

**To:** New Jersey Law Revision Commission  
**From:** Erik Topp  
**Re:** *Gilleran v. Twp. of Bloomfield*  
**Security Camera Footage and the Open Public Records Act, N.J.S. 47:1A-1 et seq.**  
**Date:** March 05, 2018

## MEMORANDUM

### Executive Summary

In *Gilleran v. Township of Bloomfield*,<sup>1</sup> the New Jersey Supreme Court considered the issue of whether a member of the public may obtain security camera footage from a public entity under the Open Public Records Act (OPRA).<sup>2</sup>

The court held that there is no absolute right of public access to such footage; based on the security exceptions found in the law, OPRA allows public entities to bar the release of video that reveals security capacity for systems protecting public buildings.<sup>3</sup>

### Background

In April 2014, Gilleran requested five days of footage from a security camera attached to a municipal building in Bloomfield, directed toward the Town Hall and the Mayor’s parking space.<sup>4</sup> After negotiation with the Township’s Records Custodian, Gilleran revised her request down to fourteen hours of one day; this revised request was later rejected pursuant to the security exceptions found in the OPRA.<sup>5</sup>

According to the Township, allowing unrestricted access to security camera videotape—which would reveal not only what is and is not captured by the security camera, but also when and how well it is captured—would undermine the purpose of having a security camera system protecting the buildings and people within them. The Township asserted that the security exclusions of OPRA permitted withholding the videotape.<sup>6</sup>

In its analysis, the Court noted that the OPRA is to be broadly construed in line with the Legislature’s intent to “make government records ‘readily accessible’ to the state’s citizens” and statement that “all government records shall be subject to public access unless exempt,” with the

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<sup>1</sup> 227 N.J. 159 (2016).

<sup>2</sup> *Id.* at 163–64.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 164.

<sup>5</sup> *Id.* at 164–65.

<sup>6</sup> *Id.* at 163.

burden of establishing exemption on the government.<sup>7</sup> These exemptions encompass information that the Legislature has deemed confidential, including both “emergency or security information or procedures for any buildings or facility which, if disclosed, would jeopardize security of the building or facility or persons therein” and “security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons, property, electronic data or software[.]”<sup>8</sup>

The Court noted the broad nature of these exceptions, stating that “both security exemptions advance a discernible public policy with respect to the security systems of public buildings,” the likes of which are at issue in the case.<sup>9</sup> While the exceptions do not establish a blanket exemption for disclosure of security-related information, the Court stated that such information can be withheld in a situation where the “information’s disclosure would create the very danger the security measures and surveillance techniques were meant to thwart.”<sup>10</sup> As the footage requested here would do exactly that, by “reveal[ing] the capabilities and vulnerabilities of surveillance cameras” and “undermin[ing] the operation of a government facility’s security system.”<sup>11</sup>

In this matter, the scope of the camera's surveillance area (the width, depth, and clarity of the images, as well as when it operates, i.e. intermittently and, if so, at what intervals and are they regular) is the information that the Township seeks to protect. That the video may contain depictions of otherwise non-confidential views of an area outside a public building or may capture persons moving in a public area is not a complete way in which to assess the security worth of this requested government record. Such analysis provides a stunted review for addressing the purpose underlying the security exemptions.<sup>12</sup>

A sensible application of the security exceptions supports denying release of information that undermines the operation of a government facility's security system. Compelling the wholesale release to the public of videotape product of any security camera, or combination of cameras, from a government facility's security system would reveal information about a system's operation and also its vulnerabilities. Once OPRA is interpreted to require unfettered access to the work product of any camera that is part of a governmental facility's security system, then footage from security cameras in all governmental facilities—police stations, court houses, correctional institutions—would be subject to release on demand. It

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<sup>7</sup> *Id.* at 170 (quoting N.J.S. 47:1A-1, citing N.J.S. 47:1A-6).

<sup>8</sup> *Id.* at 171 (quoting N.J.S. 47:1A-1.1).

<sup>9</sup> *Id.* at 172.

<sup>10</sup> *Id.* at 174.

<sup>11</sup> *Id.* at 174, 176.

<sup>12</sup> *Id.* at 175-176.

takes no stretch of the imagination to realize that that would make it possible for any person to gather the information necessary to dismantle the protection provided by such security systems.

Requests for videotape product from surveillance cameras protecting public facilities are better analyzed under the common law right of access where the asserted need for access can be weighed against the needs of governmental confidentiality. *See O'Boyle v. Borough of Longport*, 218 N.J. 168, 196–97... (2014) (noting that “the party requesting documents must explain why he seeks access to the requested documents” and relating three-part test used for evaluation of such requests); *Educ. Law Ctr., supra*, 198 N.J. at 302...<sup>13</sup>

The Court concluded “that the broad brush of compelled release under OPRA, on demand for any or no reason, of the Township's security system's surveillance videotape product, revealing its capabilities and vulnerabilities, is contrary to the legislative intent motivating OPRA's exemptions based on security concerns. We hold that the videotape requested in this matter is not subject to public access under OPRA's security exclusions.”<sup>14</sup>

In dissent, Chief Justice Rabner noted that because the OPRA “does not *say* that all security footage is categorically exempt from public disclosure[,]” the Court’s decision is fundamentally flawed.<sup>15</sup> The Chief Justice claimed the language of the statute was reasonably clear in requiring the Township to prove that release of the footage “‘would jeopardize security’ or ‘would create a risk to’ safety” to avail itself of the exemption.<sup>16</sup>

As Chief Justice Rabner explained,

what matters in this appeal is what the Legislature said when it made policy choices in the body of the statute. The Legislature did not create a wholesale exception for security footage. Instead, it drafted two security exceptions that each contain two prongs: (1) the material sought must relate to “emergency or security information” or “security measures and surveillance techniques”; and (2) the agency must show that disclosure “would jeopardize security” or “would create a risk to” safety... Unless both prongs are met, the exceptions cannot apply.

The Court, however, effectively exempts security footage from disclosure across the board because of what the footage might reveal about how a security system operates. That standard is quite broad. Indeed, it is hard to see how security footage that covers even a modest amount of time could pass the

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<sup>13</sup> *Id.* 176-177.

<sup>14</sup> *Id.* at 177.

<sup>15</sup> *Id.* at 179.

<sup>16</sup> *Id.* (quoting N.J.S. 47:1A-1.1).

majority's test. Beyond that, the Court's reading of the law gives no meaning to the second prong in both statutory exceptions. The analysis, therefore, runs contrary to a basic rule of statutory interpretation. Courts should give effect to every word of a statute and not read a law in a way that renders language superfluous. [citations omitted]<sup>17</sup>

The dissent also notes that the

...Legislature, of course, is free to rewrite and broaden the security-related exceptions in the law. It can craft a categorical exception for security footage as it has done in other areas. But it is for the Legislature, not the courts, to modify the text of a statute.

When called on to interpret a statute, courts must examine the plain language of the law and give effect to the words the Legislature used...To give sense to the statute as a whole, courts review particular language “in context with related provisions.”...Here, the broad exceptions the Legislature crafted for other categories of information offer telling context.

OPRA itself adds another important rule of statutory construction. The law expressly declares that “any limitations on the right of access ... shall be construed in favor of the public's right of access.” ... Reading OPRA's security exceptions to exempt all security footage heads in the opposite direction. [citations omitted]<sup>18</sup>

### **Conclusion**

Staff seeks authorization to engage in additional research and outreach to determine whether some modification to the statutory language could address the issue on which the Courts focused in *Gilleran*. It is noted that the case was “remanded for further proceedings based on the unresolved common law right-of-access claim.”<sup>19</sup>

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<sup>17</sup> *Id.* at 183.

<sup>18</sup> *Id.* at 184-185.

<sup>19</sup> *Id.* at 178.