

Judge Rules North Arlington Improperly Imposed Service Charge for Facebook Records - *NJ OPRA Blog*

RELATED ATTORNEYS

CJ Griffin

NJ OPRA Blog

7.1.19

Last week, Bergen County Assignment Judge Bonnie J. Mizdol issued an opinion finding that the Borough of North Arlington unlawfully imposed a special service charge upon a records requestor who sought records from the Borough's Facebook pages.

The OPRA request at issue in Wronko v. North Arlington sought the list of individuals who had been banned from the Borough's Facebook page, as well as a list of any words that had been censored and the list of page administrators. In response, the Borough insisted it needed to use an outside IT consultant to capture the screenshots necessary to fulfill the request, which would cost \$200 for 2 hours of time.

OPRA permits a special service charge only in limited circumstances. Specifically, N.J.S.A. 47:1A-5(d) provides that:

If a request is for a record: . . . requiring a substantial amount of manipulation or programming of information technology, the agency may charge, in addition to the actual cost of duplication, a special charge that shall be reasonable and shall be based on the cost for any extensive use of information technology, or for the labor cost of personnel providing the service, that is actually incurred by the agency or attributable to the agency for the programming, clerical, and supervisory assistance required, or both.

Otherwise, "electronic records and non-printed materials shall be provided free of charge." N.J.S.A. 47:1A-5(b)(1).

After hearing expert testimony from both parties, Judge Mizdol concluded "that production of the requested documents does not require a substantial amount of manipulation of information technology." The court found that capturing screenshots of the Facebook pages that contained the list of banned users and censored

words “did not require any expertise in the field of information technology” and that any person with a “basic level of computer skills” would be able to fulfill the request by utilizing Facebook’s “Help” pages or a “simple Google search for ‘how to take a screenshot.’”

Importantly, the Court noted that it is imperative that agencies be able to fulfill modern day OPRA requests:

OPRA requests increasingly involve information technology in this digital age. Those hired to serve as an OPRA Records Custodian, thus, must have the requisite skills to reply to requests for government records located on such digital platforms. If a custodian does not have such skills, the municipality has the ability to rely on information technology experts or hire third party help. However, shifting costs related to same [to the requestor] requires the presence of a substantial amount of manipulation on information technology.

Unfortunately, the imposition of special service charges seems to be on the uptick. Many requestors may simply walk away from a request if the agency seeks to impose a significant fee, but it is possible to challenge the fees in court. In this case, Judge Mizdol ordered the agency to release the records without any fee and to pay the requestor’s legal fees.