

# Split Supreme Court Exempts Security Camera Footage

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Yesterday, the Supreme Court of New Jersey ruled in a split decision that security camera footage is not accessible under the Open Public Records Act (OPRA).

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### About the Case

The case is Patricia Gilleran v. Township of Bloomfield. Ms. Gilleran\* requested video footage from a security camera placed on the outside of town hall, just above the mayor's parking spot. Bloomfield denied her request, citing two of OPRA's security-related provisions that exempt:

emergency or security information or procedures for any buildings or facility which, if disclosed, would jeopardize security of the building or facility or persons therein; [and]

security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons, property, electronic data or software

Bloomfield argued vaguely that what the camera records was a secret and that the tape could possibly contain images of police officers, confidential informants, or members of the public reporting crimes at the law enforcement building next door to town hall.

Both the trial court and the Appellate Division ruled in Ms. Gilleran's favor, finding that the exemptions were not blanket exemptions that rendered all security camera footage inaccessible under OPRA. The courts also found that Bloomfield had not met its burden of proving that the exemption applied because 1) the camera was in plain view and it was obvious what the camera recorded, 2) the Township Administrator's certification did not sufficiently explain why releasing the footage would actually cause harm; and 3) no one from Bloomfield

had even watched any portion of the tape to state with certainty what it had recorded or whether it contained any confidential images.

Bloomfield appealed to the Supreme Court, who accepted the case.

### **About Supreme Court's Split Decision**

The Court issued a split decision, with four justices (Justice LeVecchia, Albin, Solomon, and Fernandez-Vina) voting to reverse the lower courts and two justices (Chief Justice Rabner and Justice Timpone) dissenting. The majority held that security footage was off limits under OPRA because releasing it “would undermine the security purpose of the camera.” It found that while there is not a blanket exemption for all security-related records (such as the public bidding documents for the purchase of a security system), that there is a blanket exemption for security camera footage. The Court held that “knowledge of the vulnerabilities of a security system could allow an ill-motivated person to know when and where to plant an explosive device, mount an attack, or learn the movements of persons, placing a public building or persons at risk.”

Ultimately, though the majority ruled that security footage is exempt from access under OPRA, the Court did conclude that there may still be a common law right of access to security camera footage. It thus remanded the case back to the trial court to determine whether Ms. Gilleran's interest in the video footage outweighs Bloomfield's security needs.

In his dissenting opinion, Chief Justice Rabner wrote that had the Legislature intended to create a blanket exemption for all security camera footage, it would have said so. In the Chief Justice's opinion, the Township Administrator's “general language” in his certification did not establish that releasing the footage would jeopardize the safety of persons, which is what the plain language of the exemptions requires. The dissenting opinion further noted that OPRA provided Bloomfield numerous remedies, such as reviewing the footage and redacting portions of it that caused concern; negotiating with Ms. Gilleran to narrow the amount of footage requested; or charging a service fee to comply with the request.

### **What This Means For The Public**

The Court's decision means that there is no right to access security camera footage pursuant to OPRA. While the Court likely found comfort in holding that there is still a mechanism to gain access to the video footage under the common law, unfortunately the Court's decision will essentially shut down all access to camera footage.

Why? In an OPRA case, an agency who unlawfully denies access to a record faces litigation and will have to pay the fees of any requestor who prevails. Thus, agencies are more reluctant to deny access to records because it comes with a big financial risk. As the Supreme Court previously stated, without OPRA's fee-shifting provision “the ordinary citizen would be waging a quixotic battle against a public entity vested with almost inexhaustible resources.” With regard to the

common law, however, as the Chief Justice noted in his dissenting opinion, it is generally thought that there are no attorney fees awarded in common law cases (though, there are some decisions that have held otherwise). Agencies thus have no incentive to grant access to records under the common law, because they know that very few people will have the resources to file a lawsuit and that even if the requestor prevails, the agency will likely not be on the hook for the fees.

To put it simply, would an agency voluntarily give up camera footage that incriminates the mayor in response to a common law request? Doubtful. What is more likely is that the agency would deny access to the footage and then battle it out with the requestor in court. Most media agencies cannot afford such expensive legal battles these days, let alone average people. Thus, denials of common law claims records will go un-litigated.

The media is widely reporting on this case, with stories by NJ Advance Media, NorthJersey.com, New Jersey Herald, Philly.com, the Washington Times, Politico, TapIntoBloomfield. The American Civil Liberties Union of New Jersey, the Reporters Committee for Freedom of the Press, and 18 media organizations filed amici briefs.