

The Star-Ledger

Justices lay out guidelines for open-records lawsuits

Wednesday, July 23, 2008

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People who feel they were wrongly denied documents they requested under New Jersey's Open Public Records Act must act quickly if they want to use the courts to force governments to release them, the state Supreme Court ruled yesterday.

In a unanimous ruling, the state's high court affirmed the law's 45-day window for people to sue when a government or agency refuses to turn over documents. The court also said governments that turn over public documents because of such lawsuits must pay all legal fees.

"Citizens are entitled to swift access to public records, and both the public and governmental bodies are logically entitled to have any disputes brought and addressed in the same, rapid manner," wrote Chief Justice Stuart Rabner.

The law allows governments to take up to seven days to either release documents or deny a request for them. It gives 45 days for people to sue after their requests are denied. Yesterday's decision said that is enough time for people to launch legal challenges, and provides certainty for governments.

Civil libertarians and municipal officials said the court was balanced in its ruling, made in a case involving a Hoboken councilwoman who filed 125 separate requests for public records from the city.

"The result of today's decision is a clear set of rules to govern future cases. Not everyone will like today's decision, but it does seem that the court was trying to achieve a balanced result," said Peter Verniero, a former justice. "The court appears to be trying to foster open government while being fair to all sides in litigation."

Added Deborah Jacobs, executive director of the American Civil Liberties Union of New Jersey: "This is a victory for New Jersey citizens' rights to access to government information ... The ruling will help ensure that municipalities respond timely to citizens' requests for information, and makes it more likely that municipalities will be held financially liable for their improper actions or inactions."

Hoboken corporate counsel Steven Kleinman called it a "very, very good thing for the

efficient operation of municipal government" without restricting public access.

Richard Gutman, who represented the Libertarian Party of Central New Jersey Open Government Task Force, worried that the 45-day limit would keep some people from pursuing claims against towns. "It is a difficult burden because sometimes it takes a while for the requester to find an attorney," he said.

The ruling stems from lawsuits filed by Elizabeth Mason, a founder of the New Jersey Foundation for Open Government. She had filed lawsuits involving 17 requests for city records, which included a request for copies of every city financial transaction in 2003 and 2004.

While some documents were provided immediately, not all were in the form Mason requested. City officials also delayed providing some documents, saying some had to be corrected and the business administrator needed to help care for his critically ill mother.

Mason sued, saying she should get attorney fees for being denied access, and that the deadline to sue should be two years.

The ruling says people can recoup attorney's fees if records are produced as a result of litigation, and that governments that didn't provide documents within seven days after they were requested must pay unless they prove that the lawsuit was not the reason for releasing them.

But it also ruled that Mason did not meet those guidelines and should not get attorney's fees. Mason's lawyer, Jeffrey Kantowitz, said he was "disappointed in the ruling."