



Ohio Coalition for Open Government

Working to strengthen and support open government and public access

Analysis of Ohio Supreme Court cases shows increased support for open government issues

COLUMBUS, May 16, 2017 – The Ohio Supreme Court issued rulings more favorable to the position of open government advocates during the past two years than during the previous five years, according to an analysis by the Ohio Coalition for Open Government (OCOG).

During the 2015 and 2016 calendar years, the Court issued 13 rulings which OCOG considered supportive of open government, open meeting, and sunshine law issues. These rulings including high-profile cases such as deciding that police dash-cam videos are public records along with more routine rulings such as admonishing the city of South Euclid for not releasing requested records to citizens.

During that same period, the Court issued seven rulings that OCOG scored as unfavorable to open government interests, supporting the governmental agency seeking to deny access to a record or a meeting.

Court officials correctly point out that there are many factors that go into rulings, including the facts of the cases, quality of the arguments and the laws the justices must interpret. OCOG also stresses that when it evaluates case outcomes as “unfavorable” to open government, that does not mean that the court ruled incorrectly.

Still, the last two years contrasted with the 24 rulings issued from 2010 through July 2015, when OCOG first produced the spreadsheet. During that period, 24 of 36 cases considered had results in favor of the government position.

“The database is serving the purpose intended, particularly as it grows,” said Dennis Hetzel, OCOG president. “First of all, this is the only place to see all these cases in one spot. We recognize that some of our scoring is open to interpretation, particularly with complex cases, but that’s a good basis for the start of a discussion.

“Still, for whatever reason – and it just may be that lawyers are bringing better cases and arguing them better – the current trend is very encouraging. Three years ago, we were very concerned that the pendulum of court decisions had swung too far in favor of secrecy.”

For the original analysis, released in 2015, the Ohio Coalition for Open Government built a spreadsheet to track court rulings and individual justice votes in every open government case the Court had handled in the preceding five years.

In the new analysis 18 open government rulings were examined from August 2015 through December 2016. These rulings were added to the previous 44 examined from July 2010 to July

2015. The final OCOG analysis excluded routine prisoner appeals and 11 cases in which the opinions were too mixed to be fairly scored one way or the other.

The six-year analysis also includes comparisons between justices to compare the frequency with which each justice votes for and against open government.

Among current justices, Justice Terrence O'Donnell was, by far, the justice least likely to decide in favor of open government, doing so only 27 percent of the time. Justice Judith French had the best pro-access voting record among incumbent justices, voting in favor of open government 55 percent of the time, or 28 percent more often than O'Donnell.

The OCOG analysis was compiled using the WestLaw website to identify cases involving open government cases handled by the Ohio Supreme Court since 2010.

To view the OCOG spreadsheet and other supporting materials, go to www.ohioopengov.com/news/supremecourt.

“The database also is working as intended in terms of the rulings of individual justices,” Hetzel said. “Even though they hear the same arguments and read the same pleadings, justices vary considerably in how they vote on these cases. This gives the public a window into how they view the law.”

The analysis of Ohio Supreme Court cases is featured in the spring 2017 issue of OCOG's *Open Government Report*, which can be downloaded at www.ohioopengov.com/open-government-report.

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