

## **Court: FOIA Applies to Indian Tribes**

### ***By Anne Gearan***

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WASHINGTON (AP) – Indian tribes cannot claim that correspondence with the federal government is exempt from the federal Freedom of Information Act, the Supreme Court ruled Monday.

The tribes and the federal government had argued that seven documents were protected under an exemption to the sunshine law.

The unanimous ruling is a blow to tribes that hoped to stop opponents in a water rights dispute from seeing records passed between the tribes and the federal Bureau of Indian Affairs.

Four tribes claimed that because of the special advocacy and caretaker relationship between Indian tribes and the Bureau of Indian Affairs, the records were protected in much the same way that correspondence between lawyers and clients is protected.

“All of this boils down to requesting that we read an ‘Indian trust’ exemption into the statute, a reading that is out of the question,” Justice David H. Souter wrote for the nine-member court.

The Freedom of Information Act, or FOIA, allows reporters and other outsiders to get unclassified government records that officials would not otherwise release.

Souter noted that although there are exemptions to the law, they are meant to be applied narrowly. He rejected the government’s comparison of the tribes to government contractors, whose correspondence is sometimes protected under the FOIA exemption.

The court said it recognizes the value of “frank communication” between the government and tribes for whom it holds trust funds, but said unlike contractors, a tribe’s communication with the government is meant to advance its own interests.

The case pitted the tribes against a group of organizations and interest groups seeking the same scarce water from the Klamath River Basin along the California-Oregon border. Several organizations representing the news business also argued the records should become public.

The federal Bureau of Reclamation administers the Klamath Irrigation Project, which uses water from the Klamath River Basin to irrigate over 200,000 acres in Klamath County, Ore., and two counties in northern California.

The bureau is part of the Department of the Interior, as is the Bureau of Indian Affairs, which regularly corresponded with various Indian tribes in the Klamath Basin about their water rights.

In 1996, a group of Klamath Project irrigators filed a series of FOIA requests seeking access to all communications between the Bureau of Indian Affairs and the tribes regarding water issues.

The agency released some documents but refused to release seven of them. At issue was whether those documents should be considered “interagency or intra-agency” communications that are exempt from public release under FOIA.

The case is U.S. Department of Interior v. Klamath Water Users Protective Association, 99-1871.