

Supreme Court Restores Access to Electronically Stored Information

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Last year, in Paff v. Township of Galloway, 444 N.J. Super. 495 (App. Div. 2016), the Appellate Division issued a rather shocking decision—in essence, the court held that even though OPRA includes electronically stored information is in the definition of “government records,” an agency has no obligation to extract that data because it would be “creating a new record.”

Mr. Paff’s request involved a log of emails that included the “to,” “from,” “subject,” and “date.” The agency admitted that it could print the log and it would take only two to three minutes to do so, but it argued that printing out that data in the format of a log would be creating a new record. Since Paff v. Township of Galloway was issued, we have seen public agencies try to argue that they do not have to print payroll reports, accounts receivables reports, and other common reports from their databases because doing so would be “creating a new record.”

Thankfully, in a unanimous decision, the Supreme Court of New Jersey restored OPRA access to electronically stored information. The Court held that “A document is nothing more than a compilation of information—discrete facts and data. By OPRA’s language, information in electronic form, even if part of a larger document, is itself a government record. Thus, electronically stored information extracted from an email is not the creation of a new record or new information; it is a government record.” The Court noted that OPRA contemplates the “programming of information technology,” and that this is precisely what is required to extract the electronic information that Mr. Paff sought.

The Supreme Court also found that the Appellate Division erred in giving the Government Record Council’s (GRC) guidance to the Township of Galloway “substantial deference.” In fact, the Court reminded lower courts that the GRC’s decisions and guidance are not

entitled to any deference, let alone substantial deference. This is important because too often agencies try to convince lower courts that they must follow what the GRC says, even though the OPRA statute states otherwise.

In today's world, there are fewer and fewer records that exist only in paper form and much information is now stored electronically in databases and accounting programs. The Supreme Court's decision ensures that the public is entitled to access such electronically stored information, just as OPRA says.

