

Lawsuit Seeks Newark's AmazonHQ2 Proposal - *NJ OPRA Blog*

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On February 20, 2018, Pashman Stein Walder Hayden partner CJ Griffin filed an OPRA lawsuit against the City of Newark on behalf of long-time client Steven Wronko. The lawsuit seeks access to a copy of Newark's AmazonHQ2 proposal.

For our prior press release about the suit and a copy of the complaint, [click here](#).

On March 26, 2018, Newark moved to dismiss Plaintiff's complaint. In support of its motion, Newark submitted a certification by Aisha Glover, Executive Director of the Newark Community Economic Development Corporation ("NCEDC"), which simply stated that a) Newark is bound by a non-disclosure agreement and b) Newark would be at a competitive disadvantage if it released its proposal. Newark's motion brief and Glover's certification (with the non-disclosure agreements) can be found [here](#) and [here](#).

On April 3, 2018, Plaintiff opposed the motion to dismiss. Plaintiff's brief can be found [here](#) and his argument is summarized as follows:

- The non-disclosure agreement a) only applies to information that Amazon has disclosed to Newark and b) expressly states that agencies may comply with their public records laws
- Newark has not offered any evidence regarding type of content within its proposal and why releasing that type of information would put it at a competitive disadvantage. Our courts have repeatedly held that an agency cannot overcome OPRA's presumption of access by simply making a conclusory statement that a record is exempt or that harm will occur if a record is released.
- Many of the details that Newark says it cannot release without putting it at a competitive disadvantage have already been released

by Newark itself. For example:

- Newark states that the proposed site locations for Amazon HQ2 are secret, yet in December it took a group of reporters on a bus tour of those locations and even provided renderings directly from its proposal! To see those renderings and read about the tour, check out these stories and slideshows by Real Estate NJ, ROI-NJ, and NJ.com.
- On the tour, Newark discussed specific details of what it included in its proposal, such as touting its fiber optic infrastructure and internet speed.
- Newark states that its incentives are top secret, but the Legislature's \$5 billion incentive package and Newark's commitment to \$2 billion in additional incentives has already been disclosed to the public.
- Newark has not proven that its proposal cannot be released in redacted form to protect any remaining non-public information while permitting the public to see the bulk of the proposal. OPRA requires records to be redacted so that non-exempt information is released. Many of the finalist cities have taken this approach and have released their proposals with redaction to non-public information. Some finalist cities, such as Boston and Washington D.C., have even gone so far as to create entire websites as part of their pitch, which contain their proposals. Newark, however, denied complete access to its proposal, even though it has disclosed much of the information within it to the press already.

Hearing:

The Honorable Jeffrey B. Beacham, J.S.C., will hear oral argument on Friday, April 20, 2018 at 9:00 a.m. at the Essex County Historic Courthouse in Newark, NJ.