

Open Records Requests At State Universities in Ohio: The Law, Legalities, and Litigation

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Recent scandals on the campuses of major universities in the United States have deeply affected not only coaches and coaching staffs, but also faculty, students, university governing bodies and administrators. Ensuing investigations and news coverage have prompted reporters to seek records, documents, and to attend meetings in order to scrutinize actions and records of university administrations. The open access and information laws, often described as sunshine laws, provide for public access to many records, documents, and meetings. Publicly-supported institutions must comply with these laws and this legality has created a conflict between administrators and student journalists in state universities throughout the United States including Ohio. Engaging qualitative data collection techniques, researchers conducted interviews and focus groups to ascertain the perceptions, attitudes and actions of the various stakeholders in this confrontation between student journalists and university administrators. This paper focuses on the laws, legalities and litigation that have caused and/or resulted from this conflict in state universities in Ohio.

Introduction

A premier research university in Louisiana made national headlines, not because of sports or scholarship achievements, but because of the deep rift between news gatherers and university administration officials (Sunne, 2013). In fact, the situation reached such a severe state that a district court judge prepared to issue warrants to order the arrest and subsequent jailing of the public university's board members (2013). The critical issue centered on the fact that university administrators refused to release public records to local newspapers.

In another recent case, a Penn State alumnus was successful in attaining an appeals-court decision ruling he is entitled to records that contain the communications between the university's board of trustees and a board member who is the former state secretary of education in Pennsylvania (*Bagwell v. Pennsylvania Department of Education*, 2013; PSU

alum, 2013). The focus of the communications was on how Penn State administrators reacted to the child-sex abuse scandal there (Miller, 2013). University administrators initially refused to release the communications; the state Office of Open Records concurred (*Bagwell v. Pennsylvania Department of Education*, 2013; Miller, 2013). The appeals court ruled that Bagwell was entitled to the records he seeks; the court ordered the Office of Open Records to review the records held by the state education department (PSU alum, 2013).

These situations occur repeatedly throughout the United States each year. Administrators refuse to release public records to petitioning activists, reporters, or student journalists. The sunshine laws set up an adversarial climate between administrators and petitioners on the campuses of many public universities, including those in Ohio (Harkins, 2013; Student Editor Sues, 2013; Student Paper Suing, 2013; Hapney, 2012; Mytelka, 2009; Nicklin, 1999).

Review of the Literature

The struggle between administrators of public universities in the United States and student journalists who want to report the activities on the campuses is evident nationwide. Ohio is no exception. Three court cases—including two from state litigation records—provide useful information for understanding the legal ramifications of the laws. These are examined later in this section.

Ohio's Open Records and Open Meetings laws are known as "Sunshine Laws" (Sunshine laws; Ohio open records law, O.R.C. § 149.43). This set of laws provides access to records and government meetings to citizens of the state. Specifically:

"Public record" means records kept by any public office, including, but not limited to, state, county, city, village, township, and school district units...Upon request...all public records responsive to the request shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours...A public office or person responsible for public records shall make copies of the requested public record available at cost and within a reasonable period of time...If a request is ultimately denied, in part or in whole, the public office or

the person responsible for the requested public record shall provide the requester with an explanation, including legal authority, setting forth why the request was denied (Ohio open records law, O.R.C. § 149.43).

If a person does not receive nonexempt public records in a timely manner from the public office from which he/she requests them, the individual can start legal action against the office and seek a judgment ordering the office or person responsible for the records to adhere to the law (2011). State universities and colleges are subject to the Sunshine Laws.

Three court cases—two in Ohio and one elsewhere in the United States—dealt with issues regarding open records requests. First, in *Miami Student v. Miami University* (1997), the editor of a student newspaper at a public university in Ohio unsuccessfully attempted to gain access to records containing information on student disciplinary proceedings conducted before the university's disciplinary board. The editor sought to use the records to create a database and track student crime trends on the campus. The student journalists made written requests to the university administration, per the Ohio Public Records Act. The students made clear that they did not need names, Social Security numbers, student identification numbers, or any other protected information. University officials complied with the requests but cited, under the Family Educational Rights and Privacy Act (FERPA), that they had to delete identity, sex, ages, dates, times, and locations of the incidents. University administrators also deleted internal memoranda and other written statements that students composed to appeal decisions. The two editors, believing the responses were inadequate, asked the university to provide them complete, unedited copies of the public records, redacting only the Social Security numbers, names, and student identification numbers (*Miami Student v. Miami University*, 1997).

The students filed a writ of mandamus to force the university to comply with the Ohio Public Records Act. In granting the students' request, the Supreme Court of Ohio directed university administrators to provide copies of the requested disciplinary records. The court explained that insofar as the records were not academically focused, they were not exempt from release under FERPA (*Miami Student v. Miami University*, 1997).

The second case is *Red & Black v. Board of Regents* (1993), a case in which student journalists working for a newspaper at a university in Georgia sued

the institution's Board of Regents and its president. The plaintiffs sought injunctive relief because of denial of requests for access to records related to disciplinary proceedings conducted by the university's organization court about hazing charges lodged against two fraternities. A state trial court held that the student paper had a right to access university records under Georgia's Open Records Act but could not attend the proceedings of the organization court. The court also dismissed the president from the suit (*Red & Black v. Board of Regents*, 1993).

On further review, the Supreme Court of Georgia affirmed, allowing the paper access to the university's student court records. However, the court reversed on the point that the proceedings were not subject to state open meeting statutes, thereby allowing student journalists access to the meetings because the board that handles such proceedings represents the Board of Regents, a body that is required to meet the general assembly's requirement of open meetings. The court also reversed in dismissing the president from the suit, writing that because he was in charge of the entire institution, he is charged with carrying out its policies and procedures (*Red & Black Publishing Co. v. Board of Regents*, 1993).

A third case, also from Miami University of Ohio, reached a different outcome, placing the status of the law into an unsettled state (Hapney & Russo, 2013; *United States v. Miami University*, 2002). The Sixth Circuit affirmed that student disciplinary records do not qualify as educational records, in terms of FERPA. However, it also ruled that a trial court was not wrong in its denial of records to the students. The appellate court ruling stated that the student journalists had no First Amendment right guaranteeing them access to such records containing criminal activities and subsequent penalties assessed (2013; 2002).

In short, these cases illustrate the law as it relates to open records requests is unsettled, leaving the door open for additional cases of student journalists seeking public records and administrators not granting them access to such records. The contradictions will certainly lead to additional cases of conflict, legal wrangling and litigation.

Method

The research documented in this paper is one part of a much larger study on student newspaper governance on public university campuses in the state of Ohio (Hapney, 2012). This paper deals specifically with open records requests and the related activities between higher education

administrators and student journalists on public university campuses in Ohio. The researcher filed the appropriate paperwork with the Institutional Review Board for the Protection of Human Subjects in Research (IRB) at the University of Dayton.

The original study that garnered the bulk of the data presented in this paper utilized a mixed-methods research design that was predominantly qualitative (Ridenour & Newman, 2008). The researcher used a survey questionnaire to gauge the attitudes of administrators, faculty, and students regarding student newspapers on Ohio's public university campuses. Then, the researcher visited any university campus that had experienced litigation (as indicated in the responses in the survey) between student journalists and administrators. He conducted qualitative research via interviews and focus groups on those campuses in order to discover the specifics of what issues student journalists and administrators faced at those institutions relating to student newspapers.

The study included 11 universities: University of Akron, Bowling Green State University, University of Cincinnati, Ohio University, The Ohio State University, University of Toledo, Kent State University, Miami University, Cleveland State University, Wright State University, and Youngstown State University. Three state universities were eliminated from the study for various reasons affecting rigor. Of the 11 participating universities, four had instances of litigation related to open records requests. The researcher assigned pseudonyms to the universities and the informants on each university campus based, generically, on their position titles to protect their identities. Interviews and focus groups provided the data for the study and were all conducted in the informants' natural, professional/academic environments.

The data gleaned from four universities for this study are labeled with pseudo names to protect the informants and include "Hillcrest University" (HU), "University of Tomorrow" (UOT), "Taylor White University" (TWU), and "Buckeye State University" (BSU). Key informants in the study included student affairs administrators (SAA), journalism faculty members (JFM), student journalists (SJ), student newspaper advisory board members (SNABM), university legal team members (LTM), and business affairs representatives (BAR). SAA's and BAR's, typically, deal with student fees allocations to student newspapers. The other informants' positions are relatively self-explanatory in terms of rationale as to why they were selected for interviewing by the researcher.

Open Records Requests on Select Public Universities in Ohio Hillcrest University

Overview

The researcher conducted interviews on the Hillcrest University campus with a student affairs administrator (SAA), journalism faculty member (JFM), and a student journalist (SJ).

Paper Attributes

The publication at HU is an independent student newspaper that is published twice a week. It is generally between 8 and 16 pages, depending on advertising sales, and 8,000 newsprint copies are printed each day it is published. HU students are the primary audience members. Faculty and staff members are secondary audience members. Community members in the city in which HU is located are the third consideration in terms of audience. The paper is distributed on and off the HU campus. There is also an online version of the paper. The SJ said a typical Tuesday issue gets 8,000 hits. On the day a story with major controversy was published in the paper that number rose to 17,000 hits. The HU student newspaper also utilizes Twitter and Facebook regularly.

Informants

Administrator.

The student affairs administrator (SAA) has served at HU for several years. She has worked in higher education for over three decades.

Student.

The student journalist (SJ) started his time at HU with the intention of studying journalism. "I took two journalism classes my freshman year," he indicated. "Then I just really wanted to study other things. I wanted to give myself a journalism education by working at the paper . . ."

Faculty.

The journalism faculty member (JFM) serves in academic affairs at HU as well as student affairs at the university. Her career includes spending over a decade at the university. The JFM oversees all of the financial aspects

of the student newspaper and guides the students editorially. She does “not tell them what to do.” “I critique the paper,” she maintained.

Open Records

Administrator.

The SAA explained that last year or the year before student journalists who worked for the newspaper did open records requests on everything:

It was like, what is it you really need, because you just asked for an open records request that will take two people about five days to pull this together. What is it, specifically, that you need? And, so, trying to help educate them about . . . you know . . . you just don’t do this blanket open records request. This is not going to help you.

Student.

The SJ did not mention any issues with open records requests at HU.

Faculty.

The JFM added that there are occasionally issues with open records requests at HU. Sometimes the administration turns down the newspaper’s requests. “But we’ve never really sued,” the JFM commented. “Eventually they end up giving us the records.” The JFM explained that the university attorney is the biggest resistance to releasing records to the paper. The attorney usually writes the editor a letter telling the paper’s staff whether it will or will not get the records. “We’ve taken it to the Student Press Law Center a few times and they write a letter and . . . we end up getting (the records),” the JFM indicated.

There was a fire on campus a few years ago and the student newspaper staff members tried to get some records and the university administration would not release the information. “I told (the students) to drop it,” the JFM maintained. “It was probably not appropriate.”

The University of Tomorrow

Overview

The researcher conducted interviews on and near The University of Tomorrow (UOT) campus with a journalism faculty member (JFM) in the academic department that provides journalism students to the newspaper, a student affairs administrator (SAA), a student newspaper advisory board member (SNABM), and a student journalist (SJ) who works for the paper. The student newspaper is completely independent of UOT.

Paper Attributes

The student newspaper at The University of Tomorrow (UOT) is an independent student newspaper with no financial or editorial ties to UOT. The paper's offices are located adjacent to the UOT campus. It was a student organization prior to severing ties with the university, gaining independent status in 1999. The catalyst that caused the newspaper to become independent was a dispute between the student newspaper staff members and the president of the university in the late 1990s. There were many accusations that the president tried to censor the student newspaper. The paper has a circulation of 8,000 and is published twice a week. The online version is updated twice a week and as needed.

Informants

Administrator.

The SAA plays a major role in leading all student-affairs related functions at UOT. Her background is in counseling.

Student.

The student journalist (SJ) served as editor of the student newspaper at UOT, news editor, and managing editor. Her main duty is to manage the editorial staff by keeping track of content, generating ideas for content, and making sure the content is something that is "actually interesting for students to read and is relevant to the community."

Faculty.

The JFM is a full professor of many years in the academic department that trains student journalists at UOT. The second faculty member is a student newspaper advisory board member (SNABM) who serves in an advising capacity to the independent student newspaper. He is

an alumnus of UOT and former member of the student newspaper's editorial staff.

Open Records

Administrator.

The SAA did not address open records issues during the interview.

Student.

The SJ did not address open records issues during the interview.

Faculty.

The SNABM stated the university "almost invariably" drags its feet on public records requests. He attributes this to the fact that the paper publishes twice a week. "If we put through a public records request on a Wednesday and we're publishing Wednesday night and being distributed Thursday morning . . . if they can drag their heels . . . probably not going to be as interested in it for the following Monday edition." He declared it is just easy for the university employees not to do the work to compile the records. "They're busy and they got other things to do and they don't want to deal with us. Even though the law says in a timely manner," he reported.

The SNABM also explained that FERPA is cited. He believes part of the reluctance on the part of the administration is "laziness" while the other part of it is "...they're not educated in the law:"

So, I've always advised the students to take the Sunshine Law with them . . . when it does come down to it and it's something they don't want to release, they say, well, I'm sorry, our general counsel has said no, and we say, "bullshit," but are we really going to take them to court? Now we have a very good First Amendment attorney . . . who is . . . also the First Amendment attorney for the (local metro daily) . . . and he has done a couple of things pro bono for us. And we have sued and sued successfully . . . I don't even know if we've taken it to court.

The SNABM acknowledged that he thinks the fact that the newspaper staff members filed the lawsuit was enough to get the university to turn over the

records. He recognized that most public records are not protected information. He said the university's general counsel also adds, typically, that the paper's requests are not for protected information. But sometimes the end of the semester is approaching and students have to decide how hard they want to push it. "(In one case) the editor . . . got another job and so the story went away . . .," the SNABM commented. He explained that the university won by dragging its feet. "That's one area where I feel that . . . facts are facts. And it's a public university."

Taylor White University

Overview

The researcher conducted interviews on the Taylor White University (TWU) campus with a student affairs administrator (SAA), journalism faculty member (JFM), student journalist (SJ), and a member of the university's legal team (legal team member, LTM). There are two student newspapers at TWU.

Paper Attributes

One of the two student newspapers is tied to a two-semester class. It was founded in the late 1990s and is published twice a month by students in the journalism academic program. The journalism students publish the paper as part of a newspaper lab. Students are required to take it as a capstone class in their academic program. It is published every two weeks and 4,000 copies of this free newspaper are distributed, mainly, through the stands on campus. The other method of disseminating the newspaper is in local businesses. In addition, the newspaper goes through the campus mail to everyone who has a mailbox on campus, including students, faculty, and staff members. Primary audience members for this lab paper include university community members such as students, faculty, and staff members. Secondary audience members are local community members who pick up copies in business locations near and around the campus. There is also an online version of this student newspaper. The newspaper staff uses Facebook and Twitter to do updates.

The other student newspaper, a weekly, is like most other college newspapers because it is a student club activity that was founded in the 1920s. Another faculty member in the journalism program advises this paper that is considered a free-speech zone. Its primary audience is the

student body at TWU while the secondary audience is faculty and staff members. There is an online version that the SAA considers successful. The student newspaper that is tied to the class is the paper on which the researcher focused the most of these two papers in this study because participants consider it as the more legitimate newspaper on the campus.

Informants

Administrator.

The SAA works with the student affairs operations at TWU, including student life, student activities, student government, student media (including the free speech zone paper, multicultural magazine, and poetry magazine), student health services, disability services, the veterans program, the women's center, residence life, campus recreation, the ombudsperson, and counseling services. His work includes four years at TWU and 25 years in student affairs.

The second administrator interviewed at TWU is a university legal team member (LTM), a role she has held since the 1990s. The LTM's work in higher education began in 1996. In her current role, the LTM provides legal advice and counseling to the board of trustees, president, and senior-level administrators.

Student.

The student journalist (SJ) is an editor of the student newspaper that is tied to the class. His duties include laying out the front page and helping the executive editor with news judgment, what stories go where, and suggesting and critiquing story ideas. He has held his position for one semester.

Faculty.

The journalism faculty member (JFM) teaches journalism courses at TWU. His work at the university spans several years. He teaches the class to which the lab newspaper reports.

Open Records

Administrator.

The SAA did not mention issues related to open records.

The LTM stated that all open records requests go through her office and she and her staff members “follow to the letter” the open records laws in the state of Ohio. She declared that if there is a legitimate exception, they will tell the requester what it is, or if they need clarification, they will ask for it. Otherwise, they make the records available. “We try to keep things transparent, really,” she reported. “It’s probably been a long time, if ever, since there’s been a problem with that.” The LTM acknowledged that there are only a few exceptions of things that are exempted from the open records act. “It’s very broad.” She recognized that:

Just in the last two presidencies . . . which would be the past 11 or 12 years . . . I think there’s been a good relationship between the president and upper administration and the newspapers. I think when you have open dialogue, there’s less of a need for records requests . . . I don’t even recall entertaining too many from the (papers), because I think they’re getting what they need from interviews and other sources.

Student.

The SJ noted no issues with open records requests at TWU.

Faculty.

The JFM indicated no issues with open records requests at TWU.

Buckeye State University

Overview

The researcher conducted interviews at Buckeye State University (BSU) with a journalism faculty member who serves as a student newspaper advisory board member (SNABM), a student affairs administrator (SAA), a business affairs representative (BAR), another journalism faculty member (JFM), and six student journalists (SJ) who hold positions with the student newspaper, the campus television station, and the news website produced by students at BSU. There is a major push in the area of media convergence at this institution.

Paper Attributes

There is one student newspaper at BSU that is published daily during the regular school year and weekly during the summer. During both time periods, the 8,000 copies are distributed on and off campus. The SNABM stated that the students consider other students as their primary audience while faculty, staff, and other university community members are secondary audience members. He does not believe that student journalists view off-campus readership as audience targets, because of the university's dominance in the community. In addition to the daily newsprint edition of the paper that is found in stands across the BSU campus, there is an online version of the newspaper. The SNABM views it as successful. The JFM also thinks the online version of the paper is very successful. "Thursday is the peak, typically, and we get about 6,000 page views. It varies greatly depending on what the content is that day, but typically about 4,000 page views (per day)," the JFM offered. She pointed out that they get a lot of one-story hits based on Facebook and Twitter.

Informants

Administrator.

The student affairs administrator (SAA), who has worked at BSU for approximately two decades, has spent nearly 30 years in higher education. Her experience related to journalism consists of her work with student media through her roles in student affairs.

One administrator has served as a business affairs rep (BAR) for student media at BSU for two decades. She attends to business-related items for student media, and works with the university's two student media governing boards. She is known as "BAR" in this study.

The BSU president was not available for a meeting for this study. He was one of two university presidents to complete the researcher's survey questionnaire during the quantitative phase of the original, larger study.

Student.

The researcher interviewed multiple student journalists (SJ's) around a student-media boardroom table. Students present represented the assigning editor for the BSU student newspaper, main editor for the paper, a news producer for the campus television station, the news director for the station, the programming director for the station, and the online managing editor for the media convergence website representing all

student media at BSU. The student journalists had long affiliations with student media. They are known as “SJ” or “SJ’s” in this study.

Faculty.

The journalism faculty member who serves as the student newspaper advisory board member (SNABM) has worked at BSU for several years. He worked with both high school and college journalists during his lengthy career. He is known as “SNABM” in this study.

The second journalism faculty member (JFM) worked at a major local daily newspaper for many years. She is known as “JFM” in this study.

Open Records

Administrator.

The two administrators interviewed gave no issues with open records requests at BSU.

Student.

Students vocalized no issues with open records requests at BSU.

Faculty.

The SNABM offered that the student journalists have, “generally,” experienced success in getting what they need, eventually, through open records requests. “I have to say not in every circumstance, but from the university, generally, they have,” the SNABM pointed out. “There’s . . . the local transportation agency here and the city . . . have not always been especially helpful, or the police in (the city), as well. But I think, eventually, they have been able to get what they want.”

The JFM remarked that the student journalists had increased the number of freedom of information requests they have made over the past year-and-a-half, and the administration has not complied quickly all the time. “But I wouldn’t say they are uncooperative,” the JFM stated. “We almost always get the information we’re requesting, or, like we recently asked for the board of trustees’ contact information because they don’t have any way for students to contact the board unless you attend a meeting, and even then it’s really hard to get a word in edgewise,” she declared. The JFM indicated she was not sure the students’ request was outlined as well as it should have been; students requested home addresses

and phone numbers. "They denied it based upon some Ohio court cases where even if they are considered university employees their home addresses aren't considered public record, but they still haven't followed up on the email. The home address thing, I think they are right on that."

The JFM reported that their main argument regarding the release of the board members' information is that the board members are not paid, "so how can they be university employees"? She acknowledged that she thinks email and home addresses are considered public record. "The problem I am having with them is they should be proactive about this and say, 'Wow, we should find a way for people to talk to the board members,'" the JFM recognized. She said this was after the newspaper staff ran a story about the lack of process involved in evaluating and compensating the university president, giving him huge performance bonuses each year. "There is no process," she added. "There is no written evaluation. There is no communication about it. It's slam-dunk. But we requested an interview through the communications office to talk to the board chair. It was denied." The JFM indicated those through whom the request was made wanted questions ahead of time. "We said, 'No, we don't do that,'" the JFM commented. She explained all they wanted was to find out how the board evaluates the president. "There is no ax to grind, but it became an ax to grind because there is no process," she indicated. "They literally handed him a (nearly \$200,000 bonus)."

Conclusion

Universities in Ohio face the risk of increased litigation due to the adversarial atmosphere created by the sunshine laws. Student groups, student newspapers, reporters and investigators increasingly seek information from offices and university administrations that sometimes resist relinquishing the control of the carefully-guarded records. Judges and juried decisions concerning open access have set the stage for conflict, opposition and legal actions. The exception in this article centered on the advice of a university Legal Team Member (LTM) who advises, ". . . when you have open dialogue, there's less of a need for records requests . . . because (student journalists are) getting what they need from interviews and other sources." That said, administrators, faculty members, and students should re-examine the laws, both federal and state, in order to prepare for the next legal threat on the horizon. Students, journalists and other petitioners must exercise patience while waiting for university

administrators to fill their properly-filed requests. On the other hand, administrators must remember that “ignorance of the law is no excuse!”

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