

Are Survey Results Subject to OPRA? - *NJ OPRA Blog*

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Government agencies often distribute surveys to the public regarding various issues of public concern. Are the completed surveys subject to public access under OPRA? We think so and a court is being asked to decide.

Recently, we learned of an OPRA lawsuit filed by a requestor who seeks the results of a survey that was sent to residents of the Borough of Saddle River. The survey, which was sent by a local veterinarian who serves on the Borough's Non-Lethal Deer Population Control Committee, asked residents whether they would allow access to their property to carry out a non-lethal deer management plan. When the requestor filed an OPRA request for the survey results, Saddle River denied the request, claiming that the results were "inter-agency or intra-agency advisory, consultative or deliberative material." We think the Saddle River got it wrong.

The deliberative process privilege applies only to inter-agency and intra-agency communications. The privilege is designed to keep internal policy-making documents confidential. Only internal documents (or documents between one government agency and another) that weigh one policy option over another; that make recommendations; or that offer opinions and advice fall within the privilege. Surveys that are completed by the general public are simply not "inter-agency" or "intra-agency" documents and thus the privilege cannot apply.

There may be times when OPRA's privacy provision (or some other exemption) may apply to allow some information within a survey to be redacted, however. For example, we litigated [Flom v. Allendale Board of Education](#), Docket No. BER-L-9208-15 (Law Div. Jan 7, 2016), where the requestor sought access to surveys that parents completed regarding their level of satisfaction with the district's special education program. While the survey was intended to be completed

anonymously, some parents put personal identifying information about their children on the forms. The court granted access to the survey results, but permitted the district to redact any information from the survey forms that would identify any student since students are entitled to heightened privacy.

