OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

April 4, 2017

Via electronic mail
Mr. Brendan J. Healey
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bhealey@mandellmenkes.com

Via electronic mail
Ms. Elizabeth Scannell
Assistant General Counsel
Office of the Cook County Sheriff
Legal Affairs Division
50 West Washington, Room 704
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RE: FOIA Request for Review – 2015 PAC 34653

Dear Mr. Healey and Ms. Scannell:

This determination 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 the Cook County Sheriff's Office (Sheriff's Office) did not improperly designate SpotCrime.com (SpotCrime) as a commercial and recurrent requester.

According to correspondence provided by the parties, [redacted], on behalf of SpotCrime, began submitting FOIA requests to the Sheriff's Office for crime data beginning in September, 2014. On March 5, 2015, SpotCrime requested that the Sheriff's Office furnish data on a daily basis. On March 13, 2015, the Sheriff's Office responded that it could provide the requested data on a monthly basis, but not on a daily basis. SpotCrime continued to submit FOIA requests on a daily basis for certain crime data, namely the block number of the location where the crime occurred, the date of the incident, and the type of crime. On April 7, 2015, the Sheriff's Office notified SpotCrime that its FOIA requests would be treated as having a

"commercial purpose" and being from a "recurrent requester" pursuant to sections 3.1 (5 ILCS 140/3.1 (West 2014)) and 3.2 of FOIA (5 ILCS 140/3.2 (West 2014)), respectively. On April 8, 2015, SpotCrime reiterated its request that crime data be provided on a daily basis, and asserted, "SpotCrime publicly reports on the data and as such we are a member of the press."[1]

On April 27, 2015, this office sent a copy of the Request for Review to the Sheriff's Office and requested that it provide factual information and legal arguments in support of its designation of SpotCrime as a commercial and recurrent requester. This office also requested that the Sheriff's Office respond to SpotCrime's assertion that it should be considered "news media" for the purposes of FOIA, as defined by section 2(f) of FOIA (5 ILCS 140/2(f) (West 2014)).

On May 6, 2015, the Sheriff's Office submitted a written response to this office. It described the course of requests from SpotCrime, and noted that when SpotCrime initially submitted a FOIA request in September, 2014, it had indicated that the request was made for a commercial purpose, and did not object to that designation. The Sheriff's Office further addressed whether SpotCrime is "news media": "Spotcrime is a privately owned corporation that makes commercial use of incident-level crime reports. Spotcrime makes crimemapping data available to its 'users' and contracted subscribers for a fee. Even where those contracted subscribers are members of the media, Spotcrime maintains a commercial interest in providing the crime data."[2]

On May 7, 2015, this office forwarded a copy of the Sheriff's Office's response to SpotCrime, and on June 2, 2015, SpotCrime replied. It described its services in further detail:

> SpotCrime owns and operates a website that provides highly localized crime news using data drawn from a variety of sources. * * * Such crime data has long been a staple of print news coverage in the form of police blotter sections. SpotCrime delivers the data to consumers online and via email alerts. SpotCrime has more than one million subscribers to its email alerts, and it sends more than 10 million crime alert emails per month, making it the largest crime alerting system in the United States. SpotCrime also

[1]E-mail from [redacted] to Elizabeth Scannell (April 8, 2015).

[2]Letter from Elizabeth Scannell, Assistant General Counsel, Office of the Cook County Sheriff to Benjamin Reed, Assistant Attorney General, Public Access Bureau (May 6, 2015), at 4.

> provides crime data to media organizations and has partnered with Gannett and Sinclair.[3]

SpotCrime argued that it is a "news service" as that term is used within FOIA's definition of "news media":

> SpotCrime qualifies as a "news service" both because it provides free crime information to visitors to its websites and also because it syndicates and sells crime data to its corporate media clients. Just as other news services package and sell data and information to media clients, so too does SpotCrime. In addition, SpotCrime distributes crime news to individual recipients at regular intervals via electronic push notifications such as email, RSS, and social media. Finally, SpotCrime disseminates information to a significant cross section of the public. SpotCrime's website has more than one million unique visits per month.[4]

On August 25, 2016, SpotCrime furnished this office with an example of a crime alert sent to a subscriber. On January 30, 2017, SpotCrime provided an additional explanation of its services to subscribers:

> Each one of these [crime] alerts is unique to the subscriber by location and radius. SpotCrime readers select a location and a radius for the personalized crime news they receive. SpotCrime then provides a specific map and list of crimes for each subscriber.
>
> SpotCrime does not merely send its readers an un-edited stream of data. SpotCrime classifies each crime. Assault with a deadly weapon, for example, will typically be classified as a shooting in the SpotCrime system. Historically, almost all police departments don't have a specific classification for shooting. SpotCrime also weeds non-crime events out of its news update[.]

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[3]Letter from Brendan J. Healey, Mandell Menkes LLC, to Sarah Pratt, Public Access Counselor, Office of the Attorney General (June 2, 2015), at 1.

[4]Letter from Brendan J. Healey, Mandell Menkes LLC, to Sarah Pratt, Public Access Counselor, Office of the Attorney General (June 2, 2015), at 2.

> * * * Each SpotCrime subscriber gets localized crime reports whenever a crime is proximate to the reader's address and within the radius the reader has selected.[5]

DETERMINATION

Section 2(c-10) of FOIA (5 ILCS 140/2(c-10) (West 2014)) defines "commercial purpose" as:

> 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.)

Section 2(g) of FOIA (5 ILCS 140/2(g) (West 2014)), defines a "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.)

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[5]E-mail from Brendan Healey, Mandell Menkes LLC, to [redacted] (January 30, 2017).

As highlighted above, the definitions of "commercial purpose" and "recurrent requester" both exempt requests from members of the "news media" who make requests for certain purposes. It is undisputed that SpotCrime has submitted the requisite number of FOIA to qualify as a recurrent requester and that its requests would be considered as having a "commercial purpose" if SpotCrime does not meet the "news media" exception in sections 2(c-10) and 2(g) of FOIA. Therefore, whether the Sheriff's Office properly designated SpotCrime's requests as having a "commercial purpose" or being from a "recurrent requester" hinges on whether the definition of "news media" in FOIA applies to SpotCrime

Section 2(f) of FOIA 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 the context of self-published websites purporting to be "news media," this office has opined that the statutory definition of "news media" requires more than simply disseminating information through a website or e-mail:

> Merely disseminating information or criticism electronically though 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. Ill. Att'y Gen. PAC Req. Rev. Ltr. 44649, issued December 2, 2016, at 3 (quoting Ill. Att'y Gen. PAC Req. Rev. Ltr. 33323, issued February 13, 2015, at 4).

In the absence of Illinois law on how to interpret the term "news media," this office has found cases from other jurisdictions interpreting similar statutory definitions to be persuasive. Those cases hold that "an individual or entity that self-publishes information on the Internet generally must demonstrate some adherence to recognized journalistic standards such as editorial oversight or the creation of original content similar to that of traditional media" in order to be considered "news media." Ill. Att'y Gen. PAC Req. Rev. Ltr. 44649, at 5. We further observed that "[t]he General Assembly has not expanded the definition in FOIA to include other individuals or entities apart from those traditional media sources and their electronic versions." Ill. Att'y Gen. PAC Req. Rev. Ltr. 44649, at 5.

This office has reviewed the SpotCrime website and the other materials furnished by SpotCrime. The SpotCrime website allows the public to access maps consisting of pinpoints designating the types of crimes reported in a certain area. The crime alerts are similar, but provide customized statistics and maps for subscribers. The fact that SpotCrime provides

personalized reports for its subscribers further supports the argument that it has a commercial purpose, rather than existing to access and disseminate news of interest to the public at large. Although SpotCrime tailors data provided to subscribers based on their location and other preferences, the essential product of the service is the compilation of data. This product is not original content compiled by journalists using recognized journalistic standards, but instead re-packages existing data for particular users, depending on their preferences. The SpotCrime service therefore lacks the essential components of a "newspaper," "periodical" or "news service" included in FOIA's definition of "news media."

SpotCrime argues that its product is analogous to police blotters that historically have been published in newspapers. However, the police blotter is but one component of those traditional news publications, not their defining characteristic.

Accordingly, this office concludes that SpotCrime is not "news media" as that term is defined in FOIA, and the Sheriff's Office did not improperly designate it as a commercial and recurrent requester. Therefore, the Sheriff's Office may respond to SpotCrime's FOIA requests according to the procedures set forth in sections 3.1 and 3.2 of FOIA.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter shall serve to close this matter. If you have any questions, please contact me at (217) 782-9078 or nolson@atg.state.il.us.

Very truly yours,

[redacted]

NEIL P. OLSON
Deputy Public Access Counselor
Assistant Attorney General, Public Access Bureau

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