



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

**KWAME RAOUL**  
ATTORNEY GENERAL

January 2, 2020

*Via electronic mail*

Ms. Dani Tietz  
*Mahomet Daily*  
207 East Oak #D  
Mahomet, Illinois 61853  
dani@mahometnews.com

*Via electronic mail*

Dr. Lindsey Hall  
Superintendent and FOIA Officer  
Mahomet-Seymour Community School District No. 3  
1301 South Bulldog Drive, Box 229  
Mahomet, Illinois 61853  
lhall@ms.k12.il.us

RE: FOIA Request for Review – 2019 PAC 60459

Dear Ms. Tietz and Dr. Hall:

This determination letter is issued pursuant to section 9.5(b) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(b) (West 2018)). For the reasons set forth below, the Public Access Bureau concludes that Mahomet-Seymour Community School District No. 3 (District) improperly treated a FOIA request submitted by Ms. Dani Tietz as having commercial purposes.

On August 5, 2019, Ms. Tietz, on behalf of *Mahomet Daily*, submitted a FOIA request to the District seeking copies of communications among certain District officials since April 2, 2019. On September 4, 2019, the District notified Ms. Tietz that the copies were ready for pick up, but assessed a fee of \$85.00 because it claimed the request was commercial. Eventually, pursuant to a separate FOIA request, the District uploaded the records to its website. On November 4, 2019, Ms. Tietz submitted the above-captioned Request for Review contesting various aspects of the District's response, including its treatment of her request as having commercial purposes.

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Section 9.5(a) of FOIA (5 ILCS 140/9.5(a) (West 2018)) generally allows a person whose FOIA request has been denied to seek review of that denial with the Public Access Counselor. Section 9.5(b) of FOIA, however, contains an exception for commercial requests:

A person whose request to inspect or copy a public record is made for a commercial purpose as defined in subsection (c-10) of Section 2 of this Act may not file a request for review with the Public Access Counselor. A person whose request to inspect or copy a public record was treated by the public body as a request for a commercial purpose under Section 3.1 of this Act may file a request for review with the Public Access Counselor **for the limited purpose of reviewing whether the public body properly determined that the request was made for a commercial purpose.** (Emphasis added.)

Under the plain language of this provision, a person whose FOIA request is treated as a commercial request by the public body may ask this office to review only whether the public body properly determined the request to be commercial.

In light of this restriction, on December 3, 2019, this office sent a copy of the Request for Review to the District and asked it to provide this office with a detailed explanation only of its rationale for treating the request as having commercial purposes. On December 9, 2019, the District responded. On December 16, 2019, Ms. Tietz submitted a reply.

#### **DETERMINATION**

"It is a fundamental obligation of government to operate openly and provide public records as expeditiously and efficiently as possible in compliance with [FOIA]." 5 ILCS 140/1 (West 2018). Section 3.1(a) of FOIA (5 ILCS 140/3.1(a) (West 2018)) provides:

A public body shall respond to a request for records to be used for a commercial purpose within 21 working days after receipt. The response shall (i) provide to the requester an estimate of the time required by the public body to provide the records requested and an estimate of the fees to be charged, which the public body may require the person to pay in full before copying the requested documents, (ii) deny the request pursuant to one or more of the exemptions set out in this Act, (iii) notify the requester that the request is unduly burdensome and extend an opportunity to

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the requester to attempt to reduce the request to manageable proportions, or (iv) provide the records requested.

Correspondingly, section 2(c-10) of FOIA (5 ILCS 140/2(c-10) (West 2018)) provides:

"Commercial purpose" means the use of any part of a public record or records, or information derived from public records, in any form for sale, resale, or solicitation or advertisement for sales or services. For purposes of this definition, requests made by **news media** and non-profit, scientific, or academic organizations shall not be considered to be made for a "commercial purpose" when the principal purpose of the request 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.)

In its response to this office, the District indicated that it was still having an internal debate about how *Mahomet Daily* fits the definitions of "news" and "media," asserting: "Mahomet Daily is a commercial entity, thus it was treated as such."<sup>1</sup> In particular, the District questioned how *Mahomet Daily* fits into subsections (i), (ii), and (iii) of section 2(c-10) of FOIA, but the District did not set forth any facts or arguments as to why *Mahomet Daily* would not meet any of those three principal purposes. Ms. Tietz replied that Mahomet Daily "has served the area with news consistently Monday through Friday via a website."<sup>2</sup> She noted that many news organizations are commercial entities in the sense that they run advertisements and offer subscriptions, but argued that this fact does not negate the news media function of entities like *Mahomet Daily* that disseminate information concerning news and current events. Ms. Tietz also noted that on September 16, 2019, the District's Board of Education had passed a non-binding resolution recognizing *Mahomet Daily* as a news media organization. As to the purpose of the FOIA request at issue, Ms. Tietz asserted:

As always, the purpose of the request was made to disseminate information concerning news and current or passing events. Board members talked about topics and procedures that were discussed via email during a public meeting; that is a current

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<sup>1</sup>Letter from Lindsey A. Hall, Superintendent and FOIA Officer, Mahomet Seymour Community Schools, to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau (December 6, 2019).

<sup>2</sup>Letter from Dani Tietz to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau (December 16, 2019).

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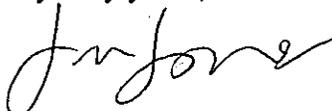
and passing event. It was the topic of a discussion, and to understand that discussion, I asked for those emails.<sup>3]</sup>

This office's review of the website [www.mahometdaily.com](http://www.mahometdaily.com) confirmed that *Mahomet Daily* is a news media organization. Section 2(f) of FOIA defines "news media" as including "a newspaper or other periodical issued at regular intervals whether in print or electronic format, a news service whether in print or electronic format[.]" 5 ILCS 140/2(f) (West 2018). The *Mahomet Daily* website is updated frequently with original content, including reporting on a range of matters of public interest. It appears much like other local news websites. Further, it appears clear that the purpose of Ms. Tietz's FOIA request was to access and disseminate information concerning news and current or passing events. Because having any of the principal purposes in the three subsections of section 2(c-10) is sufficient to exclude a request by a news media organization from having a "commercial purpose," this office concludes that the District improperly treated Ms. Tietz's request as having commercial purposes. This office advises the District to process any future FOIA requests from Ms. Tietz on behalf of *Mahomet Daily* under the timelines applicable to non-commercial requesters.

Because the District's appeared to indicate that it treated Ms. Tietz's request as having a commercial purpose simply because it considers *Mahomet Daily* to be a commercial entity, this office notes that not all requests by businesses have a "commercial purpose" under FOIA. Rather, a request must seek records for "sale, resale, or solicitation or advertisement for sales or services[ ]" to be properly characterized as having a "commercial purpose" under the definition of that term in section 2(c-10) of FOIA.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter serves to close this file. Please contact me at (312) 814-8413 or [jjones@atg.state.il.us](mailto:jjones@atg.state.il.us) if you have any questions.

Very truly yours,



JOSHUA M. JONES  
Deputy Bureau Chief  
Public Access Bureau

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<sup>3</sup>Letter from Dani Tietz to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau (December 16, 2019).