

August 8, 2014

National Archives and Records Administration
Office of Government Information Services
Attention: FOIA Advisory Committee
8601 Adelphi Road - OGIS
College Park, MD 20740-6001

To the Committee Members:

I would like to bring the following issue to the Committee's attention: application of Administrative Wage Garnishment to fees assessed for Freedom of Information Act requests.

Federal agencies have begun exploring and instituting a new weapon to use against FOIA requesters: wage garnishment. Here is a link to an article that mentions two agencies: one that is implementing wage garnishment and one that has decided not to do so after receiving some unfavorable feedback.

<http://tinyurl.com/FeeGarnishment>

In this case, two agencies have already sought permission to use wage garnishment in FOIA cases for unpaid fees. A number of other agencies have established rules implementing the Administrative Wage Garnishment - AWG - provisions of the Debt Collection Improvement Act of 1996 - DCIA, but do not mention FOIA specifically. Other agencies are in the process of such rules, or are planning to add such rules.

The requester community should be concerned about this disturbing trend. Preventing the misuse of Administrative Wage Garnishment by agencies in this manner might be a useful clarification in a revision of the FOIA statutes.

Agencies often impose disproportionate fees that have the effect of deterring certain types of requests. For example, requesters frequently receive large fee letters without benefit of a preliminary call or note from the agency to discuss the possibility of a narrowed or more specified request, or to help clarify fee status.

Agency staff often charge review fees to noncommercial requesters, despite the fact that such fees are inapplicable. Agency staff frequently seek to charge search fees to newsmedia requesters, again despite the fact that such fees are inapplicable. Noncommercial requesters are subject to search and review fees when responses are not provided within the statutory deadlines, even though the law precludes

such fees, agencies asserting that all or nearly all the records requests they receive are subject to unusual and exceptional circumstances. Agencies even have imposed large page by page duplication fees, even when supplying electronic copies of records that already exist in electronic form.

Requester unfamiliarity with fee waiver procedures can result in large fees while that issue is sorted out. Moreover, agencies can impose large fees in cases where a requester is unfamiliar with the importance of placing a dollar limit in the agreement to pay fees.

Despite the fact that agencies send large fee invoices, the agencies do not always provide good opportunities for requesters to help resolve fee disputes.

Wage garnishment is an intrusive, blunt instrument that carries with it great social and economic stigma, ignominy and disgrace. Its use could affect access to credit and even employment by requesters. It can and would be used against individuals who work for news organizations, nonprofit groups or advocacy groups. By its nature, it seems less likely to be used against commercial organizations than noncommercial requesters. The selective use of this tool is most concerning, because it will likely be used in those cases that implicate first amendment or news reporting activities where the fees become most significant in access to records.

Wage garnishment seems entirely inappropriate for use in FOIA fee disputes, particularly when an agency already has access to existing processes of suspending or cancelling requests, and in rejecting new requests until the fee issue has been resolved. Thus, it is a solution without an underlying problem. FOIA fee disputes are rarely the result of deadbeat requesters deliberately refusing to pay appropriate fees - such disputes are typically the result of unexpected or unfair fees that are inconsistent with the letter and spirit of the law.

In short, agencies should not be given access to the nuclear option of fee garnishment as a response to FOIA fee disputes.

Sincerely,

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(Speaking only for myself as a private individual)