



Ohio Coalition for Open Government

Working to strengthen and support open government and public access

1335 Dublin Road, Suite 216-B, Columbus, Ohio 43215

FOR IMMEDIATE RELEASE

Does the Ohio Supreme Court support open government? OCOG analyzes six years of cases to find out

COLUMBUS, Ohio, *September 30, 2015* – A report by the Ohio Coalition for Open Government (OCOG) confirms the view that the Ohio Supreme Court most often sides with officials in cases involving government access and transparency, but a recent string of decisions has shifted outcomes more in citizens' favor.

The Ohio Coalition for Open Government built a spreadsheet to track court rulings and the votes of individual justices in open-government cases the Court has handled since 2010.

Forty-four rulings were examined from July 2010 to July 2015. The final OCOG analysis excluded routine prisoner appeals and eight cases in which the opinions were too mixed to be fairly scored one way or the other. Of the remaining 32 cases, 12 were voted in favor of open government – including the five most recent decisions tabulated – and 20 favored restricting or denying access.

Among the sitting justices, Justice Terrence O'Donnell was the justice most likely to decide against access – 77 percent of the time (excluding routine prisoner cases). Justice Judith French was the justice most likely to vote in favor of parties seeking access. She voted against access 60 percent of the time, a 17 percent difference from O'Donnell.

“We wanted to see if trends emerged as you examine dozens of rulings,” said Dennis Hetzel, president of OCOG and executive director of the Ohio Newspaper Association. “A lot of these decisions are 4-3 or 5-2, so obviously the justices don't view the law in the same ways.”

The Ohio Supreme Court was given an opportunity to review the analysis and responded in part by saying, “The role of the Supreme Court of Ohio in open government cases is to interpret and apply the public records access laws passed by the General Assembly. The Supreme Court is not free to use cases to legislate its own views on open government.”

For the complete response from the Ohio Supreme Court, [go here](#).

“We agree that people should keep in mind that there are a lot of factors that go into decisions, starting with the facts of the case, the existing law and evidence as presented,”

Hetzel said. “Sometimes it means a poorly written statute needs fixing, which was starkly demonstrated by their recent ruling involving Ohio charter schools. A number of decisions in recent years have made it particularly difficult to gain access to government records in Ohio.”

Hetzel said one recent case, *Murray v. Chagrin Valley Publishing*, actually is a libel and defamation case, but was included in the database after some deliberation.

“It fits our criteria of including meaningful cases on open government issues. In July, the Supreme Court refused to consider Murray’s appeal of the lower-court decision against him,” Hetzel said. “We believe a decision in favor of Murray would open the door to more actions that chill the First Amendment rights of citizens to comment on matters of public concern.”

The OCOG analysis was compiled using the WestLaw website to identify and summarize relevant cases. Courtney Stanley, a recent graduate of the University of Cincinnati and a summer intern at the ONA, worked with Hetzel and Jason Sanford of the ONA on the initial analysis, which was then reviewed by several Ohio attorneys who are experts in open government cases.

To view the OCOG spreadsheet, [go here](#). Hetzel said that OCOG plans to update the spreadsheet as new rulings are issued.

“For example, the Supreme Court just ruled in *Clough v. Franklin County* that a mother did not have the right to see documents related to an investigation of suspected abuse of her daughter,” Hetzel said. “Regardless of how you feel about that outcome, it’s an interesting case and should be part of our database.”

Hetzel added that OCOG is closely following two pending cases. One involves a school board majority’s use of e-mail for deliberations instead of having a discussion in a public meeting. The other case challenges the refusal of the Columbus Police Department to allow access to records in a murder case in which the defendant claims he is innocent.

Contact:

Dennis Hetzel
Executive Director
Ohio Newspaper Association
President
Ohio Coalition for Open Government
614-486-6677
1335 Dublin Road, Suite 216B
Columbus, OH 43215
dhetzel@ohionews.org