

CAPABILITIES / LITIGATION

Transparency and Public Data

OVERVIEW

The first of its kind in the nation, Obermayer's groundbreaking Transparency and Public Data practice helps clients develop strategies to utilize public information access laws as a competitive advantage. If a company does business with or is regulated by, state or federal government, its information is always at risk of disclosure. Applicable laws can include the Freedom of Information Act, Pennsylvania's Right-to-Know Law, and a matrix of other state-specific public data laws. Any or all of them can affect who has access to sensitive information. The attorneys of our Transparency and Public Data practice ensure that our clients can both minimize the risk and maximize the considerable opportunity these laws can present.

Our Clients

The Obermayer team provides guidance to, among others, federal contractors, private/public partnerships, development companies, transportation authorities, life sciences companies, universities, and others. Our attorneys, who have exceptionally deep experience in the operation of these laws from both the government and the private sector perspective, help clients understand how to prevent or manage the accidental or intentional disclosure of their confidential/private information to the public. We also serve media companies. In as time-sensitive a media environment as today's, waiting months or years for records is no longer an option. We help news organizations obtain public records in real-time – typically under 60 days.

We help our clients recognize what is and is not public record. We provide training services to help them understand how to protect their confidential/trade secret information. We guide their in-house counsel in drafting contracts and providing guidance for their employees. And when necessary, we provide specialized advocacy in the event of a potential or actual disclosure.

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EXPERIENCE

The Transparency and Public Data practice is led by Terry Mutchler, a legal pioneer and one of the founding thinkers in the discipline. Terry was the first Executive Director of the Office of Open Records, appointed by Pennsylvania Governor Ed Rendell to create the office from the ground up. In this position, Terry wrote the policies and procedures that now govern process for over ten thousand units of state and local government. It's safe to say that nobody knows this topic better.

In addition, our team members have a particular appreciation for the issues presented at the intersection of the media and open records law. Terry, a former award-winning investigative journalist and AP bureau chief, guides clients in the communication and crisis strategy that often accompanies litigation.

Because transparency laws are relatively new, and are evolving quickly, clients are frequently unaware that when they submit records to the state or local government, competitors may have access. We are often able to position their submissions to properly protect confidential and proprietary material and help them understand what records will be public as part of their submission.

In addition, transparency law topics frequently touch on a host of other legal issues, including intellectual property (trade secret, trade dress), First Amendment law (newsgathering, slander, libel, defamation), and data protection, data privacy, and white-collar investigations. The team is uniquely capable of advising clients in each of these situations. We work closely and cost-effectively with legal counsel from either within Obermayer, or from elsewhere.

Our team brings a compelling combination of thought equity and hands-on experience to this practice. First, we know that when clients are scrambling to protect confidential information, time is of the essence. We are responsive and fast. Our goal is to manage time, either by speeding up statutory deadlines for production or invoking an emergency stay to protect data.

Second, clients benefit from our experience, which is particularly valuable in such a new area of the law. As one example, since its passage in 2008, Pennsylvania's Right-to-Know law has been significantly expanded by a deep trove of case law guidance. Given this, individuals seeking information, or entities seeking to protect it, need more than an attorney who handles routine business issues. Without truly competent, experienced open records representation, a client is left to grapple with a relatively obscure process for which there is no equivalent in Pennsylvania jurisprudence.

Finally, and from a pragmatic standpoint, we are intimately familiar with the decision-makers in this field. Our consistent, steadfast and exceptional advocacy has been hailed by appellate and trial court judges in this state. In Pennsylvania, there isn't a single entity who regularly comes in contact with transparency law who isn't familiar with our team, our work, and our knowledge. Our clients benefit from all of this, and for the first time, can rely on experienced, knowledgeable professionals to help them manage what is increasingly the most valuable asset any business has: information.

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