



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

February 13, 2015

Via electronic mail



RE: FOIA Request for Review – 2015 PAC 33323

Dear [REDACTED]

This determination letter is issued pursuant to section 9.5(c) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(c) (West 2012), as amended by Public Act 98-1129, effective December 3, 2014). For the reasons that follow, the Public Access Bureau concludes that no further action is warranted as to this matter.

On January 16, 2015, you submitted a FOIA request to the University of Illinois (University) seeking the following information concerning an e-mail that you indicated was date-stamped "July 24 12:00:00":

- 1) specify whether this is midnight of the 23rd, zero dark of the 24th, or midnight of the 24th, zero dark of the 25th; and
- 2) specify whether the UIUC mail system has any component that allows for timed delivery of email or otherwise explains the timestamp of EXACTLY "12:00:00."¹

On January 20, 2015, you submitted another FOIA request to the University seeking responses to the following questions about a file concerning former professor Steven Salatia:

¹E-mail from [REDACTED] to University of Illinois FOIA (January 16, 2015).

February 13, 2015

Page 2

1. What documents are being placed in this file?
2. Are any of these documents third-party documents sent to the university other than emails?
3. What are UIUC's retention policies for third-party documents?^{2,3}

Your requests asserted that because you fall under the exceptions for news media and/or non-profit, scientific or academic organizations, you cannot be properly characterized as a recurrent requester pursuant to section 2(g) of FOIA (5 ILCS 140/2(g) (West 2012), as amended by Public Act 98-1129, effective December 3, 2014, 98-806, effective January 1, 2015).

Your assertions to the contrary notwithstanding, on January 26, 2015, the University responded by designating both requests as requests by a recurrent requester based on 96 requests that you had submitted within the previous 12-month period. The University indicated that it would provide initial responses within 21 business days of receipt of your most recent requests in accordance with section 3.2(a) of FOIA (5 ILCS 140/3.2(a) (West 2012), as amended by 98-756, effective July 16, 2014).

Your Request for Review does not dispute that you submitted a sufficient number of FOIA requests within a 12-month period to be treated as a recurrent requester, but you allege that the University failed to acknowledge that you fall under the exception for news media requesters. Specifically, you state that you engaged in a "news-gathering function" by identifying "TWO variants" of an e-mail at issue in a lawsuit.⁴ Your January 16, 2015, FOIA request to the University further contended:

In my case, I am appropriately classified as a "news media" filer because, during the course of 2014 I issued reports of my FOIA results at regular intervals to the West Urbana Neighborhood Association (WUNA) listserv,⁵ and because from December 2014, on, I have provided exposes on the abuses of your office at regular intervals on my website, samizdat-startups.org (as well as communicating these results to various media outlets for the entire period).⁶

²E-mail from [REDACTED] to University of Illinois FOIA (January 20, 2015).

³FOIA provides that a public body must make public records open to inspection and copying; FOIA does not require a public body to answer questions or explain the meaning of public records. *See* 5 ILCS 140/1.2, 3.3 (West 2012).

⁴E-mail from [REDACTED] to Public Access Bureau (January 27, 2015).

⁵A listserv is a software application that sends e-mails to all subscribers on a mailing list.

Section 2(g) of FOIA defines "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" 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 * * *."⁷

Legislative intent is best evidenced by the language used in the statute, and if the statutory language is clear and unambiguous, it must be given effect as written. *Blum v. Koster*, 235 Ill. 2d. 21, 29 (2009). You contend that you constitute a "news media" requester because you: (1) disseminated information to subscribers on an organization's mailing list; (2) disseminated information on your website; and (3) communicated information to news media outlets. A "newspaper" is defined as "a publication consisting of a number of large sheets of folded paper, on which news, advertisements, and other information is printed."⁸ "Periodical" generally refers to "magazines, especially serious or academic ones, that are published at regular intervals."⁹ A "news service," or "news agency," as it is frequently referred to, is "an organization that supplies news to newspapers, radio and television stations, etc. that subscribe to its services."¹⁰ Electronic versions of these types of media are included under the definition of "news media" in section 2(f) of FOIA.

⁶E-mail from [REDACTED] to University of Illinois FOIA (January 16, 2015).

⁷The 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. Because you have not suggested that your website constitutes one of these types of media, we will not address these aspects of the definition.

⁸<http://www.collinsdictionary.com/dictionary/english/newspaper>, accessed February 11, 2015.

⁹<http://www.collinsdictionary.com/dictionary/american/periodical>, accessed February 11, 2015.

[REDACTED]
February 13, 2015

Page 4

Your website contains various postings critical of the University that were published between November, 2014, and January, 2015.¹¹ The website, however, does not appear to constitute a newspaper, periodical or news service, or an electronic version thereof, as those terms are commonly understood. 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. Nor is there any indication that media outlets such as newspapers or radio and television stations subscribe to you to receive news. Accordingly, this office concludes that you are not exempted by the news-media exception from the recurrent requester provisions of FOIA.

Your FOIA request and Request for Review also appeared to assert that you constitute a non-profit organization. However, you acknowledged that although you "have an attorney working to obtain non-profit status[,]" he has not completed filing the required paperwork.¹² Therefore, there is no basis to conclude that you constituted a non-profit, scientific or academic organization within the scope of section 2(g) of FOIA at the time you submitted your FOIA request to the University.

Because you do not fall within the exceptions for news media or non-profit, scientific or academic organizations, we conclude that the University did not erroneously treat you as a recurrent requester in connection with your January 16, 2015, and January 20, 2015, FOIA requests. Accordingly, we have determined that no further action is warranted as to this matter. If you have any questions, please contact me at (312) 814-6756.

Very truly yours,

[REDACTED]
STEVE SILVERMAN
Assistant Bureau Chief
Public Access Bureau

33323 f no fi war univ

¹⁰http://www.collinsdictionary.com/dictionary/american/news-agency#news-agency_1, accessed February 11, 2015.

¹¹<http://www.samizdat-startups.org>, (last visited February 3, 2015).

¹²E-mail from [REDACTED] to Public Access Bureau (January 27, 2015).

[REDACTED]
February 13, 2015

Page 5

cc: *Via electronic mail*
Mr. Thomas P. Hardy
Executive Director and Chief Records Officer
University of Illinois
Office of University Relations
108 Henry Administration Building
506 South Wright Street, MC-370
Urbana, Illinois 61801
foia@uillinois.edu