



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 4, 2015

Via electronic mail

Ms. Diane Benjamin
Bloomington Normal News
27248 East 1100 North Road
Ellsworth, Illinois 61737
blnnews@yahoo.com

Mr. Mark Messman
FOIA Officer
McLean County
115 East Washington Street
Bloomington, Illinois 61701

RE: FOIA Request for Review – 2013 PAC 29061

Dear Ms. Benjamin and Mr. Messman:

This determination letter is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2014)). For the reasons that follow, the Public Access Bureau concludes that McLean County (County) improperly denied some records responsive to Ms. Diane Benjamin's April 17, 2014, FOIA request.

On April 17, 2014, Ms. Benjamin submitted a FOIA request to the County seeking "[a]ll FOIA requests made by The Pantagraph/Lee Enterprises in the last 60 days" along with any responses to those FOIA requests.¹ On April 23, 2014, the County denied that request pursuant to section 7(1)(c) of FOIA (5 ILCS 140/7(1)(c) (West 2014)), asserting that compliance with this request would disclose the identity of a prior FOIA requester, and further asserting that the records sought do not fall under the definition of public records. On April 23, 2014, Ms. Benjamin submitted a Request for Review to this office contesting that response.

¹FOIA Request from Diane Benjamin, Bloomington Normal News, to McLean County (April 17, 2014).

Ms. Diane Benjamin
Mr. Mark Messman
December 4, 2015
Page 2

On May 2, 2014, this office forwarded the Request for Review to the County and asked it to provide a detailed explanation of the applicability of the asserted exemption. On May 15, 2014, Mr. Mark Messman, Assistant State's Attorney, provided a written response to this office on behalf of the County. This response was forwarded to Ms. Benjamin on May 22, 2014, who submitted a brief reply on the same day.

DETERMINATION

All public records in the possession or custody of a public body are "presumed to be open to inspection or copying." 5 ILCS 140/1.2 (West 2012); *see also Southern Illinoisan v. Illinois Dept. of Public Health*, 218 Ill. 2d 390, 415 (2006). A public body "has the burden of proving by clear and convincing evidence" that a record is exempt from disclosure. 5 ILCS 140/1.2 (West 2012).

Completeness of Response

The requirements of FOIA apply to "public records," which are records "having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of any public body." 5 ILCS 140/2(c) (West 2014)). However, a "requester is entitled only to records that an agency has in fact chosen to create and retain." *Yeager v. Drug Enforcement Administration*, 678 F.2d 315, 321 (D.C. Cir. 1982).

In its response, the County stated:

It is important to note that McLean County has not received any FOIA requests from the *Pantagraph*. The County has received FOIA requests from private citizens whom the County believes to be employed by the local newspaper, the *Pantagraph*. Those private citizens enjoy all the same expectations of privacy as discussed above. If they choose to waive or give [up] that privacy, it is their decision and not the decision of the County.²

In a phone conversation with this office, the County clarified that on its online FOIA request form, there is a space for the requester to input a company name, and certain requesters identified the *Pantagraph* as the company with which they are affiliated. If a requester does not specify that a FOIA request is being submitted on behalf of a news media organization such as the *Pantagraph*, the County is unable to presume that it was submitted on

²Letter from Mark D. Messman, Assistant State's Attorney, McLean County State's Attorney, to Benjamin Reed, Assistant Attorney General, Public Access Bureau (May 15, 2014).

Ms. Diane Benjamin
Mr. Mark Messman
December 4, 2015
Page 3

behalf of the news media organization. Notably, section 3(c) of FOIA (5 ILCS 140/3(c) (West 2014)) provides that a public body may not "require the requester to specify the purpose for a request, except to determine whether the records are requested for a commercial purpose or whether to grant a request for a fee waiver." Therefore, based on the available information, we are unable to conclude that requests from individuals who may be affiliated with the *Pantagraph* or Lee Enterprises, but who do not identify themselves as such in their FOIA requests by inputting the company name, are responsive to Ms. Benjamin's request. However, FOIA requests submitted by requesters who identify themselves as affiliated with the *Pantagraph* or Lee Enterprises are responsive to the request. Our determination about the applicability of section 7(1)(c) is limited to those requests.

Section 7(1)(c)

Section 7(1)(c) exempts from inspection and copying "[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information." 5 ILCS 140/7(1)(c). An "unwarranted invasion of personal privacy" is the "disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information."

In asserting that the responsive records are exempt from disclosure pursuant to section 7(1)(c), the County argues that "[w]hen a subsequent FOIA request identifies the records sought as being those of a previous FOIA requester, compliance with the subsequent request necessarily requires disclosure of the identity of the previous requester which is exempt personal information."³ In other words, the County appears to contend that disclosing FOIA requests made by the *Pantagraph* or Lee Enterprises would constitute an unwarranted invasion of those entities' personal privacy.

In *Chicago Alliance For Neighborhood Safety v. City of Chicago*, 348 Ill. App. 3d 188, 212 (1st Dist. 2004), the Illinois Appellate Court concluded that the disclosure of the names and addresses of individuals who submitted FOIA requests to the Chicago Police Department seeking records related to crime prevention meetings would constitute an unwarranted invasion of personal privacy under section 7(1)(c): "FOIA requesters, particularly those who are crime victims, witnesses, or individuals interested in crime prevention, have a privacy interest in keeping confidential their names and addresses and keeping confidential the fact they have made a FOIA request to the Department. Disclosing to the public their names and addresses from the



³Response to Request for Public Records, Mark Messman, Assistant State's Attorney, McLean County State's Attorney, to Diane Benjamin (April 23, 2014).

Ms. Diane Benjamin
Mr. Mark Messman
December 4, 2015
Page 4

FOIA requests, responses or denial file undermines that interest." However, corporate entities do not have a privacy interest as individuals do for purposes of the exemption in federal FOIA for the disclosure of law enforcement records that would constitute an unwarranted invasion of personal privacy.⁴ *FCC v. AT & T, Inc.*, 562 U.S. 397, 409-10, 131 S. Ct. 1177, 1185 (2011); *see also* Ill. Att'y Gen. PAC Pre-Auth. dl12330, issued February 17, 2010 ("corporate entities do not have 'personal privacy' interests within the meaning of section 7(1)(c).").

Ms. Benjamin's request specifically sought FOIA requests submitted by the *Pantagraph* or Lee Enterprises. Because corporate entities do not have personal privacy interests for purposes of section 7(1)(c) of FOIA, the disclosure of requests by the *Pantagraph* or Lee Enterprises or individuals acting on their behalf would not constitute an unwarranted invasion of personal privacy. Accordingly, based on the available information, this office concludes that the County improperly withheld under section 7(1)(c) FOIA requests submitted by the *Pantagraph* or Lee Enterprises or individuals who identified themselves as affiliated with those entities. This office requests that the County disclose those FOIA requests to Ms. Benjamin. We note that the County may still redact any "private information" from the FOIA requests under section 7(1)(b) of FOIA (5 ILCS 140/7(1)(b) (West 2014)).⁵

The Public Access Counselor has determined that resolution of this issue does not require the issuance of a binding opinion. This letter will serve to close this matter. If you have any questions, please contact me at (217) 785-7438 or at the Springfield address listed on the first page of this letter.

Very truly yours, 

BENJAMIN REED
Assistant Attorney General
Public Access Bureau

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⁴5 U.S.C. § 552(b)(7)(C) (West 2010).

⁵Section 7(1)(b) of FOIA exempts from inspection and copying "[p]rivate information, unless disclosure is required by another provision of this Act, a State or federal law or a court order." Section 2(c-5) of FOIA (5 ILCS 140/2(c-5) (West 2012)) defines "private information" to include, among other things, "home or personal telephone numbers [and] * * * home address[.]"