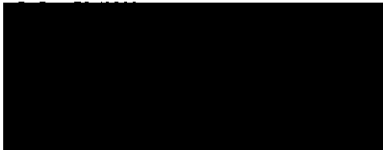


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

August 28, 2017

Via electronic mail



Via electronic mail

Mr. Russell E. Matson
Police Records Supervisor
Elgin Police Department
151 Douglas Avenue
Elgin, Illinois 60120
matson_r@cityofelgin.org

RE: FOIA Requests for Review – 2017 PAC 47422; 47571; 47800; 48007;
48008

Dear [REDACTED] and Mr. Matson:

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 2016)). For the reasons that follow, the Public Access Bureau concludes that Elgin Police Department (Police Department) did not improperly designate [REDACTED] as a recurrent requester in each of the above-referenced files.

On March 12, 2017, [REDACTED] submitted a FOIA request to the Police Department seeking copies of any and all records concerning the enforcement of Federal Immigration laws or policy from any law enforcement agency, Immigration and Customs Enforcement, or Homeland Security. On March 20, 2017, the Police Department notified [REDACTED] that, because he was a recurrent requester, it would provide its initial response in 15 business days. On April 14, 2017, the Police Department provided Mr. O'Neill with that response. On April 17, 2017, [REDACTED] submitted a Request for Review (2017 PAC 47422),

[REDACTED]
Mr. Russell E. Matson

August 28, 2017

Page 2

which, he then clarified, was intended to contest the Police Department's assertion that he qualified as a recurrent requester.

[REDACTED] subsequently submitted additional FOIA requests to the Police Department and corresponding Requests for Review, all of which likewise contested his designation as a recurrent requester. This office has consolidated these files for purposes of this determination because they involve the same parties and same issue.

This office sent copies of [REDACTED]'s first two Requests for Review to the Police Department and asked for a detailed explanation as to why it designated [REDACTED] as a recurrent requester. On May 31, 2017, the Police Department provided a detailed accounting of nine FOIA requests submitted by [REDACTED] between October 4, 2016, and October 10, 2016, including copies of those requests and its responses. The Police Department further explained that on October 18, 2016, it had informed [REDACTED] that he qualified as a recurrent requester. On June 20, 2017, [REDACTED] submitted a reply, asserting that he was exempt from the recurrent requester designation because he qualifies as news media.

In a July 19, 2017, telephone conversation with an Assistant Attorney General in the Public Access Bureau, [REDACTED] confirmed that he contests only his designation as a recurrent requester by the Police Department.

DETERMINATION

Section 2(g) of FOIA (5 ILCS 140/2(g) (West 2016)) provides, in pertinent part:

"Recurrent requester", as used in Section 3.2 of [FOIA], means 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.)

██████████
Mr. Russell E. Matson
August 28, 2017
Page 3

The Police Department has documented that ██████████ submitted nine separate requests for records in the 7-day period from October 4, 2016, through October 10, 2016. Section 2(g) of FOIA unambiguously provides that a requester who has already submitted seven requests for records within a 7-day period becomes a recurrent requester upon the submission of one further request to the same public body. Thus, under the plain language of section 2(g) of FOIA, ██████████ qualified a recurrent request when he submitted his eighth FOIA request on October 10, 2016, unless he falls under one of the exceptions to that provision.

In his June 20, 2017, reply to this office, ██████████ argued that his requests met the news media exception in section 2(g)¹ because: (1) his website, www.elginet.com, "has existed as a media information service" for 21 years; (2) his Youtube channel has over 650,000 views and has covered matters in and around Elgin; (3) he has accumulated a Facebook audience of over 2,500 people in two years; (4) his "Media Photography page" was created at least ten years ago and has over 10 million views; and (5) he won an award for one of his photographs in 2010.² However, ██████████ also stated:

In the past, the city has *not* required me to make FOIA requests *as* Elginet Media. I can however, resubmit these FOIA requests *as* Elginet Media this will relieve any confusion on their part but I feel they will then simply deem them as "Duplicate Requests". (Emphasis in original.)³

Based on this office's review, the October 2016, requests were not identified as being from a "news media" entity, or assert that the principal purpose of the requests was among the three principle purposes that are excluded from the definition of "recurrent requester" in section 2(g) of FOIA. Elginet Media does not appear to be a traditional news media outlet such as a newspaper and there is no indication that the Police Department was aware that ██████████ sought Elginet Media to be recognized as news media in order to avoid being treated as a

¹Section 2(f) of FOIA (5 ILCS 140/2(f) (West 2016)) provides:

"News media" means a newspaper or other periodical issued at regular intervals whether in print or electronic format, a news service whether in print or electronic format, a radio station, a television station, a television network, a community antenna television service, or a person or corporation engaged in making news reels or other motion picture news for public showing.

²Letter from ██████████ to Christopher Boggs, Assistant Attorney [General], Public Access Bureau (June 20, 2017), at 1-2.

³Letter from ██████████ to Mr. Christopher Boggs, Assistant Attorney [General], Public Access Bureau (June 20, 2017), at 2.

[REDACTED]
Mr. Russell E. Matson
August 28, 2017
Page 4

recurrent requester. Moreover, [REDACTED] only claimed that he qualified as news media in his reply in these matters, rather than in his FOIA requests or in his Requests for Review. Therefore this office did not ask the Police Department to address whether [REDACTED] requests met the news media exception. Because [REDACTED] did not identify his requests as being from a news media entity for a purpose excluded from definition of "recurrent requester" and because neither his FOIA requests nor his Requests for Review claim that his requests qualified as being from news media, this office is unable to conclude that the Police Department improperly designated him as a recurrent requester in connection with his FOIA requests in these matters.

The Public Access Counselor has determined that resolution of these matters does not require the issuance of a binding opinion. This letter serves to close these files. 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,

[REDACTED]
CHRISTOPHER R. BOGGS
Assistant Attorney General
Public Access Bureau

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