



National Freedom of
Information Coalition

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NFOIC awards Knight FOI Fund litigation grant in New York public records suit

Petition challenges Chestertown Volunteer Fire Company's "steadfast effort to block the review of public records" and "hostile denial of access to meetings."

COLUMBIA, Mo. (September 28, 2010) – A news website publisher in upstate New York and a citizen open government activist have been awarded a litigation grant from the Knight FOI Fund to press a legal action against a volunteer fire company.

According to a complaint filed in the Warren County (NY) Supreme Court, the Chestertown Volunteer Fire Company continues to insist it is not subject to New York state's Freedom of Information Law (FOIL) and Open Meetings Law (OML), despite repeated requests for records and meeting access by the plaintiffs in the case, and an advisory opinion issued in June by the state's Freedom of Information Committee.

The \$2,000 litigation grant was announced by the National Freedom of Information Coalition (NFOIC), which administers the Fund that was created by the John S. and James L. Knight Foundation. The grant was the first awarded for a New York case since the Fund was established in January.

Christine Hayes, a deputy zoning administrator and assistant assessor for the Town of Horicon, NY, and June Maxam, editor and publisher of the *North Country Gazette* filed the lawsuit on September 15, 2010, against the Chestertown Volunteer Fire Company, Inc., of Chestertown, NY, and its fire chief, Jack Crossman.

"We are elated," Ms. Maxam stated in an email after learning of the grant award. "This will somewhat relieve the overwhelming pressure we have felt about how we were going to fund this very important litigation."

Whether or not volunteer fire companies in New York are subject to public disclosure and open meetings laws is not a new issue in the state. But the state's Freedom of Information Committee, a division of the Secretary of State's office which issues advisory opinions on open government matters, said it has been settled law for 30 years that fire companies and their governing boards are subject to those laws.

The committee said that the definitive ruling on the matter was in a 1980 case, *Westchester Rockland Newspapers Inc. v. Kimball*, ruled on by the state's Court of Appeals, the highest court in the state.

In a 1988 case, the Albany County Supreme Court said: "This court recognizes the long, distinguished history of volunteer companies in New York State, and the vital services they provide to many municipalities. But not to be ignored is that their existence is inextricably linked to, dependent on, and under the control of municipalities for which they provide an essential public service."

Maxam and Hayes say in their petition that, in an effort to avoid a lawsuit, they obtained the assistance of a recognized access attorney, Peter Henner of Clarksville, NY, to discuss the access issues with the fire company's attorney, John Silvestri.

The complaint alleges the fire company held "an unannounced, locked door, secret meeting" on August 24 for the purpose of deciding to ignore their own attorney's advice that they are subject to open records and open meetings laws.

The Knight FOI Fund award was made to defray the legal costs Hayes and Maxam will incur in their attempt to compel the fire company's compliance with basic requirements of the state's open records and open meetings laws.

The plaintiffs say they filed their petition only after repeated attempts to gain access to meetings and proceedings and obtain records about the fire company's budget, expenses, purchases and operations.

"Those who volunteer to protect a community from harm certainly deserve that community's—and all of our—gratitude and appreciation," said Kenneth F. Bunting, executive director of the NFOIC. "But they are not entitled to ignore the laws that dictate accountability and transparency."

"Our democracy cannot function if those who work in government get to make up their own rules at their own whim for their own convenience," Bunting added.

The NFOIC, a nonpartisan coalition of open government groups and advocates headquartered at the Missouri School of Journalism, administers the Knight FOI Fund, which is part of a \$2 million, three-year grant from the John S. and James L. Knight Foundation announced in January, 2010.

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.

The *North Country Gazette* was published as a weekly newspaper from 1981 to 1994. It is now a daily online publication.

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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