

Sunshine Law could allow for backdoor censorship of publicly funded journalism

With a decline in the independent, local newspaper industry as a whole, publicly-funded institutions have attempted to fill in the many gaps that have been left behind. Journalism schools, many of which are state government operated, have played a large role in this process.

“It’s great for communities because they get local news that they otherwise wouldn’t get,” said Kathy Kiely, the Lee Hills Chair in Free-Press Studies and Professor at the University of Missouri School of Journalism. “This is an important model going forward into the future for providing communities with information they need.”

However, the relationship between journalism and publicly funded institutions gets complicated in conversation with public record laws, along with journalists’ ability to protect their sources. This became evident last September when Missouri Attorney General Eric Schmitt’s office requested emails from the Columbia Missourian and two Missouri University journalism school professors by way of the Sunshine Law. The Sunshine Law is meant to foster transparency by requiring public institutions to disclose their activities to the public.



(Photo by Attorney General Eric Schmitt via Flickr)

The request was in regard to the school's collaboration with PolitiFact, a nonpartisan newsroom that fact-checks statements by public officials. The school worked with PolitiFact to make sure that professors were trained in their fact-checking methodology while also training students in the PolitiFact fact-checking rubric.

Emails in the private journalism sector are typically protected by shield laws – laws that protect reporters' privilege and allow reporters to refuse to reveal information about their sources. However, with the *Missourian* being affiliated with the University of Missouri, a state-funded institution, there is no such protection. The journalism school is cooperating with the request.

"Journalists who work in [publicly operated institutions] are now going to be subjected to fishing expeditions from public officials who do not like what they're reporting," Kiely said. "That is a form of censorship that has a chilling effect on news organizations."

Tim O'Neil, a retired Saint Louis Post-Dispatch reporter and University of Missouri '74 alum, said he wished the school pushed back a bit more on the principle of Schmitt's request.

"It was a stunt by Schmitt to get a few headlines," O'Neil

said. "The larger implication is that if professors have to give up their emails over fact-checking exercises, then what's to keep a mayor, or a Senate candidate from demanding the emails of a reporter who's writing an investigative story. If the university rolls meekly on this, then what does the journalism school have in terms of internal workings?"

Schmitt's office has not specified what it is that they're after with their request, just that they want to better understand how the Missourian checking works.

"That raises the next question," Kiely said. "The Attorney General can tell us how to do our jobs? I mean, do we really want to live in a country where the people in power get to tell journalists what they should and shouldn't be covering?"

Mike Hiestan, a student legal counsel at the Student Press Law Center, said that with public funding entering the journalism sector, there's a whole ecosystem of news media that needs up-to-date legislation.

"The citizens are supposed to own the government, and the government works for us," Hiestan said. "It gives us the owners the ability to keep tabs on what it is our government officials are up to. People like Schmidt are really taking advantage of openness in these laws that is allowing them to go after information that they have no business seeing."

Brian Munoz, a Southern Illinois University alum and freelance journalist, said groups like the Student Press Law Center are vital to help news organizations attached to public institutions keep their editorial independence. He said the Sunshine Law should be working in favor of journalists and not against them.

At SIU, the Sunshine Law did work in Munoz's favor. Munoz worked at the student publication, the Daily Egyptian, during his time there and filed many FOIA requests as a part of his investigative reporting.

“Public records are a valuable resource to hold people accountable,” Munoz said. “State agencies and those that receive taxpayer dollars in order to keep them accountable and transparent. Right now, where it becomes a little bit of a sticky situation is when it’s on the flip side with a news organization that is affiliated with a public institution.”

Without Shield Law protections, journalists can’t guarantee their sources the protection they need to speak with anonymity.

“Courts have found that the public good served by journalism is important enough that it should be provided some protection,” Kiely said. “Journalism is in many ways a last resort for people who are whistleblowers, people who are in an institution that’s corrupt. They’re not going to talk and corruption festers. For years, this has been a precedent, and that’s the reason for it. If you take away that protection, it makes it more difficult for journalists to do their jobs.”

Hiestan said that Schmitt’s email request, along with the larger story of the vulnerability of publicly funded journalism institutions, sets a dangerous precedent for the future.

“To find out what stories student editors are covering, what the local NPR affiliate is covering, and who they’ve talked to – that’s abusing Freedom of Information laws, ” Hiestan said. “They were never intended to be used that way.”