

9 (S.D.N.Y. 1980), 507 F. Supp. 117 (S.D. N.Y. 1981) the District Court held that the NSA's refusal to disclose the existence or non-existence of a telegram was unjustified under exemption 3 of the FOIA.

As the Court states in Weberman:

"Of course, all information gathered by the NSA relates in some way to an NSA activity, simply because the gathering itself is an activity of the Agency. However the underlying policy of the FOIA, which favors full disclosure, requires a more realistic construction of Section 6.... [Disclosure] in the factual context of this particular case will neither disclose 'intelligence sources or methods'...nor will NSA be furnishing 'classified information...concerning the communication intelligence activities'." Weberman at 15.

Compare that analysis with the holding of the District Court in this case:

"The communications intelligence reports relate to the most sensitive activities of the defendant and thus fall squarely within the protection of Public Law 86-36." District Court Mem. and Order.

The court has taken a relationship that exists only in terms of cause and effect and mistakenly concluded that this inevitable activity/product relationship triggers the protection of Public Law 86-36.

Unfortunately, Hayden has spawned doubtful progeny. An understandable desire to isolate NSA to prevent the disclosure of security sensitive information has led the courts to gradually accede to the suppression of non-sensitive information of great public interest and scientific value.