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Via eCourts

Joseph H. Orlando, Clerk
Appellate Division Clerk's Office
P. O. Box 006
Trenton, NJ 08625

Re: Ernest Bozzi v. Jersey City and Irene McNulty
TRIAL COURT DOCKET NO.: HUD-L-354-19
APPELLATE COURT DOCKET NO.: A-4205-18T2

Dear Mr. Orlando:

Please accept this letter brief on behalf of defendants/ appellants the City of Jersey City and Irene McNulty ("defendants") as a reply to plaintiff/respondent Ernest Bozzi's ("plaintiff") opposition to defendants' appeal of the lower Court's order requiring defendants to comply with plaintiff's request for records under the Open Public Records Act, N.J.S.A. 47:1A-1 et. seq. ("OPRA").

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LEGAL ARGUMENT

POINT I

PLAINTIFF MISINTERPRETS MUCH OF THE CASE LAW RELIED UPON IN HIS OPPOSITION TO DEFENDANTS' APPEAL

Plaintiff misinterprets much of the case law relied upon in his opposition to defendants' appeal. To begin, plaintiff claims that because the names and addresses of sex offenders were deemed to be subject to public disclosure under the Notification portion of Megan's Law in Doe v. Poritz, 142 N.J. 1 (1995), that the names and addresses of Jersey City dog owners should also be subject to public disclosure in this matter. Pb 15-17. Plaintiff's conclusion in this regard both confuses and oversimplifies the Court's holdings in Doe, supra, 142 N.J. 1. In Doe, supra, 142 N.J. at 83-84, the Supreme Court determined that disclosure of a sex offender's name and address violated a reasonable expectation of privacy. However, the Supreme Court in Doe went on to determine that the information was nevertheless subject to disclosure because the "state interest in public disclosure substantially outweigh[ed]" the sex offenders' interest in privacy. Id. at 88. The Supreme Court explained that there is an "express public policy

militating toward disclosure: the danger of recidivism posed by sex offenders." Id. at 89. By contrast, in this case, plaintiff's interest in soliciting for his invisible dog fence business is not at all similar to the "express" public interest advanced in the Doe case. Ibid.

Next, plaintiff argues that the Government Records Council ("GRC") decision of Bernstein v. Park Ridge, GRC Complaint No. 2005-99 (July 21, 2005), should be disregarded because the decision relied on repealed Executive Order 21. Pb. 14-15. Plaintiff again mischaracterizes the Bernstein decision, and erroneously claims that Executive Order 26, which repealed various provisions of Executive Order 21, entirely nullified the finding in Executive Order 21 that there are privacy interests in personal addresses. Id. This is not accurate. In particular, paragraph five of Executive Order 26 states "the Privacy Study Commission created by Chapter 404, P.L. 2001, is hereby directed to promptly study the issue of whether and to what extent the home address and home telephone number of citizens should be made publicly available by public agencies[.]" Da80. Thereafter, the Privacy Study Commission issued a final report. Da97-195. The final report by the Privacy Study Commission contained multiple recommendations finding that privacy interests continued to exist regarding the publication of names and home addresses. Id. Specifically, the

conclusion of the final report by the Privacy Study Commission specifically states that:

The Commission believes that in some cases disclosure under OPRA of personally identifiable information such as home addresses may violate a citizen's reasonable expectation of privacy. People who do not want their home addresses released have limited means for preventing disclosure, and little recourse once the disclosure has been made. The Legislature has specifically articulated in OPRA its intention of not forcing individuals to sacrifice their privacy as a condition of doing business with the government when it stated 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. Da135. (Emphasis added).

Therefore, plaintiff's claim that Executive Order 26 "nullified" the reasonable expectation of privacy in names and home addresses is not at all accurate. Pb15.

Furthermore, the Bernstein decision only briefly referenced Executive Order 21. Da63-66. Instead, the GRC in Bernstein chiefly relied on the principles established in Doe, supra, 142 N.J. 1, in concluding that the names and addresses of dog owners for purposes of commercial solicitation were not subject to disclosure under OPRA. Da64-65. Doe v. Poritz is settled case law and has not been overturned since its publication in 1995.

While the GRC in Bernstein cited to Executive Order 21 to bolster its opinion, it mainly relied on Doe and other published cases in reaching its conclusion. Da63-66. Finally, although the GRC decision in Bernstein is not binding precedent upon the Appellate Division, the Court should nevertheless consider the Bernstein decision because it involves an application of the Doe balancing test in a factual context identical to the one presently before the Court.

Next, plaintiff's opposition brief criticizes defendants for not addressing the New Jersey Supreme Court case Higg-A-Rella v. County of Essex, 141 N.J. 35 (1995), which plaintiff claims supports disclosure of the names and addresses of Jersey City dog owners in this case. The Higg-a-Rella case, however, is easily distinguishable from the case presently before the Court. In Higg-A-Rella, the Supreme Court permitted the disclosure of a computer tape copy of tax assessment records in Essex County to the plaintiff under the common law right of access. Id. at 55. The computer tapes contained "the same tax lists that are available in hard copy for the public to inspect and photocopy at the Essex County Board of Taxation." Id. at 40.

The Supreme Court in Higg-A-Rella explained that according to a specific statute, "tax lists shall remain in the office of the board as a public record." Id. at 42 (quoting N.J.S.A. 54:4-55). The Supreme Court found that the records sought were subject to

disclosure because they "contained simple, non-evaluative data that have historically been available to the public," and therefore, did not violate any reasonable expectation of privacy. Id. at 49. Indeed, the defendants in Higg-A-Rella did not even assert any interest in keeping the records confidential. Id. at 48-49. By contrast, in this case, dog license records have never been "historically available to the public," and there is no statute that advises Jersey City dog owners that their names and home information will be made public upon submission of dog license applications. As such, plaintiff's reliance on Higg-A-Rella is misplaced.

Finally, plaintiff argues that because car accident reports are subject to public disclosures, the names and addresses of Jersey City dog owners should be also be subject to disclosure. Pb9 n. 3. This argument fails to consider an important factor not addressed in plaintiff's opposition brief: a New Jersey statute specifically authorizes the disclosure of motor vehicle accident reports. See N.J.S.A. 39:4-131. The statute specifically states that motor vehicle accident reports "shall not be privileged or held confidential" and that "[e]very citizen of this State shall have the right, during regular business hours and under supervision, to inspect and copy such reports and shall also have the right in person to purchase copies of the reports[.]" N.J.S.A. 39:4-131. As such, the New Jersey Legislature has carved out a

special exception for the public dissemination of motor vehicle accident reports. The New Jersey Legislature did not create a similar exception for the dissemination of dog license records. As such, plaintiff's argument in this regard is not persuasive.

CONCLUSION

For all of the foregoing reasons, as well as those stated in defendants' appellate brief, 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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Dated: November 7, 2019

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