

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-004205-18T2**

ERNEST BOZZI,	:	Civil Action
	:	
Respondent/Plaintiff,	:	
	:	ON APPEAL FROM
	:	
v.	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION: HUDSON COUNTY
	:	
JERSEY CITY and	:	DOCKET NO.: HUD-L-354-19
IRENE McNULTY,	:	
	:	SAT BELOW
Appellants/Defendants.	:	
	:	Honorable Francis B. Schultz
	:	

**BRIEF ON BEHALF OF APPELLANTS/DEFENDANTS,
JERSEY CITY and IRENE McNULTY**

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PRELIMINARY STATEMENT

This appeal involves a fundamental right to privacy for the citizens of the City of Jersey City ("the City"). Pursuant to the Open Public Records Act, N.J.S.A. 47:1A-1 et. seq. ("OPRA"), the lower Court erroneously ordered defendants, the City and Irene McNulty, City Clerk (collectively "defendants"), to provide plaintiff Ernest Bozzi ("plaintiff") with a list of names and home addresses of every individual who possesses a dog license in the City. Plaintiff has freely admitted that he is seeking the list of names and addresses in order to solicit customers for his invisible dog fence installation business. This type of information, which will be used for the express purpose of soliciting business, is protected by a privacy exception to OPRA. See N.J.S.A. 47:1A-1.

The lower Court erred by ignoring established New Jersey and United States Supreme Court precedent and finding that Jersey City dog owners had no reasonable expectation of privacy in regards to their names and home addresses. The lower Court also erred by finding that the public interest in disclosure outweighed the interest in keeping the information private.

STATEMENT OF FACTS AND PROCEDURAL HISTORY¹

On November 27, 2018, plaintiff sent an OPRA request to defendants which stated:

I would like your most recent compiling of dog license records (annual/yearly). You can redact the breed, name of dog, any information about why they have the dog and any phone numbers whether they are unlisted or not. I am only looking for the names and addresses of dog owners for my invisible fence installations (I am a licensed home improvement contractor). Please remove any information beyond the names and addresses as there are no privacy concerns as outlined by the Government Record Council in Bernstein v. Allendale. Da56. (emphasis added).

Plaintiff also noted in his OPRA request that he was a “[b]usiness owner seeking dog owners as customers.” Id.

Thereafter, on December 10, 2018, defendants denied plaintiff’s request pursuant to the privacy exception under OPRA. Specifically, the City stated in its denial that:

N.J.S.A. 47:1A-1 specifically states that “a public agency has a responsibility and an obligation to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy.” In this particular instance, the people identified on the dog licensing records would likely be subjected to unsolicited commercial contact. Additionally,

¹ Because the facts and procedural history of this case are inextricably intertwined, they are combined to avoid repetition and for the Court’s convenience.

"public disclosure of registered dog owners would jeopardize the security of the dog owner, the security of the non-dog owner, the property that the dog may be protecting and the dog itself from burglary, theft and other criminal activity. Many homeowners use their dogs as a means of security and that others have valuable dogs that could be subject to theft." Bernstein v. Borough of Park Ridge, GRC Complaint No. 2005-99 (July 2005). As a result, the responsive documents in the possession of the City are exempt from disclosure pursuant to OPRA. Da4.

On January 24, 2019, plaintiff commenced an action in the Hudson County Superior Court by filing a verified complaint and an order to show cause challenging defendants' denial of plaintiff's OPRA request. Da1-2; Da 5-6. On May 9, 2019, after hearing oral argument on the matter, the lower Court granted plaintiff's order to show cause and directed defendants to provide the information sought in plaintiff's OPRA request. Da196; T3:1-46:25.² On May 30, 2019, defendants filed a notice of appeal. Da197-199. Defendants also filed a motion to stay the lower Court's judgment pending resolution of the appeal. On June 14, 2019, the Appellate Division granted defendants' motion to stay.

²Order to Show Cause hearing before the Honorable Francis B. Schultz, J.S.C. on May 9, 2019.

LEGAL ARGUMENT

STANDARD OF REVIEW

As a preliminary matter, a lower Court's determination of the applicability of OPRA should be reviewed de novo by the Appellate Division. Paff v. New Jersey State Firemen's Ass'n, 431 N.J. Super. 278, 286 (App. Div. 2013). Therefore, the lower Court's "interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Manalapan Realty, L.P. v. Twp. Comm. of Twp. of Manalapan, 140 N.J. 366, 378 (1995).

POINT I

THE LOWER COURT ERRED IN FINDING THAT THE INFORMATION SOUGHT IN
PLAINTIFF'S OPRA REQUEST WAS NOT PROTECTED BY THE PRIVACY
PROTECTIONS OF N.J.S.A. 47:1A-1 (T35:4-39:7)

OPRA provides that "government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, with certain exceptions, for the protection of the public interest[.]" N.J.S.A. 47:1A-1. The New Jersey Legislature enacted OPRA "'to maximize public knowledge about public affairs in order to ensure an informed citizenry and to minimize the evils inherent in a secluded process.'" Mason v. City of Hoboken, 196 N.J. 51, 64 (2008) (quoting Asbury Park Press v. Ocean Cty. Prosecutor's Office, 374 N.J. Super. 312, 329 (Law. Div. 2004)). The New Jersey Supreme Court has explained that "[w]ith broad public access to information about how state and local governments operate, citizens and the media can play a watchful role in . . . guarding against corruption and misconduct." Burnett v. Cty. of Bergen, 198 N.J. 408, 414 (2009).

However, OPRA has also carved out a privacy exception for certain types of information. N.J.S.A. 47:1A-1 provides that "a public agency has a responsibility and an obligation to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy[.]"

Therefore, as a threshold matter, a public agency seeking to withhold records from public view pursuant to the privacy exception of OPRA "must present a colorable claim that public access to the records requested would invade a person's objectively reasonable expectation of privacy." Brennan v. Bergen County Prosecutor's Office, 233 N.J. 330, 342 (2018). Once the public agency has satisfied this threshold factor, the Court must then balance the privacy interests of its citizens against the public's interest in disclosure of the private information. See Doe v. Poritz 142 N.J. 1, 87-88 (1995). This balancing test requires the Court to consider the seven factors as laid out by the Supreme Court in Doe. Ibid. The seven factors are:

(1) the type of record requested; (2) the information it does or might contain; (3) the potential for harm in any subsequent nonconsensual disclosure; (4) the injury from disclosure to the relationship in which the record was generated; (5) the adequacy of safeguards to prevent unauthorized disclosure; (6) the degree of need for access; and (7) whether there is an express statutory mandate, articulated public policy, or other recognized public interest militating toward access.

Id. at 88 (citing Faison v. Parker, 823 F. Supp. 1198, 1201 (E.D.Pa. 1993))

Based on these standards, it is clear that information sought by plaintiff, every dog license owners' name and home address within the City of Jersey City for the express purpose of

commercial solicitation, is protected by the privacy exception of OPRA. See N.J.S.A. 47:1A-1 To begin, in regards to threshold question as to whether there exists a reasonable expectation of privacy, the Supreme Courts of New Jersey and the United States have already determined that access to a citizen's name and home address for purposes of commercial solicitation violates the citizen's reasonable expectation of privacy. Doe, supra, 142 N.J. at 82. In Doe, the Supreme Court stated that "public disclosure of plaintiff's home address does implicate privacy interests," and explained that:

"[t]he question of whether an individual has a privacy interest in his or her bare address does not fully frame the issue...[and] [t]he more meaningful question is whether inclusion of the address in the context of the particular requested record raises significant privacy concerns, for example because the inclusion of the address can invite unsolicited contact or intrusion based on the additional revealed information."

Id. at 82-83 (quoting Aronson v. Internal Revenue Service, 767 F. Supp. 378, 389 n.14 (D. Mass. 1991), modified, 973 F. 2d 962 (1st Cir.1992)) (emphasis added).

By way of example, the Court in Doe cited to the United States Supreme Court case United States Dep't of Defense v. Federal Labor Relations Authority, 510 U.S. 497, 501, 114 S. Ct. 1006, 1015, 127 L. Ed. 2d 325, 338 (1994), which held that employees of federal agencies had a reasonable expectation that their names and home

addresses would not be released to the labor unions which represented the bargaining units of the employees. The Court held that such information was not accessible pursuant to the Freedom of Information Act (FOIA), the federal analog to OPRA. Id. at 502. The decision stated that Courts should be "reluctant to disparage the privacy of the home, which is accorded special consideration in our Constitution, laws, and traditions" and that there was a reasonable privacy interest in "preventing at least some unsolicited, unwanted mail" from reaching the employees at their homes. Id. at 501. See also John Does v. City of Trenton., 565 F. Supp. 2d 560, 571 (D.N.J. 2008) (holding that the names and addresses of employees of government contractors were not accessible under OPRA, and that "once the personal information at issue is released, there would be nothing to stop others from obtaining it to harass these employees").

In Jersey City, all dog owners are required to obtain a dog license for their dogs. Section 90-13(a) of the City code states that "every owner of a dog of licensing age shall obtain a license and official registration tag for such dog and shall place upon such dog a collar or harness with the registration tag securely fastened thereto." Furthermore, the New Jersey statute N.J.S.A. 4:19-15.5 provides that a dog license applicant:

shall state the breed, sex, age, color and markings of the dog for which license and registration are sought, whether it is of a

long- or short-haired variety...also the name, street and post-office address of the owner and the person who shall keep or harbor such dog.

Neither the City code nor the State statute places its citizens on notice that their names and home addresses, along with information regarding their dogs, will be disseminated to the general public.

Dog license holders in Jersey City have a reasonable expectation that their names and addresses will not be disseminated to the public for the specific purpose of commercial solicitation. As explained in Doe, supra, 142 N.J. at 83, the issue here is not simply that plaintiff seeks Jersey City citizens' bare names and addresses. Indeed, the issue is that plaintiff is seeking names and addresses of Jersey City citizens along with the fact that those citizens own dogs, and that plaintiff seeks the information for a business interest. Ibid. Plaintiff freely admitted in his OPRA request that he is seeking the "the names and address of dog owners for my invisible fence installations," and explained that he is a "licensed home improvement contractor," and a "[b]usiness owner seeking dog owners as customers." Da56. (emphasis added).

Plaintiff is not seeking the information in order to achieve any of the main goals of OPRA, such as to "minimize the evils inherent in a secluded process" of government, or to "play a watchful role in . . . guarding against corruption and misconduct." Mason, supra, 196 N.J. at 64; Burnett, supra, 198 N.J. at 414.

Rather, plaintiff is seeking the information to generate business. Because plaintiff's OPRA request would "invite unsolicited contact or intrusion" upon its citizens, defendants have demonstrated that providing access to dog license holders' names and addresses would violate its citizens' reasonable expectations of privacy. See Doe, 142 N.J. at 83.

The Court below therefore erred in finding that there was no reasonable expectation of privacy regarding a dog owner's name and home address. The lower Court, in its oral opinion, stated "I don't think someone who simply registers their dog has a objectively reasonable belief that it's going to be kept private or confidential." T35:6-8. It is apparent that the lower Court's determination in this regard was based upon a personal opinion, without any regard to the standards for reasonable expectations of privacy which have been set by the Courts in Doe, 142 N.J. at 83, United States Dep't of Defense, 510 U.S. at 501, and John Does, 565 F. Supp. 2d 560, 571.

The Court below also briefly touched upon the case of Brennan v. Bergen County Prosecutor's Office, 233 N.J. 330, 342 (2018), in determining that defendants had failed to satisfy the threshold determination of reasonable expectation of privacy. The Court stated:

So I don't think it meets the threshold that the chief justice talked about in the -- what was the case you were talking about the

threshold? I guess it was the Brennan case. It was the Brennan case. T36:16-19.

The Court did not proceed to discuss or analyze the facts or substance of the Brennan decision. Nevertheless, the Brennan case is easily distinguishable from the case presently before the Court. In Brennan, 233 N.J. at 332, the plaintiff sought the names and addresses of successful bidders who voluntarily participated in a public auction of government property. The Court in Brennan explained that the bidders "knew they were participating in a public auctions," and noted that "forfeiture proceedings and public auctions of forfeited property are not conducted in private." Id. at 342. The Brennan case is thus readily distinct from the case presently before the Court, because dog license applicants are not submitting their applications in a public forum similar to that described in Brennan. Additionally, neither the State statute, N.J.S.A. 4:19-15.5, nor the City code, §90-13(a), requiring dog registration, places citizens on notice of the possibility that their information could be distributed when they submit a dog license application. As such, the lower Court misinterpreted the Supreme Court's holding in Brennan, and the lower Court's reliance on Brennan was in error.

Next, based on the seven factor Doe balancing test, it is clear the City's interest in protecting dog license holders' names and addresses from dissemination weighs heavily against any public

interest in disclosure. The seven factor Doe balancing test was applied by the Government Records Council ("GRC") in Bernstein v. Park Ridge, GRC Complaint No. 2005-99 (July 21, 2005), a case almost identical to the one presently before the Court. Da63-66.

In Bernstein, the complainant made an OPRA request seeking the names of addresses of all dog license owners in the Borough of Park Ridge. Da65. The complainant sought the records for the purpose of soliciting business. Id. The GRC determined that, in applying the seven factor Doe test, the private interest in protection outweighed any public benefit of disclosure. Da63-66. Of significance, the GRC, while relying on the Supreme Court's opinion in Doe, 142 N.J. at 82, noted that dog owners in the Borough would be subjected to business solicitation not only from the complainant, but also from other businesses if the list of addresses were to be redistributed. Da64-65. The GRC in Bernstein also found that if the information were to be released, it could "potentially adversely affect a citizen's willingness" to provide important personal information, such as a dog's vaccination status, to the government if citizens expected that their personal information would not be protected from public disclosure in future circumstances. Da65.

Furthermore, the GRC in Bernstein also reasoned that there were potential safety concerns in disseminating dog owner's home addresses:

Permitting access to such records allows any recipient of the record to ascertain which homes are protected by or have dogs and which do not have dogs. Although the Complainant has indicated that the records are to be used in business solicitation, the release of this information could potentially jeopardize the safety and security of citizens and their property, as well as their dogs...The potential for theft, physical harm, vandalism and burglary is a concern in determining the disclosure because it allows the requestor access to personal information regarding the dog owner and their property that may not otherwise be disclosed to the public.

The release of the requested names and addresses, further, has the potential for harm to citizens who own valuable dogs. Dogs of certain breeds may become potential targets for threats, theft and physical harm simply because of their breed. The public agency is without safeguards to provide assurance as to how the records will be used if released.

Id.

Based on the Doe factors, the GRC determined that information regarding dog owners' names and home addresses was protected by the privacy exception of OPRA. Da65-66.

Although Bernstein is not considered binding authority upon this Court, the Bernstein decision has been cited with approval, and used as guidance, by the United States District Court in John Does v. City of Trenton, supra, 565 F. Supp. 2d at 570-71, a similar case involving OPRA's privacy safeguards. In John Does, the District Court granted an injunction enjoining the defendant

public agency from releasing the "names, addresses, and other personal identifying information" of employees who performed work for a government contractor. Ibid. The District Court found that the interest in protecting the employees' personal information outweighed the purported interest in disclosure - to "'preserve[] area wage and safety standards and the general promotion of worker rights.'" Ibid.

The District Court in John Does noted that much like the risk of disclosure in Bernstein, "once the personal informant at issue is released, there would be nothing to stop others from obtaining it to harass these employees." Ibid. (citing Sheet Metal Workers Int'l Ass'n, Local Union No. 19 v. United States Dep't of Veterans Affairs, 135 F.3d 891, 905 (3d Cir. 1998)). The District Court in John Does also found that, like in Bernstein, the "release of these identifiers would not serve the core purpose of OPRA -- to 'maximize public knowledge about public affairs in order to ensure an informed citizenry and to minimize the evils inherent in a secluded process.'" Ibid. (quoting Times of Trenton Publ'g Corp. v. Lafayette Yard Cmty. Dev. Corp., 183 N.J. 519, 535 (2005)). Because "even a slight privacy interest will tip the scales in favor of non-disclosure," the District Court found that disclosure was protected by the privacy exception of OPRA. Ibid. (emphasis added).

In this case, the seven factor Doe test weighs heavily in favor of non-disclosure of the information sought in plaintiff's OPRA request. The first factor, the type of records requested, is the name and address of dog license holders in the City for the purpose of plaintiff's invisible fence installation business. Da56. The second factor, the information it does or might contain, is the names and addresses of all dog owners within Jersey City who have applied for a dog license. Da56.

The third factor is the "potential for harm of subsequent nonconsensual disclosure." Doe, supra, 142 N.J. at 88. If these records were to be produced, they could be sold or re-distributed to other parties who could use it for any purpose, including further solicitation. See Sheet Metal, supra, 135 F.3d at 905. (noting that once the information is out of the agency's protection it can be "misappropriated by marketers, creditors, solicitors, and commercial advertisers.") Additionally, if the records were to be uploaded to the Internet, the private information could become easily accessible to anyone on the Internet, and it would be impossible for the City or plaintiff to retrieve the information once it is disseminated in that manner. Although the lower Court in this matter emphasized that it personally did not believe plaintiff would disseminate the list to others or post it on the internet, there would simply be no way for defendants to prevent

plaintiff from doing so once it released the information. T38:1-5. This factor therefore weighs in favor of nondisclosure.

The fourth factor is the "injury from disclosure to the relationship in which the record was generated." Doe, supra, 142 N.J. at 88. In this case, disclosure may discourage dog owners from properly applying for dog licenses if they believe that their personal information would be distributed for purposes of commercial solicitation. If dog owners are deterred from properly registering their dogs, the City would be unable to accurately verify if dogs within the City are vaccinated against dangerous communicable diseases such as rabies. Additionally, the City would not know whether dogs are present when first responders enter citizens' homes to respond to emergencies.

Furthermore, there are also legitimate safety considerations which could be implicated if this dog license information were to be distributed. For example, because dogs may sometimes be used for protection, public disclosure of such information could inform potential criminals of which properties throughout the City do not have dogs, and therefore, those homes could be more appealing to burglarize. Da57. Dogs themselves could also be targets for theft. See Bernstein, supra, GRC Complaint No. 2005-99. This factor therefore also weighs in favor of nondisclosure.

The fifth Doe factor examines "the adequacy of safeguards to prevent unauthorized disclosure." Doe, supra, 142 N.J. at 88.

Here, no potential safeguards have even been proposed to prevent unauthorized disclosures. As noted previously, once the information is released to plaintiff, there is nothing preventing plaintiff from selling the list of Jersey City dog owners' names and addresses to other businesses or disseminating it on the Internet. In this regard, the lower Court stated that "common sense is that the plaintiff isn't going to give this to his competitors, and there's not really a great need for safeguard[.]" T38:1-5. However, the lower Court's "common sense" is not something that can be considered an "adequate safeguard" against future disclosure. Furthermore, while plaintiff may not wish to distribute the list to competitors selling invisible dog fences, plaintiff may well seek to profit by distributing the list to other vendors of dog services, such as dog walkers, dog food suppliers, or dog boarding businesses. Therefore, the fifth Doe factor also weighs in favor of nondisclosure.

The sixth Doe factor looks to "the degree of need for access." Doe, supra, 142 N.J. at 88. In this case, the purported need for access is to allow plaintiff to solicit customers for his invisible dog fence business. The lower Court agreed with defendants in this regard and stated that "[t]here's no heavy need for access by the plaintiff...[h]e wants them to run his business." T38:14-17. As such, there has been no legitimate public purpose identified in

obtaining this information. The New Jersey Supreme Court has noted that:

[a]n entity seeking records for commercial reasons has the same right to them as anyone else. However, when legitimate privacy concerns exist that require a balancing of interests and consideration of the need for access, it is appropriate to ask whether unredacted disclosure will further the core purposes of OPRA: 'to maximize public knowledge about public affairs in order to ensure an informed citizenry and to minimize the evils inherent in a secluded process.' Burnett, supra, 198 N.J. at 435 (quoting Mason, supra, 196 N.J. at 64).

Plaintiff does not require access to the dog license information in order to be an informed citizen. Rather, plaintiff seeks this information to formulate a commercial mailing list. As such, the sixth factor does not weigh in favor of disclosure.

Finally, the last factor is "whether there is an express statutory mandate, articulated public policy, or other recognized public interest militating towards disclosure." Doe, supra, 142 N.J. at 88. In this case, there is no such mandate, policy, or public interest which militates towards disclosure. In fact, the lower Court agreed with defendants on this factor, and stated that "no, there's nothing specific. I just think that OPRA allows for it." (38:18-22) (emphasis added). The fact that the lower Court "just think[s] that OPRA allows for [disclosure]," does not qualify

as a statutory mandate, articulated public policy, or other recognized public interest. Furthermore, as discussed above, none of the goals of disclosure under OPRA would be furthered by producing the documents sought by plaintiff for his commercial business. This factor therefore also does not weigh in favor of disclosure.

Finally, the lower Court also erred when it stated that it was "not sure" that all of the Doe factors came "into play" in this case, and by concluding that some of the Doe factors were "simply not -- not applicable here." T38:8-13. The lower Court's determination that some of the Doe factors were not applicable was based on personal opinion, and was not based on any case law or statutory directive that permitted the Court to simply dispose of some of the Doe factors. Interestingly, the Doe factors which the Court deemed inapplicable, the fifth, sixth, and seventh factors, were also ones that favored non-disclosure of the information sought by plaintiff.

Based on the seven factor balancing test as articulated in Doe, 142 N.J. at 88, the interest in privacy weighs heavily against any purported need for disclosure. As such, the Court below erred in finding that the records were not protected by the privacy exception of OPRA, N.J.S.A. 47:1A-1, and it is respectfully requested that the lower Court's decision be reversed.

POINT II

THE LOWER COURT ALSO ERRED IN FINDING THAT PLAINTIFF WAS ENTITLED TO THE INFORMATION SOUGHT IN HIS OPRA REQUEST UNDER THE COMMON LAW RIGHT OF ACCESS (T43:21-45:6)

The Court below also erred in finding that plaintiff was entitled to a list of the names and home addresses of every registered dog owner in the Jersey City pursuant to the common law right of access. T43:21-45:6. A person seeking access to records under the common law right of access must establish three requirements: "(1) the records must be common-law public documents; (2) the person seeking access must establish an interest in the subject matter of the material; and (3) the citizen's right to access must be balanced against the State's interest in preventing disclosure." Keddie v. Rutgers, 148 N.J. 36, 50 (1997) (internal citations and quotation marks omitted).

In regards to the first factor, defendants do not dispute that the records sought are common law public documents. In regards to the second factor, the person seeking disclosure of the records must have either a "wholesome public interest or a legitimate private interest." Loigman v. Kimmelman, 102 N.J. 98, 112 (1986) (quoting City of St. Matthews v. Voice of St. Matthews, Inc., 519 S.W.2d 811, 815 (Ky.1974)) (emphasis added). Plaintiff has not asserted any public interest, but rather seeks the information for his own private interest. However, plaintiff has

failed to establish that his private interest is "legitimate." Plaintiff intends to use the information to directly mail unsolicited advertisements to Jersey City dog owners to find new customers for his invisible dog fence business. Plaintiff's interest in sending commercial spam into the mailbox of every dog owner throughout Jersey City should not be considered a "legitimate" private interest under the common law right of access, especially when there are less intrusive means of contacting the same target market in which plaintiff is interested.

Next, in considering the third factor, the balance of the citizen's right to access against the public agency's interest in preventing disclosure, the Court should consider the following:

(1) the extent to which disclosure will impede agency functions by discouraging citizens from providing information to the government; (2) the effect disclosure may have upon persons who have given such information, and whether they did so in reliance that their identities would not be disclosed; (3) the extent to which agency self-evaluation, program improvement, or other decision making will be chilled by disclosure; (4) the degree to which the information sought includes factual data as opposed to evaluative reports of policymakers; (5) whether any findings of public misconduct have been insufficiently corrected by remedial measures instituted by the investigative agency; and (6) whether any agency disciplinary or investigatory proceedings have arisen that may circumscribe the individual's asserted need for the materials.

[Loigman v. Kimmelman, 102 N.J. 98, 113

(1986).]

Much like the Doe factors discussed above, the Loigman factors also weigh in favor of nondisclosure. As has been noted previously, disclosure of the information sought by plaintiff would likely “discourage citizens from providing information to the government” in the future. Ibid. When submitting a dog license application, no reasonable person would expect that their personal information would be disseminated and they would be subjected to receiving unwanted commercial mailings. Neither the City code nor the State statute advises dog owners that defendants would be distributing their personal information when applying for a dog license. See City of Jersey City Code § 90-13(a); N.J.S.A. 4:19-15.5.

Next, when citizens learn that their personal information has been distributed for the purpose of plaintiff’s commercial gain, it is likely that dog owners in Jersey City would be hesitant to apply for dog licenses in the future. This would, in turn, “impede agency functions” if the defendants were deprived of important information regarding the population of dogs within Jersey City, such as whether dogs are properly vaccinated against rabies, and whether dogs are present when first responders enter citizens’ homes to respond to emergencies. See Loigman, supra, 102 N.J. at 113. Furthermore, this lack of important information could result in “chilling” the City’s “self-evaluation” and “program improvement” for its animal control initiatives. Ibid.

Accordingly, it is respectfully submitted that plaintiff does not possess a valid claim for right to access under the common law. As such, the lower Court erred by finding that plaintiff was entitled to the information sought under the common law right to access, and the lower Court's decision should be reversed.

CONCLUSION

For all of the foregoing reasons, it is respectfully requested that lower Court's decision granting plaintiff's order to show cause and requiring defendants to comply with plaintiff's OPRA request be reversed.

Respectfully submitted,

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