

From: Holzer, James
Sent: Thursday, November 07, 2013 8:56 AM
To: FOIAHQ
Cc: Holzer, James
Subject: MuckRock

Good morning,

As you are aware, with the passage of the OPEN Government Act, Congress statutorily defined “representative of the news media” as “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” Additionally, Congress specifies that freelance journalists shall be considered representatives of the news media if they “can demonstrate a solid basis for expecting publication through [a news media] entity, whether or not the journalist is actually employed by the entity.” For freelancers, a publication contract with news organization would be “clearest” proof for inclusion in news media category but we may also consider “past publication record” in this regard (see OPEN Government Act § 3; see OMB Fee Guidelines, 52 Fed. Reg. at 10,018). In analyzing requests seeking media status on a case-by-case basis, we should determine whether the requester meets these standards and that the requester has demonstrated a firm intention of creating or publishing an editorialized work. Simply publishing a single article or posting the records on a website does not ensure media status. Rather, this is more akin to those of a middleman or information vendor despite the requesters conclusory assertions that they are representative of news media.

I conducted a search on Google News to review the past publications of the following individuals to help us determine the proper category assignment. Results are below.

Jason Smathers:

Past Publications:

Jason Smathers | MuckRock Reporter's Notebook blog.muckrock.com/tag/jason-smathers/ Cached
Similar Apr 18, 2011 - Posts about Jason Smathers written by [jasonsmathersmuckrock](http://jasonsmathersmuckrock.com).

NSA Releases Heavily Redacted Talking Points: Say It's Hard To ... www.techdirt.com/.../nsa-releases-heavily-redacted-talking-point... Cached

Similar by Michael Masnick - in 5,784 Google+ circles

Nov 30, 2012 - After receiving a Freedom of Information Act (FOIA) request from Jason Smathers, via Muckrock, the NSA has released a series of "talking ...

Shawn Musgrave:

Past Publications:

The NYPD Is FOIA-Proof Motherboard (blog)-Nov 4, 2013

By Shawn Musgrave ... discharge reports—a standard request, submitted this past March by a reporter via the MuckRock request system.

Media seeks reforms to lower costs, speed records access The Sun-Oct 15, 2013

"I'm in the trenches every day filing these requests, and mostly getting denied or not answered at all," said Sean Musgrave, Muck Rock projects ...

Making it easier to get state records WWLP 22News-Oct 15, 2013

Shawn Musgrave, editor of Muckrock, told 22News, “Right now the incentives in Massachusetts are very heavily slanted toward keeping the ...

Mass. lawmakers look to provide public access to gov't. docs.Daily Free Press (subscription)-Oct 20, 2013
Shawn Musgrave, projects editor at MuckRock, a public records service and media site dedicated to government transparency, said he ...

Michael Morisy:

Past Publications:

Sandy's hidden toll: Thousands of FBI filesSalon-Oct 31, 2013

The website MuckRock.com, which automates the Freedom of ... Hurricane Sandy that cofounder Michael Morisy decided to submit a request ...

Additionally, I do not think that they qualify for the “other” category as they have a commercial interest in MuckRock. According to MuckRock’s site, Jason Smathers is a MuckRock user. Shawn Musgrave is the Projects Editor for MuckRock. Michael Morisy is the Cofounder of MuckRock.

Based on the past publications, I believe that we should continue to ask them to provide a firm intention of creating or publishing an editorialized work AND evidence that they expect to publish through a news media organization. As previously identified in our original analysis, simply publishing a single article or posting the records on a website does not ensure media status.

Regards,

James

James V.M.L. Holzer, DM, CIPP/G

Senior Director, FOIA Operations

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From: Holzer, James
Sent: Thursday, September 26, 2013 1:37 PM
To: FOIA Officers
Subject: Muck Rock News
Attachments: Fee Waiver or Claims Membership in a Preferential Fee Category

Good afternoon,

On June 27, 2013, the DHS FOIA Office notified components that it will be responsible for determining the proper requester category and whether or not a fee waiver will be granted, in coordination with the applicable DHS component, when a requester seeks records from multiple components and has requested either a fee waiver or claims membership in a preferential fee category. DHS has received multiple requests from MuckRock seeking records from multiple components and often claims a fee waiver or claims media membership.

MuckRock describes itself as acting as “a request proxy, e-mailing, faxing or even snail mailing the request on your behalf. Documents are sent to our offices to be prepared by our team of experts for your convenience. We can even assist with analyzing your data. Our intuitive system ensures that your documents are for your eyes only until you're ready to publish” (see <https://www.muckrock.com/about/>, Accessed 9/26/2013).

MuckRock claims it is supported by grants, individual donations, and user fees. To submit a request you must create an account and then pay a fee to submit the request. MuckRock manages a new request by creating new virtual mailboxes: “Each request gets both a unique P.O. Box and e-mail address, and all incoming and outgoing responses are automatically channeled through them, so that when an agency responds via e-mail, the user is instantly notified. If they send a snail mail letter (usually the case), we scan it in and upload it that request’s unique page on MuckRock, and the user gets a notification e-mail that their digitized documents are ready” (See http://www.cjr.org/behind_the_news/qa_michael_morisy_cofounder_of_muckrock.php?page=all&print=true, Accessed 9/26/2013).

According to 5 U.S.C. § 552(4)(A)(ii)(II), “fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media.” The FOIA defines the term “a representative of the news media” as “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience”.

MuckRock is not a member of the news media. Certainly, certain requesters using MuckRock’s services may qualify for such status. Yet, even MuckRock describes itself as a “request proxy” that mails the request on behalf of their paying customer; an organization that simply collects and distributes information. Based on this information, it is my recommendation that on a case-by-case review, MuckRock be placed in the commercial category and charged accordingly. Let me know if you want to discuss.

Regards,

James

James V.M.L. Holzer, DM, CIPP/G

Senior Director, FOIA Operations

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