



Ocean City agrees to provide public with copies of electronic documents

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OCEAN CITY - A city man who is suing the city over public records is claiming a small victory last week in state Superior Court.

Russ Smith is suing the city over his public-records request. State Superior Court Judge Steven Perskie dismissed most of his complaint. But the city conceded a small point that could save residents money the next time they ask for a public record. If residents wish, the city will provide records in a digital format instead of paper copies that could cost them significant copying fees.

Smith asked for the city's legal bills and paid \$70 for hard copies. He argues that many of the records could have been provided electronically at no cost to him or the city.

"I just wanted to see how much they were spending per month. They said nothing was electronic," he said.

City Clerk Linda P. Macintyre said most people who ask for records at her office want paper copies. The city provides as many as three pages free of charge. The city charges 75 cents per page up to 10 pages, 50 cents for up to 20 pages, and 25 cents for requests for more than 20 pages.

But she conceded that some electronic documents might not have been provided electronically in some cases.

"It makes our lives easier to send it electronically if we have it," she said. "We are going to do that. As of now, we will most definitely make sure we will provide them."

City Solicitor Gerald Corcoran said all along the city has provided electronic copies of records when they are available under the Open Public Records Act. But the city refused to convert a paper file into an electronic one just because a member of the public did not want to pay for the copies.

"Public bodies forward to a person making an OPRA request a copy of the documents in electronic form if it is maintained in an electronic format. What we've agreed to do is continue to comply with OPRA," Corcoran said. "What we have not agreed to do is convert a written document into an electronic format and e-mail that."

Smith is also challenging what he considers to be onerous city copy fees. A hearing on that matter is scheduled for Dec. 23.

William Kearns, a lawyer for the New Jersey State League of Municipalities, said the city is not doing any favors. The law requires electronic records to be provided electronically if practicable, he said. But even in the digital age, not all records are maintained that way, he said.

"We have a lot of laws written in the time of paper records. They don't adapt easily to electronic records. You do the best you can to figure out how to provide it," he said.

He predicted that more residents will ask for records to be sent by e-mail.

"We're not going to go back to a time before electronic communication. It's there and it's convenient," he said.

Even so, residents could face other costs in pursuing electronic records. For example, Smith asked for months of e-mails to and from Mayor Sal Perillo.

"Our IT people would do it. They'd cull everything out," Corcoran said. "Our IT department estimated it would take 400 hours to cull out the information at \$20 per hour."

So getting a year's worth of Perillo's electronic correspondence would cost Smith \$8,000.

Ron Miskoff said this gray area could be the latest battleground over public records. He represents the New Jersey Foundation for Open Government, a civic watchdog group.

"These governments have thrown one barrier after the other at public citizens who want information," he said.

Miskoff said making records available to the public is an important duty. The easy availability of electronic records in the digital age will make government more transparent, he said.

He sides with Smith over the chilling effect that costly copying fees could have on the free flow of information in local government.

"We're not crazy about the high cost of photocopying. They charge too much," Miskoff said. "The law sets a maximum they can charge. That's another slash at the citizen. They're trying to annoy citizens. They feel the citizens are annoying them."

E-mail Michael Miller:

MMiller@pressofac.com