

May An Agency Take Extensions to Respond?

9.28.16

RELATED ATTORNEYS

CJ Griffin

RELATED PRACTICE AREAS

Media Law

OPRA provides that a public agency must grant access to a record “as soon as possible, but not later than 7 business days after receiving a request.” Public agencies also are required to make other records available “immediately,” which should mean that you can walk into town hall and obtain a copy or at least receive a copy within 24 hours. Those records include “budgets, bills, vouchers, contracts, including collective negotiations agreements and individual employment contracts, and public employee salary and overtime information.”

Most people who have filed OPRA requests, however, know that it very frequently takes much longer than 7 business days to get a government record. Is this lawful? The answer is that in most cases, yes, the public agency can take longer than 7 business days to produce the records so long as they notify you that they are doing so within the initial 7 business day timeframe.

OPRA specifically recognizes that some records may be in storage or archived, thus not readily available for access. In such a circumstance, an agency must advise you when the record will be available. OPRA also provides that where a request would “substantially disrupt agency operations,” the agency must work with you to accommodate you and one frequent method of accommodating large requests is by seeking an extension of time to produce the records.

The Government Records Council and the Courts are fairly liberal with extension requests; however, there is a limit. Where there is no real justification for an agency taking multiple extensions and delaying access for weeks or months, it will be obvious to the GRC or the Court that the extensions are simply a mode of unreasonably delaying access to records. Additionally, if an agency seeks an extension, they have a statutory obligation to produce the records by that date. If they do not produce them or otherwise respond by the date they provided, OPRA considers such to be a “deemed denial” of the request.

If you an agency has requested more than one extension or the extension date they provide seems unreasonable, it is wise to contact an OPRA attorney to assist you in gaining access to the records. Remember, there are only 45 days to challenge an unlawful denial of an OPRA request.