although not directly involved in bringing these cases, DCOGC reviewed the grant application as part of the NFOIC's approval process.

In its first year, the Knight FOI Fund has assisted NFOIC member organizations and state coalitions, their allies and other litigants in 18 FOI or access cases. While some cases still are being adjudicated, there have been nine court rulings in favor of disclosure or access in cases supported by the Knight FOI Fund since its inception in January 2010.

“We could not be more grateful to the Knight Foundation and the National Freedom of Information Coalition,” said McClanahan. “Not only did this grant make this litigation possible monetarily, but we recognize the significance of the trust these fine groups place in our ability to successfully pursue this novel and complex litigation against a highly resourceful opponent, a trust of which we hope to prove ourselves worthy.”

The NFOIC, a nonpartisan coalition of open government groups and advocates headquartered at the Missouri School of Journalism, administers the Knight FOI Fund. It is part of a \$2 million, three-year grant from the John S. and James L. Knight Foundation announced last year.

The Knight FOI Fund does not pay attorney fees. It is set up to fuel and assist the pursuit of important FOI cases by helping to defray upfront costs such as filing fees, depositions, court costs and other expenses associated with legal actions. The Knight Fund only seeks reimbursement if resulting awards in the cases cover fees and costs for which the Knight Fund money was spent.

For more information on the Knight FOI Fund, including the selection process for grants and how to apply, see <http://www.nfoic.org/knight-foi-fund>.

The John S. and James L. Knight Foundation advances journalism in the digital age and invests in the vitality of communities where the Knight brothers owned newspapers. Since 1950, the Foundation has granted more than \$400 million to advance quality journalism

and freedom of expression. Knight Foundation focuses on projects that promote community engagement and lead to transformational change. For more, visit <http://www.knightfdn.org/>.

National Security Counselors was founded to further the twin ideals that the public needs to be as informed as possible about what its government does in the name of national security, and that people entangled in legal matters in this field should have reasonable access to knowledgeable legal assistance, regardless of income. To that end, NSC exists to: lawfully acquire from the government material related to national security matters and distribute it to the public; use this material in the creation of original publications discussing the respective subjects; advocate for intelligent reform in the national security and information and privacy arenas, and: provide a low-cost alternative to certain deserving clients involved in security law or information and privacy law-related proceedings. For more, visit <http://nationalsecuritylaw.org/>.

The National Freedom of Information Coalition is a national network of state freedom of information advocates, citizen-driven nonprofit freedom of information organizations, academic and First Amendment centers, journalistic societies and attorneys. Its mission is to foster government transparency at the state and local level. A unit of the Missouri School of Journalism, the NFOIC is an affiliate of the Donald W. Reynolds Journalism Institute. NFOIC is based at the University of Missouri, home to the nation's oldest Freedom of Information Center. For more, visit <http://www.nfoic.org/>.

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