

Charlotte Observer Draws Fire for Records Request

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The Charlotte Observer was recently on the receiving end of a wave of criticism in response to public records requests it made to local government bodies in the Charlotte area. The criticism did not stem from what it asked for *per se*, but rather who did the asking and why.

As reported by Julie Rose of WFAE in Charlotte, the newspaper compiled tens of thousands of private email addresses by making public record requests of the City of Charlotte, Mecklenburg County, and other localities, seeking the addresses of those who had signed up for local government email updates. Such email updates could, for example, include notifications from cities as to when official meetings had been scheduled. An example of one of the newspaper's requests (to the Town of Davidson, North Carolina) is linked here.

As you can see from the link, the person who made the request on behalf of the Charlotte Observer was not a reporter but rather its "Director of Strategic Products and Audience Development." This led the City of Charlotte to notify its employees of the request, which then prompted much hue and cry, with many leveling the accusation that the newspaper was using the Public Records Act to obtain information for marketing and commercial purposes.

However, according to the newspaper's editor, the purpose of the request was not commercial in nature. He indicated the newspaper intended to use the information to ask persons via email "if they would like to occasionally advise us on how we're reporting and what they would like to know more from their government and more about their community." The newspaper subsequently backed away from that statement and pledged not to use the email addresses, based in part on the outcry voiced on its website and other blogs. Other negative commentary can be found here and here.

Of course, who was doing the asking and why have no legal consequence whatever under North Carolina's Public Records Act. The Act specifically provides that the requester cannot be required to disclose the purpose of a request. And if a list of email addresses is a public record -- and it is if the public body made or received the list in the course of conducting public business -- then it does not matter whether the Charlotte Observer, Duke Energy, or Jane Q. Public asks to inspect a copy of the list.

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These legal conclusions, however, are entirely distinct from the reality that what is a public record today may not be tomorrow -- the General Assembly can both giveth and taketh away, and it has created new exceptions to the Act in the past when some particular circumstance or court decision motivated it to do so. So while the Charlotte Observer was no doubt within its rights to make the requests it made, that does not mean it was a good idea to do so, especially when you take into account the axiom that every action in the public records world can lead to an equal and opposite reaction from the legislative pen.

Despite the Charlotte Observer's pledge, the N.C. League of Municipalities still lists the following as one of its legislative goals for this term:

Seek legislation to protect the privacy of municipal residents by limiting public access to lists of email addresses submitted by citizens to municipalities.

We'll keep you posted on this and other legislative battles over the Public Records Act in North Carolina this year.