

Clerks group wants to join OPRA lawsuit in Paramus

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PARAMUS — The Municipal Clerks Association of New Jersey has criticized a borough lawsuit against clerk Ian Shore as an attempt to circumvent the state law that governs access to public records.

By insisting that a borough attorney review requests filed under the Open Public Records Act (OPRA), the borough is slowing down the process, saddling taxpayers with unnecessary legal fees, and making the clerk liable for any failure to appropriately respond to a request, the association said in a motion filed at Superior Court in Hackensack last week.

"The issue is whether a municipality or its agents are legally allowed to circumvent and frustrate the OPRA process by forcing the municipal clerk to obtain approval from the municipal attorney or another municipal agent prior to producing the information requested pursuant to OPRA," the motion says.

Claiming the case could set a precedent that would affect every municipality in the state, the group is asking to join the lawsuit as a friend of the court.

Eric Bernstein, the attorney representing the borough in the case, did not return a message left at his office Thursday.

But Borough Attorney John Ten Hoeve said the borough has asked Shore to show him non-routine requests and Shore's responses to them to protect the borough from any liability if the clerk releases information he shouldn't release.

"This isn't about control or attempting to release any information," Ten Hoeve said. "It's about notice."

Once information has been released, it can't be taken back, he said. In that situation, the borough — not the clerk — would get sued, he said.

The borough is not asking for the ultimate control over which information gets released, Ten Hoeve said. Rather, it is asking for enough notice that a request has been filed so that the attorney can ask a court to intervene if he thinks information should be withheld.

Ten Hoeve said he had not seen the clerks' association motion and was not working directly on the case.

Shore said Ten Hoeve's depiction of the case contradicts the attorney's original position.

"My question now comes that Mr. Ten Hoeve has changed his story from trying to protect the borough from supposedly my lack of knowledge in OPRA to wanting to file lawsuits to prevent me from releasing documents," Shore said. "I ask: Has Mr. Ten Hoeve been to any OPRA seminars, as I have, since the introduction of OPRA five years ago?"

Shore's attorney, Richard Gutman, has asked the borough to clarify its position in another motion filed with the court.

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He said the borough has not said whether it expects Shore to show the attorney copies of requests and responses to them — as Shore said he already does — or whether it is asking him to delay his responses until he gets permission from the attorney.

"The bottom line is, it makes it more difficult to get records if every single one has to get the approval of the attorney," Gutman said.

The borough has to reply to Gutman's motion by Wednesday. A court hearing is scheduled for Dec. 5.

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