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Paff v. Atlantic City Alliance, Inc.

Superior Court of New Jersey, Appellate Division - August 27, 2013 - Not Reported in A.3d - 2013 WL 4515915

Plaintiff appealed from a decision of the Law Division that dismissed his claim that defendant Atlantic City Alliance, Inc. (ACA) is a “public agency” subject to the provisions of the Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 to -13 and the common law right of access to public records.

In 2011, the Legislature enacted, and the Governor signed, L. 2011, c. 18, now codified as N.J.S.A. 5:12-218 to -233. The purpose of the legislation was to revive and enhance Atlantic City’s tourism and gaming industries through the creation of the Atlantic City Tourism District. N.J.S.A. 5:12-219a(1). The District would be managed by the Casino Reinvestment Development Authority (CRDA). N.J.S.A. 5:12-219b.

After the legislation was enacted, five casinos formed ACA as a private, not-for-profit corporation. On November 2, 2011, ACA and CRDA entered into a “Public-Private Agreement for Marketing Atlantic City” (the Agreement) as envisioned by N.J.S.A. 5:12-221a.

Plaintiff sent a letter to ACA’s president requesting that ACA produce certain “government records in accordance with [OPRA] and the common law right of access.” Among other things, he asked for copies of the contracts between ACA and certain of its employees, e-mails exchanged between these individuals, ACA’s by-laws, and its certificate of incorporation. ACA’s president advised plaintiff that ACA was not a “public agency” under OPRA and, therefore, ACA would not produce any of its records in response to plaintiff’s request.

Plaintiff sued. After reviewing the provision in light of the Legislature’s intent, the court concluded that the ACA is not “public agency” subject to OPRA or the common law right of access to public records. The appeals court affirmed.