

A Public Agency Must Tell You What Records Exist

RELATED ATTORNEYS

CJ Griffin

RELATED PRACTICE AREAS

Media Law

8.4.15

Pursuant to Section 5 of OPRA, a public agency must state the “specific basis” for denying access to government records. Those who request records frequently, however, know that it is not uncommon for a public agency to issue a blanket denial when you’ve requested a volume of records, rather than telling you specifically why each requested record is being withheld. Yesterday, a court awarded attorneys fees to Pashman Stein in litigation against a public agency who had refused to tell Plaintiff John Paff whether there were records responsive to his request and instead kept making blanket assertions that “any such records” would be exempt as internal affairs records. You can read more about the decision in [Paff v. Township of Stafford](#) on Mr. Paff’s blog.

In making a blanket assertion that any and all records are exempt from access, a public agency not only violates the plain language of Section 5 of OPRA, but also deprives the requestor the ability to determine whether or not he might be entitled to the records under OPRA or the common law right of access. It also places the requestor in the position of filing suit and then finding out that the records did not even exist in the first place. In such instances, our courts have still awarded fees to requestors because the public agency’s negligence in not telling the requestor that the record did not exist essentially lured the requestor into litigation.

For example, in [Kelley v. Borough of Riverdale](#), MRS-L-524-14 (Law Div. April 11, 2014) the plaintiff had requested numerous emails that were sent to and from municipal employees, including the custodian regarding litigation. The custodian responded that plaintiff requested “court records that I cannot and do not have authorization to send you.” Plaintiff sued. In opposition to suit, the agency responded that the records, in fact, did not exist and that “as there are no documents to be ‘disclosed,’ this matter should be dismissed.” The trial court still found an OPRA violation and awarded the plaintiff attorney fees,

stating that had the agency not been negligent in giving the requestor an incorrect response to his OPRA request he would not have sued.

Paff v. Stafford and Kelley v. Borough of Riverdale are just two examples of a court finding an OPRA violation for a public agency's negligence in failing to properly respond to an OPRA request. This negligence not only deprives an OPRA requestor of the ability to access whether the denial of access was lawful, but also ultimately results in an expenditure of taxpayer funds when the requestor sues.