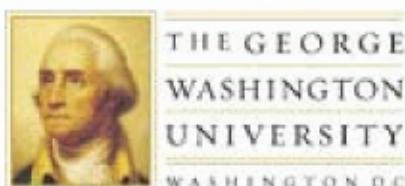


# The Burger Court Opinion Writing Database

*Reporters Committee for Freedom of the Press v. Kissinger*

445 U.S. 136 (1980)

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## Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

March 11, 1980

MEMORANDUM TO THE CONFERENCE

78-1086  
Re: No. 78-1217 Reporters Committee for Freedom of the  
Press v. Kissinger

No. 78-1924, Goland v. CIA. This case is the only one held for Kissinger. In Goland, petitioners filed an FOIA request with the CIA seeking copies of the transcripts of certain legislative hearings (as well as some other documentation). These hearings, which were conducted by Congress in private, centered on intelligence operations. The CIA denied the request, stating that Congress had classified the transcripts as "secret" and had never subsequently authorized release of the transcripts to the public. The CIA, however, has retained exclusive physical possession of the transcripts for more than 30 years and admits that the agency uses them for internal reference.

The majority of the panel in the Court of Appeals for the District of Columbia held that the transcripts were not "agency records" accessible under the Freedom of Information Act. Congress is not an "agency" covered by the Act. The court reasoned that since Congress had never declassified the transcripts or authorized the CIA to make them public, they remained congressional records, and therefore were not "agency records."

In Forsham v. Harris, 78-1118, we indicated that records generated by a non-FOIA entity can become "agency records", but that the agency must first at least obtain possession of those records. In Kissinger, we held that even possession would not be enough if the agency did not use or control the documents. In this case, the CIA has not only retained exclusive possession but has also engaged in frequent use of the documents for departmental purposes. On these facts, I am not