

Lawsuit Takes Aim at CIA's "Covert" Attack on Transparency

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Global Research, February 28, 2012

[Truthout](#) 28 February 2012

Region: [USA](#)

Theme: [Law and Justice](#)

Last September, the CIA quietly changed its long-standing policy for how it would process certain records requests by [implementing a new fee structure](#) that will essentially discourage the public from trying to get the agency to declassify secret government documents because the costs are too high, open-government advocates have charged.

The policy, which [the CIA started to enforce last December](#), applies to Mandatory Declassification Reviews (MDR), a procedure under a section of an [executive order signed by President Obama](#) (which replaced a similar executive order signed by former President Bush), that allows the public to seek the declassification of specific CIA records and appeal unfavorable rulings to an independent panel.

[Truthout filed several MDR's](#) last year to try and gain access to materials in custody of the CIA that were written by a high-value detainee and other classified documents pertaining to the Bush administration's interrogation policies.

"Overnight, without public comment or notice, the [CIA] decreed that declassification reviews would now cost requesters up to \$72 per hour, even if no information is found or released," wrote [Nate Jones of George Washington University's National Security Archive](#), a historical research group that files numerous Freedom of Information Act (FOIA) requests and publishes declassified documents.

Previously, the CIA charged the public fees that were on par with general requests for agency records filed under FOIA. Jones, who first spotted the policy changes in the Federal Register, said the new regulations are "are a covert attack on the most effective tool, [MDR], that the public uses to declassify the CIA's secret documents" and [undercuts the transparency promises](#) Barack Obama made after he was sworn in as president three years ago.

But a [lawsuit filed last week](#) against the agency in US District Court in Washington, DC, aims to remedy the issue by seeking to void the changes and declare it a willful violation of the law.

The complaint was filed by attorneys Bradley Moss and Kel McClanahan on behalf of Jeff Stein, the veteran reporter who has written extensively about intelligence and national security-related issues; Katelyn Sack, a University of Virginia graduate student conducting research on lie detectors; and Mark Zaid, a lawyer who represents national security whistleblowers. Zaid is also the founder of the James Madison Project, an organization that works to reduce government secrecy. McClanahan is the executive director of Arlington, Virginia-based public interest law firm [National Security Counselors](#), which is also listed as a

plaintiff in the lawsuit. (Full disclosure: [McClanahan is representing this reporter in a FOIA lawsuit](#) filed earlier this month against the CIA, FBI, and other government agencies.)

What's unusual about the lawsuit is that it seeks class-action status on behalf of all of the individuals who filed MDR's and were impacted by the CIA's new fee structure. McClanahan said he has requested the CIA provide him with copies of all the MDR responses the agency issued last year so he could determine the exact number of people affected by the [CIA's "declassification tax."](#) The lawsuit demands the CIA "contact every MDR requester whose request was wrongfully rejected and offer the opportunity to reinstate their respective requests and then process accordingly."

The complaint, in addition to leveling violations of federal law associated with the new MDR fees, also alleges the CIA has violated provisions of FOIA – and three decades of case law – by "unilaterally declaring that requesters are not allowed to limit the amount of money they will spend on FOIA requests," McClanahan said.

The CIA has done this by first demanding that FOIA requesters agree to pay all fees for records or the agency will refuse to process the request. Moreover, the lawsuit alleges the CIA "violated FOIA by counting time spent by computers performing automated searches for fee purposes."

"The entire point of this lawsuit is to expose and invalidate some of the CIA's most problematic information access policies," McClanahan said in an email. "Not only did the CIA unlawfully bypass the entire notice and comment process when publishing this rule, citing an exception to normal rulemaking procedures that only applies in very narrow circumstances (none of which are even close to relevant here), but even had the CIA followed the rules when promulgating this regulation, it would have been against the express will of all three branches of government."

"Twenty years ago the Supreme Court stated that while it is legal to charge individuals reasonable fees for government services, according to a law passed by Congress and signed by the President, it was not legal to charge individuals for services which benefitted the public generally," McClanahan added. "In this era of purported transparency, it is outrageous to argue that declassifying information that no longer needs to remain secret is not in the public interest. Not only is this fee hike unwise, it's illegal."

The CIA would not comment on the litigation.

Since Jones revealed the new MDR fee structure earlier this month, more than three dozen good-government groups, including Jones' National Security Archive, sent a letter to the CIA last week calling upon the agency to reverse the new fee policy.

The letter said the new rules "[price the public out of submitting MDR requests.](#)"

"Unlike FOIA requests, if an agency fails to declassify and release the information under the MDR process, requesters can appeal the agency's decision to the Interagency Security Classification Appeals Panel (ISCAP) for independent review," the letter states. "According to the Information Security Oversight Office, ISCAP officials have overruled agency classification decisions more than 65 percent of the time since 1996."

Additionally, the transparency advocacy organization, OpenTheGovernment.org, has been

asking individuals to [sign an online petition](#) demanding the CIA “withdraw this retrograde regulation.”

Kenneth F. Bunting, executive director of the National Freedom of Information Coalition, which provided McClanahan’s law firm with a grant to file the lawsuit, said the CIA is “an out-of-control agency that wants to operate with accountability to no one.”

“We understand and even appreciate that secrecy is inherent in their culture,” Bunting said. “But allowing them to operate with total disregard for rules and laws that affect the rest of government serves no good national interest.”

McClanahan, whose law firm is also a signatory to the letter, said the pressure good-government groups are placing on the CIA via the petition and letter-writing campaign “complements our litigation perfectly. “

“I will toast our success if this campaign results in the voluntary reversal of this policy, but I still hold out hope that this case will result in no agency being able to do this ever again,” he said. “The fact that a letter-writing campaign was even necessary in the first place is the reason we filed this suit.”

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