



**cnsnews.com**  
THE RIGHT NEWS. RIGHT NOW.™

## Appeals Court: Students Qualify for FOIA Fee Waivers

Hans Bader

May 23, 2016

Under the Freedom of Information Act, you can obtain government records, but usually you have to pay for them. But the law limits the fees that can be charged certain types of requesters, including “educational institutions.” On Friday, in *Sack v. U.S. Dept. of Defense*, the U.S. Court of Appeals for the D.C. Circuit held that this means students seeking to use FOIA are eligible for reduced fees as well.

The court rejected the Obama administration’s argument that only teachers, not students, can take advantage of this provision. The statute itself draws no such distinction, but the administration argued that the courts should interpret the statute that way, because it is so interpreted in guidance from the White House Office of Management and Budget. The administration should have recognized the weakness of its position. It is settled law that “courts owe no particular deference to” an agency’s “interpretation of FOIA” limiting fee waivers (*See Cause of Action v. FTC* (2015), since FOIA applies “government wide” against virtually all agencies, rather than delegating authority to a particular agency to enforce it. (*See Al-Fayed v. CIA* (2001).) Perhaps it expected courts would give it the blind deference it has been getting from judges in certain other kinds of cases.

When President Obama took office, media organizations foolishly gave Obama transparency awards based on his rhetoric in favor of open government. But Obama soon proved far less transparent than Bush, especially in the Justice Department. In March 2014, the Associated Press reported that “more often than ever, the administration censored government files or outright denied access to them last year under the U.S. Freedom of Information Act.” Things got even worse in 2015. *The Wall Street Journal* concluded that this is “the least transparent administration.” *New York Times* editor Jill Abramson admitted that the Obama administration is the most secretive ever. *The Huffington Post* reported that the “White House denies more FOIA requests than ever” these days.

One of the worst offenders has been the IRS, represented in litigation by Justice Department lawyers. A recent Sixth Circuit ruling described how “the IRS still has not complied with” a court order more than a year earlier that it produce records to conservative non-profits targeted by the IRS, after “findings” that it “used political criteria” to target them, “took four times as long to process” their “applications as other applications” and served them “with crushing

demands for what the [IRS] Inspector general called ‘unnecessary information.’” Much of the media responded with a yawn to IRS targeting of conservative and libertarian non-profits, a few of them falsely claiming that it was justified by the statutory language governing 501(c)(4) groups (debunked here). Some liberal journalists also falsely implied that liberal groups were singled out in a similar way (debunked here).

The IRS’s discrimination against non-liberal groups is nothing new, and has occurred under prior presidents (such as FDR, whose son says that he was likely the president who began the practice of using the IRS against a president’s political enemies). President Kennedy’s use of “IRS agents” against his enemies has been celebrated by liberal columnists like the *Washington Post*’s Dana Milbank. As the Cato Institute’s Gene Healy notes,

“In a November 2011 column, the *Washington Post*’s Dana Milbank offered ‘A Machiavellian model for Obama’ in Jack Kennedy’s ‘kneecapping’ and ‘mob-style threats’ against steel-company executives who’d dared to raise prices. ... Milbank observed that ‘the price increase was rolled back’ only after ‘subpoenas flew [and] FBI agents marched into steel executives’ offices’: ‘Sometimes, that’s how it must be. Can Obama understand that?’”

By contrast, the press excoriated Republican President Richard Nixon, who tried but failed to get the IRS to audit his enemies.