

Sunshine Week Begins With Supreme Court OPRA Case - NJ OPRA Blog

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It's **Sunshine Week** and this year it kicks off in New Jersey with oral arguments before our Supreme Court in an important Open Public Records Act (OPRA) case. On March 15, 2021, the Supreme Court will hear *Bozzi v. City of Jersey City*, a case that asks whether a list of names and addresses of dog license holders are accessible under OPRA. The plaintiff seeks the list for commercial purposes—he intends to mail dog owners information about his invisible fences. The case is listed as the second case of the day, which means arguments will begin sometime after 11:00 a.m. You can watch it here. CJ Griffin of Pashman Stein Walder Hayden will be participating in the case and will be arguing last. Griffin filed an *amicus curiae* brief on behalf of Libertarians for Transparent Government, arguing that the Legislature has rejected numerous bills that attempted to exempt dog owner lists or that sought to limit the ability of commercial requestors to utilize OPRA. The *amicus* brief also explains that limiting this commercial requestor's right of access will cause harm to all the other requestors who might seek lists of dog owners to benefit the public in some way.

Unfortunately, public agencies sometimes use OPRA's privacy provision not as a shield to protect legitimate privacy rights, but rather as a sword to attack a requestor's reason for seeking records, something that should be irrelevant. In this case, a commercial requestor's right to obtain public records is under attack, but in other instances the ones under attack are the so-called "gadflies" or the persistent reporters who are thorns in the sides of politicians. If the Court decides in the City's favor in this case, the consequences will not be limited only to the addresses of dog license owners or to commercial requestors. Public agencies will undoubtedly think of far-fetched reasons to invoke OPRA's privacy provision so that the balancing test applies. Requestors will then have to sue and convince courts that their reasons for wanting the records serve a

“legitimate public purpose.” In other words, an interest requirement will be engrafted into OPRA where one does not exist, and as a result, all requestors, whether commercial or not, will have to fight harder to access information that should be statutorily available to them as of right.

Even if this Court considered a commercial interest to be insufficient to gain access to the dog license records in this case, there are clearly other reasons for requesting these records that do advance “legitimate public purposes.” For example, someone who encounters a neighbor’s aggressive dog might want to determine if the dog is licensed and vaccinated. . . . Someone who runs a local animal rights group might want to contact other dog owners to rally them to pass better animal welfare laws, to lobby for a local dog park, or to alert them to local dangers to dogs. An animal rescue organization might want to independently verify that the dogs it has adopted out have been properly licensed and vaccinated, or it might want to screen prospective adopters to determine if they have other pets (or had other pets that they surrendered) that they are not disclosing on their adoption applications. A watchdog group like LFTG might want to investigate whether public officials are failing to license their own pets all while hypocritically ticketing members of the public for failing to do so. Or, it might want to verify that the list of licenses is accurate and that all of the money collected from licenses are distributed in the proper accounts and transmitted in full to the proper state agencies. . . . A research organization might seek the names and addresses of dog license owners so that it can map them and determine whether certain neighborhoods have more licensed dogs than others and whether there is any correlation to economic factors, such as income, in the ownership or licensure of dogs.

NJ Advance Media previously wrote about the case when it was pending in the trial court. Both the trial court and the Appellate Division ruled that the list must be disclosed.

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