

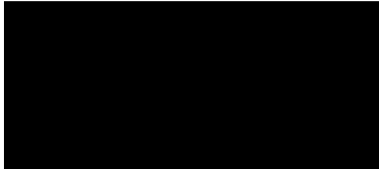


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 2, 2016

Via electronic mail



RE: FOIA Request for Review – 2016 PAC 44649

Dear [REDACTED]

This determination is issued pursuant to section 9.5(c) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(c) (West 2014)). For the reasons that follow, the Public Access Bureau concludes that no further action is warranted as to this matter.

On October 13, 2016, you submitted a FOIA request to the City of Collinsville (City) seeking a digital copy of City cellular telephone bills for the months of July, August, and September, 2016, and copies of all City credit card expenditures and receipts for the same period. You asserted that you are "a member of the press."¹

On October 20, 2016, the City responded by stating that it had examined your "press credentials" issued by the website CFAPA.org and that it had determined that you are not a "news media" requester as defined by section 2(f) of FOIA (5 ILCS 140/2(f) (West 2015 Supp.)). Therefore, the City stated that it would continue to classify you as a recurrent requester under section 3.2 of FOIA (5 ILCS 140/3.2 (West 2014)) and respond to your requests within the time period allowed for recurrent requesters.

In this Request for Review, you contend that the City has misinterpreted section 2(f) of FOIA because you "regularly and periodically electronically publish [your] FOIA findings with commentary for residents; for many it is the only way they get local news since there is not a local community paper covering local municipal city government."² You also

¹E-mail from [REDACTED] to Kimberly Wasser (October 13, 2016).

²E-mail from [REDACTED] to Public Access [Bureau] (October 21, 2016).

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argue that Internet journalists should be treated like print media, citing the New Hampshire Supreme Court's decision in *Mortgage Specialists, Inc. v. Implode-Explode Heavy Industries, Inc.*, 160 N.H. 227, 999 A.2d 184 (N.H. 2010).

On October 26, 2016, an Assistant Attorney General in the Public Access Bureau asked you to provide an example of your electronic publications. In response, you furnished addresses of the websites www.collinsvillemalcontents.com and www.madisontaxpayer.com. On November 3, 2016, you also sent this office a photograph of press credentials issued to you by the Madison County Sheriff's Office. During a telephone conversation with an Assistant Attorney General on November 3, 2016, you stated that you published www.collinsvillemalcontents.com, and you and other members of the public posted information on www.madisontaxpayer.com.

DETERMINATION

Section 2(g) of FOIA (5 ILCS 140/2(g) (West 2015 Supp.)), defines a "recurrent requester" as:

a person that, in the 12 months immediately preceding the request, has submitted to the same public body (i) a minimum of 50 requests for records, (ii) a minimum of 15 requests for records within a 30-day period, or (iii) a minimum of 7 requests for records within a 7-day period. ***For purposes of this definition, requests made by news media and non-profit, scientific, or academic organizations shall not be considered in calculating the number of requests made in the time periods in this definition*** when the principal purpose of the requests is (i) to access and disseminate information concerning news and current or passing events, (ii) for articles of opinion or features of interest to the public, or (iii) for the purpose of academic, scientific, or public research or education. (Emphasis added.)

Section 2(f) defines "news media" in relevant part as a "newspaper or other periodical issued at regular intervals whether in print or electronic format, a news service whether in print or electronic format[.]"

The Public Access Bureau has previously determined that the plain language of section 2(f) limits the definition of "news media" to a medium such as a "newspaper," "periodical," or a "news service," or an electronic version thereof.³ See Ill. Att'y Gen. PAC Req. Rev. Ltr. 35187, 35393, issued May 27, 2015, at 3. With respect to a self-published website, this office has concluded that the statutory definition requires more than simply establishing a website as a means to communicate:

Merely disseminating information or criticism electronically through a website, or via e-mail, does not meet the statutory definition of "news media." If it did, then any person who chose to post an opinion or comment on a matter of public interest electronically would become a news medium, which was clearly not the intent of the General Assembly when it enacted the exception. Ill. Att'y Gen. PAC Req. Rev. Ltr. 33323, issued February 13, 2015, at 4.

The Illinois appellate courts have not analyzed whether the statutory definition of "news media" in FOIA or an analogous statutory definition such as "news medium" contained in the "reporter's privilege act"⁴ may apply to individuals or entities that self-publish material on the Internet. However, courts in other jurisdictions have recognized that "self-appointed journalists or entities" who claim statutory protection under reporter shield laws as media members "require more scrutiny" than traditional newspaper or television reporters. *Too Much Media, LLC v. Hale*, 206 N.J. 209, 242, 20 A.3d 364, 383 (N.J. 2011).

In *Too Much Media*, the New Jersey Supreme Court reviewed whether the definition of "news media" contained in New Jersey's reporter shield law included blogger postings on an on-line bulletin board. The shield law defined "news media" as "newspapers, magazines, press associations, wire services, radio, television or other similar printed, photographic, mechanical or electronic means of disseminating news to the general public." *Too*

³The definition of "news media" also includes radio stations, television stations, television networks, community antenna television services, or persons or corporations engaged in making news reels or other motion picture news for public showing. This Request for Review does not suggest that either online publication constitutes one of these types of media.

⁴Section 8-902(b) of the Code of Civil Procedure (735 ILCS 5/8-902(b) (West 2014)) defines "news medium" as:

any newspaper or other periodical issued at regular intervals whether in print or electronic format and having a general circulation; a news service whether in print or electronic format; a radio station; a television station; a television network; a community antenna television service; and any person or corporation engaged in the making of news reels or other motion picture news for public showing.

Much Media, 206 N.J. at 229, 20 A.3d at 376. The court focused its analysis on whether the material was "similar" to those produced by traditional media sources, and concluded that the blogger had not demonstrated that she was "news media" because the posted content was unedited personal commentary that was not sufficiently similar to a newspaper or other traditional media. *Too Much Media*, 206 N.J. at 234-37, 20 A.3d at 378-80.

Similarly, in *Obsidian Finance Group, LLC v. Cox*, CV-11-57-HZ, 2011 WL 5999334, at *1 (D. Or. Nov. 30, 2011), a federal district court rejected an internet blogger's claim that she was protected under the Oregon reporter shield law, which defined a "medium of communication" as "any newspaper, magazine or other periodical, book, pamphlet, news service, wire service, news or feature syndicate, broadcast station or network, or cable television system." The court identified several factors relevant to its determination that the blogger was not a member of the media: (1) education in journalism; (2) credentials or proof of an affiliation with a recognized news entity; (3) proof of adherence to journalistic standards such as editing, fact-checking, or disclosures of conflicts of interest; (4) keeping notes of conversations and interviews conducted; (5) mutual understanding or agreement of confidentiality with sources; (6) creation of an independent product rather than assembling writings and posting of others; and (7) contacting both sides of a story. *Obsidian Finance Group*, 2011 WL 5999334, at *5. The court concluded that "[w]ithout evidence of this nature, defendant is not 'media.'"

In contrast, in *O'Grady v. Superior Court*, 139 Cal. App. 4th 1423, 44 Cal. Rptr. 3d 72 (Cal. Ct. App. 2006), the California Court of Appeals held that the "reporter shield" in the California Constitution and a related statute protected two websites from being held in contempt of court based on the websites' similarities to the types of media specified in those constitutional and statutory provisions. Both provisions contained identical language that extended protection to a "publisher, editor, reporter, or other person connected with or employed upon a newspaper, magazine, or other periodical publication, or by a press association or wire service, or any person who has been so connected or employed," and a "radio or television news reporter or other person connected with or employed by a radio or television station, or any person who has been so connected or employed[.]" Cal. Const. Art. 1, §2(b); Cal. Evid. Code § 1070(a) (West 2006). The court emphasized that the websites "reflect a kind and degree of editorial control that makes them resemble a newspaper or magazine far more closely than" web-based bulletin boards and reasoned that "the open and deliberate publication in a news-oriented Web site of news gathered for that purpose by the site's operators * * * appears conceptually indistinguishable from publishing a newspaper[.]" *O'Grady*, 139 Cal. App. 4th at 1450, 1459, 44 Cal. Rptr. 3d at 91, 99.

As you cited, the New Hampshire Supreme Court also held that a website was subject to its constitutional newsgathering privilege. *Mortgage Specialists*, 160 N.H. at 234, 999 A.2d at 189. Notably, the court was construing the provision of the New Hampshire Constitution (N.H. Const. Part 1, Art. 22)) that generally provides for freedom of speech and freedom of the press without defining covered press entities or otherwise limiting its application to certain types

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of media, as section 2(f) of FOIA does. In addition, the court accepted the trial court's findings that the website at issue was "a legitimate publisher of information and a member of the press." *Mortgage Specialists*, 160 N.H. at 233-34, 999 A.2d at 189. Accordingly, *Mortgage Specialists* is not instructive on the issue of how section 2(f) applies to the websites at issue in this matter.

As described in the other cases discussed above, in order to be considered a member of the news media covered by reporter shield statutes, an individual or entity that self-publishes information on the Internet generally must demonstrate some adherence to recognized journalistic standards such as editorial oversight or the creation of original content similar to that of traditional media. These courts' rationales are consistent with the plain statutory language of section 2(f) of FOIA that limits its application to a "newspaper," "periodical" or "news service" and their electronic versions. The General Assembly has not expanded the definition in FOIA to include other individuals or entities apart from those traditional media sources and their electronic versions.

This office has reviewed the websites you provided. The website www.collinsvillemalcontents consists of links to public records that it appears were obtained through FOIA or public court files. The website www.madisontaxpayer.com consists of links to news publications. Neither website contains original content or credits particular authors with any material posted on them. Given the absence of features such as editorial oversight and original content, the websites do not resemble a "newspaper," "periodical," or "news service" in an electronic form.

You also have provided evidence of both your credentials and education. As described by the City, the website CFAPA.org and its operator the Constitution First Amendment Press Association also do not appear to be news media, but rather a means to issue press "credentials" to those who request them via the website. The press "credentials" issued by the Madison County Sheriff's Office identifies that you are associated with the www.madisontaxpayer.com website discussed above. Neither set of "credentials," however, demonstrates a connection with one of the "news media" described in section 2(f) of FOIA. Likewise, your degree in mass communications, standing on its own, does not demonstrate you are currently working as a member of the "news media."

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Accordingly, this office concludes that you are not exempted by the news-media exception from the recurrent requester provision of FOIA, and that no further action is warranted as to this matter. If you have any questions, please contact me at (217) 782-9078.

Very truly yours,

[REDACTED]
NEIL P. OLSON
Deputy Public Access Counselor
Assistant Attorney General, Public Access Bureau

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cc: *Via electronic mail*
Ms. Kim Wasser
Freedom of Information Officer
City of Collinsville
125 South Center Street
Collinsville, Illinois 62234
kwasser@collinsvilleil.org