

Appellate Division Rules that OPRA is not Limited to NJ Citizens

RELATED ATTORNEYS

CJ Griffin

RELATED PRACTICE AREAS

Appellate Advocacy

Media Law

News

5.16.18

Ruling protects the right of out-of-state media to utilize OPRA

Pashman Stein Walder Hayden partner CJ Griffin secured an important victory today in a consolidated Open Public Records Act (OPRA) case. The Appellate Division ruled that OPRA can be used by “any person” and is not limited only to New Jersey citizens. No other appellate court has previously addressed this issue. The Appellate Division’s decision can be viewed [here](#).

The case, which has been approved for publication, is captioned [Harry Scheeler v. Atlantic County Municipal Joint Insurance Fund](#). The Appellate Division affirmed a decision by the Honorable Ronald E. Bookbinder, A.J.S.C., who held that OPRA was not limited only to citizens because nearly a dozen provisions of OPRA state that “any person” can request government records and “any person” can file a lawsuit to challenge an agency’s denial of access.

At the same time, the Appellate Division reversed the lower court in the two other appeals that were part of the consolidated decision: [Scheeler v. City of Cape May](#) and [Lawyers’ Committee for Civil Rights Under the Law v. Atlantic City Board of Education](#). In those cases, an Atlantic County trial court judge ruled that despite OPRA’s repeated references to “any person,” only New Jersey citizens can utilize OPRA because OPRA’s introductory language states that “government records shall be readily accessible for inspection, copying, or examination by the citizens of this State.”

Had the Appellate Division ruled differently, out-of-state news agencies would have been precluded from filing OPRA requests in New Jersey. Even out-of-state persons who own summer homes or rental homes in New Jersey would have been precluded from filing OPRA requests, even though they clearly have an interest in doing so.

“The Appellate Division’s decision is a significant victory because allowing out-of-state requestors to utilize OPRA, whether they are individual persons or media companies, advances transparency and benefits the citizens of our State,” said Griffin. “Most of my non-media clients, including Mr. Scheeler, routinely distribute the records they obtain from public agencies to the media or otherwise publish them online so that the public can be aware of what their government is doing.”

Griffin has litigated several cases on this issue and had convinced a total of four trial court judges that OPRA did not contain a citizenship requirement. In one case, Carter v. Borough of Paramus, the OPRA requestor was a New Jersey citizen but the agency insisted that he had to provide his home address and driver’s license in order to prove his citizenship. When the requestor cited his privacy and refused to do so, the agency denied his request. Griffin took the matter to Superior Court and won.

“A citizenship requirement would put endless obstacles in the way of gaining access to public records, even for citizens,” said Griffin. “This is the only decision that makes sense and that fosters transparency.”

Griffin represented Mr. Scheeler in both cases bearing his name. PSWH Associate Suzanne M. Bradley participated in the legal briefing. The American Civil Liberties Union of New Jersey represented the Lawyers’ Committee in the third matter.