

Public Agencies May Not File Declaratory Judgment Actions Against OPRA Requestors

6.25.15

RELATED ATTORNEYS

CJ Griffin

RELATED PRACTICE AREAS

Media Law

OPRA expressly provides that the right to institute any proceeding belongs “solely” to a records requestor. Despite this, there has been a recent trend in public agencies dragging OPRA requestors into court—often over requests that the requestor would have not have chosen to litigate.

One such case is *Township of Hamilton v. Harry Scheeler*, in which CJ Griffin of Pashman Stein represented Mr. Scheeler. Upon belief that the Township was not complying with the records retention schedule for video surveillance tapes, Mr. Scheeler filed an OPRA request for 30 days of video footage from every camera in the municipal complex and warned that he himself would archive it on YouTube. Rather than simply denying the OPRA request, the Township filed a lawsuit against Mr. Scheeler, asking the court to declare that they did not have to respond to the request and to enjoin Mr. Scheeler from making similar OPRA requests in the future.

On June 24, 2015, the Hon. Michael Winkelstein, J.A.D. (retired and temporarily assigned on recall), ruled that OPRA’s “language gives the requestor, not the government agency, the right to go to court or take other action if the records request is not granted.” The court noted the consequences of the Township’s actions: “It has attempted to use a declaratory judgment proceeding to head off a lawsuit by Scheeler under OPRA, in which he would be entitled to counsel fees if successful; and to prevent him from taking his claim to the GRC, which also allows for counsel fees to the prevailing party. And, not insignificantly, the Township’s lawsuit has prevented Scheeler from simply walking away if the Township denied his request.”

Finally, the court held that permitting a public agency to file an action against requestors of government records would have a “chilling effect” upon those who desire to file such requests and subjects them

to “involuntary litigation with all of its concomitant financial, temporal, and emotional trimmings.” The court awarded Mr. Scheeler counsel fees because he “prevailed” in the litigation and because denying a fee award would “essentially reward the Township for violating OPRA.”

OPRA mandates that a public agency must respond to an OPRA request within seven business days. That response can be a request for an extension, a grant of access to the records, or a denial of access. The Township obviously strongly felt that Mr. Scheeler’s request was overbroad, invalid, and sought records that were not accessible. Rather than simply denying the request as it was statutorily obligated to do, the Township chose to file this frivolous litigation against Mr. Scheeler and in the end, the Township’s Attorney billed the Township more than \$10,000 to do so. Now, of course, the Township must also pay Mr. Scheeler’s legal fees.