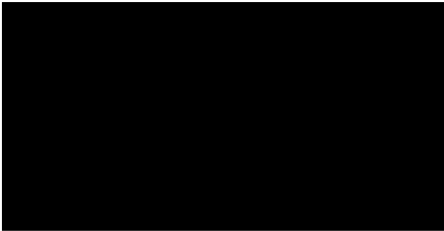




OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

May 27, 2015



RE: FOIA Requests for Review – 2015 PAC 35187 & 35393

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 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 these matters.

BACKGROUND

On April 13, 2015, you submitted a FOIA request to the University of Illinois (University) and requested that the University "apply the news-media exemption to this FOIA of mine, and do not impose any delay period in your response."¹ On April 20, 2015, the University responded by designating your request as a request by a recurrent requester based on the 118 FOIA requests that you had submitted within the previous 12-month period. The University indicated that it would provide an initial response within 21 business days of receipt of your request 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). The University further stated: "This office disagrees with your assertion that you fall within the definition of 'news media' as that term is defined in the Act, a position the Public Access Counselor upheld in determination 2015 PAC 33323."² On

¹E-mail from [REDACTED] to University of Illinois FOIA (April 13, 2015).

²E-mail from Thomas P. Hardy, Executive Director and Chief Records Officer, University of Illinois, to [REDACTED] (April 20, 2015).

██████████
May 27, 2015

Page 2

May 11, 2015, you submitted a Request for Review asserting that the University improperly treated your request as a request by a recurrent requester.

On May 13, 2015, you submitted additional FOIA requests to the University and again requested that the University "apply the media exemption to the recurrent requester status portion of Illinois FOIA law[.]"³ On May 20, 2015, the University responded by designating these requests as a requests by a recurrent requester based on the 130 requests that you had submitted within the previous 12-month period. The University again stated that it disagreed that the news media exception in the recurrent requester provisions of FOIA applied to you or your website. On May 20, 2015, you submitted another Request for Review asserting that the University improperly treated your request as a request by a recurrent requester. Because both Requests for Review concern the same allegation, we have consolidated these files for determination.

This office has previously addressed your contention that you are a "news media" requester as defined in section 2(f) of FOIA (5 ILCS 140/2(f) (West 2012), as amended by Public Act 98-1129, effective December 3, 2014, 98-806, effective January 1, 2015). *See* Ill. Att'y Gen. PAC Req. Rev. Ltr. 33323, issued February 13, 2015. After the issuance of that determination, you submitted additional information to our office in regard to this issue. In these Requests for Review, you claim that these and other "new facts" submitted to our office warrant re-consideration of our prior determination that you and your website (samizdat-startups.org) are not "news media" as defined by FOIA.⁴ You assert that information you have produced in relation to the University is "more than 'mere' comment on the facts" and is "actual news."⁵ In support of that assertion, you cite your postings on your website and another website (academeblog.org) as well as other correspondence relating to the University. You also assert that your website has subscribers as evidenced by another website ("The Public I") directly citing your website, and others using your information.

DETERMINATION

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) defines a "recurrent requester" as:

³E-mails from ██████████ to University of Illinois FOIA (May 13, 2015).

⁴E-mail from ██████████ to Public Access Bureau (May 10, 2015).

⁵E-mail from ██████████ to Public Access Bureau (May 10, 2015).

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[.]"

In our prior determination, we examined the plain language of section 2(f) which limits the definition of "news media" to a medium such as a "newspaper," "periodical," or a "news service," or an electronic version thereof.⁶ See Ill. Att'y Gen. PAC Req. Rev. Ltr. 33323, at 3. Notably, the statutory language exclusively focuses on the nature of the medium, not the content of the communication. Therefore, because your website did not meet the definition of one of these media, we concluded that the "news media" exception to the recurrent requester provisions did not apply. See Ill. Att'y Gen. PAC Req. Rev. Ltr. 33323, at 4.

In connection with the instant Requests for Review, we have reviewed and considered your submissions to this office concerning this issue that we have received since our prior determination. As described above, the focus of our inquiry must be the nature of the medium. Your submissions describe postings on your website and other websites as well as correspondence that extensively analyze issues relating to the University, but the existence of analytical content is not determinative of whether you or your website fall under the definition of "news media" in FOIA; you have not presented any new information relevant to the nature of the medium itself as opposed to the content of the communications. Similarly, with respect to the existence of subscribers, you have not described a regular distribution of information to subscribing news media outlets that would qualify you as a "news service," as that term is

⁶The 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 had not suggested that your website constitutes one of these types of media, we did not address these aspects of the definition. You also have not suggested that your website constitutes one of these types of media in connection with these Requests for Review.


May 27, 2015

Page 4

commonly understood. Accordingly, this office concludes again that you are not covered by the news media exception to the recurrent requester provisions of FOIA.

Because you do not fall within the exception for news media, we conclude that the University did not improperly treat you as a recurrent requester in connection with your FOIA requests. Accordingly, we have determined that no further action is warranted as to these matters. If you have any questions, please contact me at (217) 782-9078.

Very truly yours,


NEIL P. OLSON
Assistant Attorney General
Public Access Bureau

35187 35393 f no fi war univ

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