

THE MACKINAC CENTER'S ASSAULT ON ACADEMIC FREEDOM IS A STUNT

As TPM first reported, MI's institution of wingnut stupid, the Mackinac* Center, has FOIAed the labor studies departments of three universities.

A free enterprise think tank in Michigan – backed by some of the biggest names in national conservative donor circles – has made a broad public records request to at least three in-state universities with departments that specialize in the study of labor relations, seeking all their emails regarding the union battle in Wisconsin, Gov. Scott Walker (R-WI) and MSNBC's Rachel Maddow, TPM has learned.

[snip]

The Mackinac Center For Public Policy, based in Midland, Mich., submitted the FOIA requests last Friday and Monday to the Labor Studies Center at the University of Michigan and the Douglas A. Fraser Center for Workplace Issues at Wayne State University. A third FOIA was directed to Michigan State University, which has a School of Human Resources & Labor Relations.

[snip]

The parameters for the request, from a version of the FOIA obtained by TPM and confirmed by Mackinac, cover emails that mention:

“Scott Walker”; “Wisconsin”;
“Madison”; “Maddow”; Any other
emails dealing with the
collective bargaining situation

in Wisconsin.

The request covers all faculty emails from “January 1, 2011 to March 25, 2011.”

Read the entire FOIA sent to UM [here](#).

Now, there are three odd things about this FOIA that suggest it is not a serious request, but instead a stunt designed to intimidate academic and political speech and probably sow conspiracy theories.

First, as TPM alluded to but didn’t fully consider, MI recently had a high profile email FOIA decision, *Howell Education Association v. Howell Board of Education*—in which the Mackinac Center was involved—that found emails to be exempt from FOIA.

This is a difficult question requiring that we apply a statute, whose purpose is to render government transparent, to a technology that did not exist in reality (or even in many people’s imaginations) at the time the statute was enacted and which has the capacity to make “transparent” far more than the drafters of the statute could have dreamed. When the statute was adopted, personal notes between employees were simply thrown away or taken home and only writings related to the entity’s public function were retained. Thus, we conclude that the statute was not intended to render all personal emails public records simply because they are captured by the computer system’s storage mechanism as a matter of technological convenience.

The decision also ruled that personal emails about union actions, while a misuse of the school district’s usage policy, still constituted private messages exempt from FOIA.

Now, the Appeals Court invited the legislature to clarify whether emails should be included in FOIA. Unless I missed it (it's possible—Lansing has been generating a lot of under-discussed shit of late), the Republicans in Lansing haven't yet done so (and couldn't have by the January 1, 2011 start date of the FOIA request).

So unless I'm mistaken about there being a new law on FOIA in this state, the Mackinac Center knows this FOIA is junk.

In addition, while it may or may not affect this case, MI's universities have some of the strongest autonomy among public schools nationally. While there have mixed decisions about what this means in recent decades (usually litigated on whether MI can offer abortion coverage or same sex partner coverage to its employees), I suspect university autonomy would make this FOIA claim an even weaker case than it was in a K-12 school district.

Next, look at the terms of the FOIA:

It asked for all emails discussing:

"Scott Walker"

"Wisconsin"

"Madison"

"Maddow"

Any other emails dealing with the collective bargaining situation in Wisconsin

And the request start date is January 1, before Scott Walker was even inaugurated as Governor, and well before Scott Walker formally introduced his assault on collective bargaining on February 11.

Is the Mackinac Center trying to suggest—with a FOIA request that will go nowhere—that MI's labor professors dreamt up the response to Walker? And dreamt up Rachel Maddow in the bargain?

Note what else doesn't appear in the FOIA: "Snyder," "EFM," or "Emergency Financial Manager"—terms as least as likely to have been discussed in this state, but also terms that would clearly have even greater protection as personal emails (since the professors speaking about such topics—particularly in Wayne County, one of the targets for such legislation—would presumably have a personal, as well as a professional interest in what happens in their own state).

I don't know what to make of this—maybe in his effort to pretend he's not as conservative as the rest of the Republican governors ruining the Midwest, Snyder asked the Mackinac Center to exclude him—but I find it curious that a Michigan-based "think tank" isn't asking for emails that would be more likely to appear and more relevant to the public interest of the state.

The likelihood that this is some kind of stunt seems all the more likely given the squirminess from the Center as to their purpose.

Jarrett Skorup, the Mackinac Center research associate whose name is on the FOIA, told TPM he helped write and then filed the FOIAs at the request of his bosses, but he wasn't sure what they'd be used for in the end. He suggested the Mackinac Center was looking for chatter about the Wisconsin labor situation from state professors paid to study labor relations.

"I would imagine just to see what the people in the labor studies dept are thinking about stuff in Wisconsin," Skorup said when asked the purpose of the FOIAs.

His boss, Mackinac Center newsletter managing editor Ken Braun, refused to comment on the FOIAs.

"I'm not going to release what we're writing about," he said.

I'm not trying to say this isn't dangerous or a troubling assault on academic freedom.

But there's something that stinks even beyond the request on its face.

*Odd as it may seem, "Mackinac" is pronounced "Mackinaw" in these parts. Since we'll be hearing a lot more about the Mackinac Center in upcoming days, please try to get that right, because otherwise we here in MI will be screaming and holding our ears and so won't hear what you say.