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Stradley Ronon Stevens & Young, LLP
2005 Market Street
Suite 2600
Philadelphia, PA 19103-7018
215.564.8000 Telephone
215.564.8120 Facsimile
www.stradley.com

With other offices in:
Washington, D.C.
New York
New Jersey
Illinois
Delaware



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One-on-One with Jeffrey L. Nash, Camden County Freeholder



Jeffrey L. Nash is an attorney and a long-standing elected leader, currently serving as member of the Camden County Board of Chosen Freeholders, to which he was first elected in 1991. In addition to serving as an elected Freeholder, Jeff is Vice Chairman of the Delaware River Port Authority’s (DRPA) Board of Commissioners. First appointed in 2002, Jeff has served four different New Jersey Governors as a member of the bi-state board.

Government Affairs News (GAN): You have a long career in public service. Please describe some of your accomplishments as a member of the Camden County Board of Freeholders.

Jeffrey L. Nash (JLN): My passion in government has always been the revitalization of Camden City. Named as one of the most impoverished and dangerous cities in America, Camden offers both government challenges and opportunities. In the past few years, Camden County has partnered with other governmental entities to help lift the city’s economic and social trajectory. Public safety and education have dramatically improved, unsafe structures have been demolished, the infrastructure has been rebuilt, and the quality of life in the neighborhoods has been enhanced – all for the benefit of existing residents and businesses. The greatest component

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U.S. Supreme Court Expands FOIA Protection for Trade Secrets and Proprietary Information

by Karl S. Myers

On June 24, the U.S. Supreme Court decided that owners of trade secrets and proprietary information need not show competitive harm to trigger Freedom of Information Act (FOIA) exemption. This is a major break from prior lower court precedent – and no doubt will make it far easier for businesses to protect the sensitive information they submit to the federal government from public records disclosure.

In *Food Marketing Institute v. Argus Leader Media* (https://www.supremecourt.gov/opinions/18pdf/18-481_5426.pdf), a newspaper in Sioux Falls, South Dakota, sent a FOIA request to the U.S. Department of Agriculture, asking for information on a program called “SNAP” (formerly the food stamp program). The newspaper wanted to know the details of SNAP payments made at grocery stores across the country. The department denied the request under FOIA exemption 4, which shields “trade secrets and commercial or financial information” that businesses submit to the government.

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Jeffrey L. Nash *(continued from page 1)*

of these accomplishments is that the youth of Camden will now have better opportunities to succeed and, hopefully, to raise their families in the city.

GAN: What are some of the biggest challenges that you’ve faced as a public official?

JLN: Government is always about balance and compromise. The challenge is to make positive changes to benefit community and residents while being mindful that property taxes, which primarily fund government, are already too high. Thus, funding improvements comes with the task of figuring out how to use existing resources to accomplish our overall goals and serve the community, without raising taxes.

GAN: Please share some of your priorities and initiatives.

JLN: I have two positions and responsibilities in government – Camden County and the DRPA – and each has different priorities. For example, I am the Parks Department liaison for Camden County. My goal is to rebuild the County’s vast park system, which currently includes 22 parks. Our largest and most exciting project is the building of a 32-mile all-purpose trail that will run from the Ben Franklin Bridge to Winslow, New Jersey. At the DRPA, the priority is to maintain and upgrade the four bridges crossing the Delaware River, along with the operation of PATCO, without raising tolls or fares. An exciting project at the DRPA is the planned installation of solar panels at all PATCO parking lots, which is expected to provide 50% of the energy needed to operate the rail system and significantly reduce the DRPA’s carbon footprint.

GAN: What advice would you give to young professionals?

JLN: Follow your passion, while being mindful of your priorities. The key is to create a balance, which is perhaps the most difficult thing to do. For me, I was always passionate about government service. When I was building my legal career and starting my

family, it was difficult to add government service to this very busy mix. I always knew that family was priority one, and recognized that my legal practice was my primary source of income. This motivated me to succeed – first at Cozen O’Connor and then at my own firm. Through it all, I understood that my government service needed to take its proper place given my other obligations. With the correct balance of time and priorities, you can find a way to manage it all and be successful.

Jeff Nash began his career in 1983 as an attorney with the New York City Legal Aid Society. In 1987, he joined the Philadelphia-based law firm of Cozen O’Connor; where he specialized in civil litigation and government relations. In 2015, Jeff left Cozen O’Connor and founded The Nash Law Group, LLC located Camden, New Jersey. His firm focuses on advancing community-based projects as well as neighborhood redevelopment and revitalization efforts in Camden and throughout the Greater Philadelphia and South Jersey regions.

Jeff was first elected to public office in 1989 as a member of the Cherry Hill Township Council. In November 1991, he was elected to the seven-member Camden County Board of Freeholders. He has been re-elected to the Freeholder Board 10 times and has served the residents of Camden County for more than 27 years. Jeff is also Vice Chairman of the Delaware River Port Authority’s (DRPA) Board of Commissioners. He has served on the board since 2002.

Closer to his heart, Jeff is a volunteer attorney and Chair of the Advisory Board of the Volunteer UP Legal Clinic, which provides pro bono legal services to economically disadvantaged clients in Camden and surrounding communities. Jeff is dedicated to public service and has won numerous awards for his work in this area.

Jeff earned his Bachelor’s degree from George Washington University and his J.D. from Hofstra University School of Law. He is married to Krista, has three children and one grandchild, and lives in Camden County, New Jersey. ■

Government & Public Affairs Practice Group

John R. Saler, <i>Chair</i>	215.564.8709	jsaler@stradley.com
Mark E. Chopko	202.419.8410	mchopko@stradley.com
Steven B. Davis	215.564.8714	sdavis@stradley.com
Stephen J. Johnson	215.564.8010	stephen.johnson@stradley.com
Elizabeth A. Kuschel	215.564.8539	ekuschel@stradley.com
Andrew S. Levine.....	215.564.8073	alevine@stradley.com
Karl S. Myers	215.564.8193	kmyers@stradley.com
Corey S. D. Norcross	215.564.8742	cnorcross@stradley.com
William R. Sasso	215.564.8045	wsasso@stradley.com
Mark S. Schweiker	215.564.8003	mschweiker@stradley.com
Catherine M. Ward	856.321.2402	cward@stradley.com

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The newspaper sued, and the district and circuit courts ruled for the newspaper. In reaching that result, the courts applied a “substantial competitive harm” test, which federal courts have used since it was first adopted by the U.S. Court of Appeals for the D.C. Circuit in 1974. Thus, in FOIA exemption 4 cases, businesses typically had to make a strong showing of competitive harm from disclosure of the information to reach the exemption’s safe harbor. In *Food Marketing Institute*, the evidence did not meet that test.

All of this changed when the case reached the Supreme Court. Sweeping away 45 years of precedent, the court rejected the notion that exemption 4 requires a showing of “substantial competitive harm.” In fact, the majority – over the dissent of three justices – rebuffed the suggestion that a business has to show **any** harm under exemption 4. All the statute requires is a showing of “confidentiality” – in particular, that a business “customarily and actually” keeps the requested information private.

This is a big change for exemption 4. It has implications for every business providing sensitive information to the federal government under a government contract, during a regulatory proceeding, or in countless other settings. No longer will these enterprises have to worry about proving competitive harm. Instead, they must focus their efforts entirely on confidentiality. This includes evidence showing:

- the limits on external disclosure – emphasizing how the information is never (or rarely) disclosed to others;
- the protective measures taken when a business has to make outside disclosures, such as confidentiality agreements and physical stamping of documents as “CONFIDENTIAL”;

- the internal steps used to keep the information secret, including computer security and physical file security measures; and
- the few business insiders with access, thus indicating that even internal access is limited to the handful of people with a business need to know.

One question left open in the wake of *Food Marketing Institute* is whether exemption 4 requires a government agency to assure a business it will keep the information confidential. The answer to that seems it must be “no” – otherwise, agencies will have a veto power over attempts to protect proprietary information. In any event, and while we wait for the federal courts to sort that question out, businesses should seek out confidentiality assurances from agencies in all situations. And whenever a business provides confidential information to an agency, it should submit it with a writing asserting exemption 4 and stating that the business expects and assumes that the agency will honor that claim. ■



Karl S. Myers, chair of Stradley’s appellate practice group, represents government entities, contractors, and others in governmental litigation matters, including state and federal constitutional challenges, Pennsylvania Right-to-Know Law requests, government contracting and bid-protest disputes, insurance insolvency and regulatory matters, and state administrative agency disputes. For more information, please contact Karl at 215.564.8193 or kmyers@stradley.com.