

New Jersey Supreme Court Issues Important Ruling on OPRA's Privacy Provision

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The Supreme Court of New Jersey has issued its opinion in Brennan v. Bergen County Prosecutor's Office, in which Pashman Stein Walder Hayden partner CJ Griffin submitted an amicus curiae brief on behalf of Libertarians for Transparent Government, a non-profit organization. The Court's decision today provides important guidance to lower courts on how to apply the Open Public Records Act's privacy provision.

The case involved an OPRA request by an activist seeking the names and addresses of individuals who had purchased sports memorabilia from the Bergen County Prosecutor's Office ("BCPO") during a public auction. The auction received considerable news attention.

The trial court ruled that the names and addresses of the successful bidders were disclosable under OPRA, but the Appellate Division reversed. It found that the bidders had a reasonable expectation that their names and addresses would remain confidential. The Supreme Court reversed, finding that "the sale of government property at a public auction is a quintessential public event that calls for transparency."

Griffin, who also participated in oral argument before the Supreme Court, argued that there is no reasonable expectation that your identity will remain private when you engage in financial transactions with the government and that home addresses are generally not entitled to any level of protection. According to Griffin, this case was just one example of how lower courts have over-applied OPRA's privacy provision.

"Today's decision is important not only because the requestor will be

able to learn about who purchased government property, but also because the Supreme Court made it abundantly clear that OPRA's privacy provision should be applied only in the unique cases where there is truly a legitimate privacy interest at stake," said Griffin.

In 2009, the Supreme Court issued Burnett v. County of Bergen, its first opinion analyzing OPRA's privacy provision. In Burnett, the Court was faced with a request that sought access to millions of records which contained names, addresses, and social security numbers. The Court held that where a citizen has a reasonable expectation of privacy, lower courts must apply a 7-factor balancing test that allows a requestor to gain access to records only if his or her interest outweighs the privacy interest. According to Griffin, Burnett has been over-applied to instances where there is no reasonable expectation of privacy. Today's decision should correct that practice; the Court held that courts should apply the Burnett factors "only where a party first presents a colorable claim that public access to records would invade a person's reasonable expectation of privacy."

"The lower courts have been applying the Burnett balancing test any time an agency claims privacy as a defense, no matter how frivolous the privacy claim is. This practice has engrafted an interest requirement into OPRA where one should not exist," said Griffin. "Today's decision is exactly what we wanted from the Court and will hopefully cause lower courts to restrain from applying a balancing test where one is unnecessary."

Today's decision also makes it clear that there is generally no privacy interest in a home address. The lower courts have been split on this issue, with some appellate panels ruling that home addresses are exempt and others ruling that home addresses are accessible. The Government Records Council, an administrative agency tasked with adjudicating denials of access, has generally found that home addresses are exempt.

"Public access to home addresses is important," said Griffin. "For example, New Jersey has residency requirements for government employees and public officials. If home addresses are redacted from records, the public cannot verify that these residency requirements are actually satisfied."