



National Freedom of
Information Coalition

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Knight Fund case compels public records release in upstate NY

New York Supreme Court finds that a volunteer fire company must release requested records, but that their meetings are not subject to the Open Meetings Law.

COLUMBIA, Mo. (January 27, 2011) – A New York judge, ruling in a case supported by a Knight FOI Fund grant, has ordered disclosure of records sought by a Web publisher and a community activist regarding a volunteer fire company.

But in the same 13-page ruling, Warren County (NY) Supreme Court Judge David B. Krogmann held that many of the meetings of the Chestertown Volunteer Fire Company are of a “social” or “private nature,” and are not subject to the state’s Open Meetings Law.

June Maxam, editor and publisher of the *North Country Gazette*, and Christine Hayes, a deputy zoning administrator and assistant assessor for the Town of Horicon, NY, who represented themselves in the lawsuit filed on September 15, indicated that they planned to appeal the ruling.

Noting that they had represented themselves and therefore had no attorney bills, Judge Krogmann also declined to award the two women reimbursement for their legal fees and expenses. As offset for the fee reimbursements Maxam and Hayes had sought, Krogmann ordered that copying charges for the records being sought be waived. Maxam disputes the judge’s finding that she and Hayes incurred no legal bills.

Open government advocates expressed dismay over portions of the ruling, although Maxam and Hayes will be getting the records that were at the heart of the legal case after Krogmann completes an *in camera* judicial review to allow redaction of exempt, personal or private information.

“If they choose to appeal as they say they will, I hope some member of the New York bar who believes in open government will step forward and aid these petitioners in their important legal battle,” said Kenneth F. Bunting, executive director of the National Freedom of Information Coalition (NFOIC).

“I know that finding volunteer legal representation is especially difficult when a judge has already ruled against granting fees and expenses. But there is much more at stake here than just a community squabble,” Bunting added.

“It seems that the court did not thoroughly consider the breadth of the decision rendered by the state's highest court more than 30 years ago,” said Robert J. Freeman, executive director of the New York State Committee on Open Government, a division of the Secretary of State's office that issues advisory opinions on open government matters.

Referring to a 1980 state Court of Appeals ruling in a case called *Westchester Rockland Newspapers Inc. v. Kimball*, Freeman added: “Based on that [Westchester] decision, it has been our view that meetings of volunteer fire companies are subject to the requirements of the Open Meetings Law.”

But Krogmann said in his ruling that while the legal definitions and public functions that make the volunteer fire company subject to the state law that governs disclosure of public records are “somewhat synonymous in many regards” to the state's Open Meetings Law, “their similarities are not absolute.”

“This court does not find that the brush is equally as broad in context of the Open Meetings Law,” Krogmann wrote. “The meetings held by the Fire Company, a private not-for-profit charitable organization, are distinctly different from those meetings held by the Board of Fire Commissioners of the Chestertown Fire District, which is a public body by statute and subject to the Open Meetings Law.”

Krogmann gave the Chestertown Volunteer Fire Company, who were the named respondents in the case, 30 days to give him “any and all papers, records, minutes, etc., which are in the possession of the Fire Company and have been requested by the petitioners in their FOIL [Freedom of Information Law] requests . . . for *in camera* review.”

Krogmann also told the Chestertown Fire District—although they are not named as a party in the suit—that they are obligated to “provide any and all documents requested by the petitioners.”

However, Krogmann said in his ruling that “there is a profound difference” between the fire district and the volunteer fire company. He said meetings of the fire company are largely “social” and of “a private nature” and therefore the “Open Meetings Law does not apply” to them.

Maxam and Hayes have said it is the judge's ruling regarding the applicability of the state's open meetings law to the volunteer fire company that will be the primary focus of their appeal.

Bunting said he would try to expedite the screening and review process to give Maxam and Hayes a prompt answer should they submit a supplemental application for Knight Fund support for their planned appeal.

The *North Country Gazette* was published as a weekly newspaper from 1981 to 1994. It is now a daily news Web site that touts itself as a source of “independent, investigative journalism.” In recent months, its news articles and commentary about the volunteer fire company have dealt with arrests over alleged thefts, allegations of personal use of city credit cards, lack of security at the firehouse and, of course, accountability and transparency.

In its first year, the Knight FOI Fund has assisted NFOIC member organizations and state coalitions, their allies and other litigants in 17 FOI or access cases. While not a complete victory, Judge Krogmann’s January 12 ruling represented the ninth court ruling in favor of disclosure or access in cases supported by the Knight FOI Fund since its inception in January 2010.

Among others were a California case that kept the nation’s largest pension fund from hiding details of a \$100 million real estate investment loss, a U.S. Supreme Court case regarding election-qualifying petitions, and a case involving a New Mexico state college that had declined to disclose records detailing building projects and a search for a new president. Several Knight Fund-supported cases are still being adjudicated.

The NFOIC, a nonpartisan coalition of open government groups and advocates headquartered at the Missouri School of Journalism, administers the Knight FOI Fund. It is part of a \$2 million, three-year grant from the John S. and James L. Knight Foundation announced last year.

The Knight FOI Fund does not pay attorney fees. It is set up to fuel and assist the pursuit of important FOI cases by helping to defray upfront costs such as filing fees, depositions, court costs and other expenses associated with legal actions. The Knight Fund only seeks reimbursement if resulting awards in the cases cover fees and costs for which the Knight Fund money was spent.

For more information on the **Knight FOI Fund**, including the selection process for grants and how to apply, see <http://www.nfoic.org/knight-foi-fund>.

The **John S. and James L. Knight Foundation** advances journalism in the digital age and invests in the vitality of communities where the Knight brothers owned newspapers. Since 1950, the Foundation has granted more than \$400 million to advance quality journalism and freedom of expression. Knight Foundation focuses on projects that promote community engagement and lead to transformational change. For more, visit <http://www.knightfdn.org/>.

The **National Freedom of Information Coalition** is a national network of state freedom of information advocates, citizen-driven nonprofit freedom of information organizations, academic and First Amendment centers, journalistic societies and attorneys. Its mission is to foster government transparency at the state and local level. A unit of the Missouri School of Journalism, the NFOIC is an affiliate of the Donald W. Reynolds Journalism Institute. NFOIC is based at the University of Missouri, home to the nation’s oldest Freedom of Information Center. For more, visit <http://www.nfoic.org/>.

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