

# The Appellate Advocate: A Recap of Recent Decisions by NJ's Appellate Courts



## **Ciolek v. Township of Roxbury A-1068-23**

I am instantly drawn to any decision (state or federal, trial or appellate) that involves attorneys' fees. The reason is simple. Lawyers do not usually publicize their hourly rates. But an application to be awarded fees is one of those instances where attorneys *must* publish their hourly rates, as well as disclose the time spent on legal work. Now are you as excited as me to read these opinions, where your peers and competitors must disclose otherwise non-public information? I hope so.

This matter got started on April 1, 2022, when attorney Douglas F. Ciolek, acting on behalf of clients entangled in litigation, submitted an OPRA request seeking all police reports and notes related to two individuals and a specific location. The Township of Roxbury denied the request, arguing the records were protected under the law's exemption for criminal investigatory files.

Undeterred, Ciolek filed a verified complaint on April 19, 2022, claiming that—even if the documents fell under a criminal investigation—New Jersey law still required the disclosure of basic information such as the type of crime, time, and location under N.J.S.A. 47:1A-3(b).

At first, the trial court sided with the Township, concluding that Ciolek's request sought records rather than specific information. That is a key distinction for purposes of N.J.S.A. 47:1A-3(b). Is that a meaningful, straightforward, or pragmatic distinction? That's a question for a different blog.

On appeal, the Appellate Division took a more skeptical view. In a July 2023 decision, the panel ordered the trial court to conduct an in camera inspection—a private review of the contested documents—to determine whether any non-exempt information should have been disclosed. One often sees that logic regarding attorney-client privilege, i.e., just because unprivileged information is included in a privileged communication does not protect the information from disclosure.

With the matter back at the trial court for the in camera review, the judge found that key details from a February 7, 2019 investigative report (the type of crime, the time, the location, and the presence of a weapon) were not shielded from public view. In an August 15, 2023 order, the court compelled the Township to release that information.

But the Township's troubles didn't end there. What happened next is where attorneys' fees come into the spotlight.

Ciolek, having pried loose the information through months of legal maneuvering, returned to court seeking attorneys' fees. Under OPRA, a prevailing party is entitled to reasonable legal fees—a provision designed to incentivize public access and hold agencies accountable for wrongful denials. The Township opposed the request, arguing that no OPRA violation had occurred because Ciolek's initial filing had not explicitly requested "information," only records. Despite these objections, the trial court found in Ciolek's favor.

In an October 27, 2023 order, the trial court awarded Ciolek \$3,765 in legal fees. While he had requested compensation for 55.8 hours of work, the court trimmed that to 12.6 hours—only accounting for time spent on specific and limited trial court proceedings, rather than the larger litigation and appeal. Importantly, the ruling rejected the Township's claim that records custodians are not required to provide non-exempt information unless it is explicitly requested. The judge emphasized that the court's intervention on remand, combined with the clarity of Ciolek's verified complaint, made him the prevailing party and entitled him to fees.

The Township appealed from the decision. The appeal also included two amicus briefs, primarily contending that the trial court's decision posed undue burdens on government records custodians to search through exempt documents for non-exempt information even if the requesting party had only asked for documents (as opposed to information).

The Appellate Division, however, rejected those alarms. The panel framed the case as a straightforward application of OPRA rather than a radical expansion of custodial duties. The Township, they concluded, was on clear notice of what information Ciolek sought—both through his verified complaint and subsequent courtroom clarifications. Once the trial court's in camera review confirmed that information had been improperly withheld, the legal framework for awarding fees was firmly in place. The Appellate Division also noted that a looming amendment to OPRA, not yet in effect during the period relevant to this dispute, dilutes the risk of fee-shifting because fee awards are now discretionary as of September 2024.

For me personally, the OPRA issues are an interesting vehicle via which the (even more) interesting fee dispute is resolved. I hope anyone reading the opinion pays as close attention to the trimming of 55.8 hours down to 12.6, and that the truly dedicated readers take a minute to review the trial court docket to see exactly which billing entries were included in the award. The reasoning applied by the trial court to grant some fees and deny others is extraordinarily informative.

### **About Thomas Cotton**

Thomas Cotton is a litigation partner at Schenck Price, representing clients in trial and appellate courts throughout the United States. In addition to his practice, he authors *The Appellate Advocate*, a semi-weekly blog offering thoughtful yet accessible commentary on recent appellate rulings.



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