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Lawyer Says FOIA Is No Pipeline

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The notion that Soviet agents keep picking up valuable information on the cheap in this country by using the Freedom of Information Act has been repeated so often on Capitol Hill in recent years that it usually goes unchallenged.

But it won't stand up under courtroom scrutiny. The proposition has now been tested, first by FOIA requests for evidence and then in a lawsuit brought under the act.

The results showed that U.S. defense and intelligence agencies are unable to cite a single instance of a Soviet bloc attempt to use the law to collect intelligence since Congress passed the act in 1966.

"This is not to say that such activity has not occurred," Paul M. Rosa, the lawyer-researcher who challenged the claim, said cautiously. "It simply means that there is no evidence that it has occurred. . . . What you have here is hearsay building on hearsay at a policy level. One guy makes a claim and someone else picks it up."

That, it appears, is what happened when Rear Adm. Edward A. Burkhalter Jr., director of the government-wide Intelligence Community Staff, made a speech in San Francisco last Jan. 5 at a conference of the Armed Forces Communications and Electronics Association.

The admiral's topic was "Soviet Industrial Espionage," and he devoted most of his talk to the illegal pirating of American technology by Soviet KGB officers and their allies.

But he warmed up with a claim that "one of the more productive means by which the Soviets have

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acquired large amounts of valuable information in recent years has been adroit use of the Freedom of Information Act. Just by asking the right questions, the Soviets are able to pull from federal government files reams of technical data not otherwise available to the public, much of it only recently declassified."

Rosa said his interest was piqued when he read an account of the admiral's speech in the Jan. 10 edition of Aviation Week. U.S. intelligence officers and other critics of the FOIA often assail the law by suggesting that the Soviets are busily exploiting it, but they rarely make such blanket assertions.

"He's the first one I've seen who went out on a limb," said Rosa. "Adroit use of the Freedom of Information Act would produce a paper trail of correspondence and legal documents. . . . And a ream is 500 pages. I went into it with an open mind, to test the record and see what was there."

Rosa began his quest with letters to the office of the secretary of defense and the Joint Chiefs of Staff, the CIA, the National Security Agency, the Army, Navy, Air Force, Marines, the Defense Communications Agency, the Defense Intelligence Agency and more.

Citing Burkhalter's speech, Rosa asked, under the FOIA, for "any and all FOIA requests made by the Soviets" and all records they obtained as a result. He said he was "using the term 'Soviets' to include individuals, governments, or surrogates acting on

behalf of the government of the U.S.S.R."

Most responses said that "a review of our files indicates no requests from the Soviets or anyone acting on their behalf" or something to that effect. Some were a bit ambivalent, saying that they had no records showing the nationalities or affiliations of requestors, because the law does not require such identifications. But that also meant they had no records of any "Soviet" requests.

Rosa sued Burkhalter and the CIA to find out what evidence they had for the admiral's talk. Backed by the privately funded Center for National Security Studies, the litigation produced only a CIA memo concerning agency relations with the academic community. A librarian at the Polish Embassy had requested it in 1978 after reading about it in The New York Times. All sides agreed that this was not really "responsive" to Rosa's request.

An affidavit from the admiral's speechwriter, Lt. Cmdr. David G. Muller Jr., showed what was at the bottom of Burkhalter's remarks. Muller said he had been relying on a 1982 speech by Attorney General William French Smith and a 1982 Senate report on the transfer of high technology to the Soviet bloc.

Smith's speech made only a passing reference to the Reagan administration's desire to restrict the FOIA.

The Senate report cited the testimony of a now-retired Pentagon official who complained that the So-

viets and foreign agents could obtain many recently declassified documents through the Freedom of Information Act.