

**SUPREME COURT OF NEW JERSEY  
CASE NO. 084392**

ERNEST BOZZI,

Plaintiff- Respondent,

v.

CITY OF JERSEY CITY, and  
IRENE MCNULTY,

Defendants-Appellants.

Civil Action

On Certification From:  
Superior Court Of New Jersey,  
Appellate Division,

Docket No. A-4205-18T2

SAT BELOW:

Hon. Jack M. Sabatino, P.J.A.D.  
Hon. Thomas W. Sumners, Jr., J.A.D.  
Hon. Richard J. Geiger, J.A.D.

---

**BRIEF OF AMICUS CURIAE LIBERTARIANS FOR TRANSPARENT GOVERNMENT**

---

PASHMAN STEIN WALDER HAYDEN  
A Professional Corporation  
Court Plaza South  
21 Main Street, Suite 200  
Hackensack, NJ 07601  
Ph: (201) 488-8200  
F: (201) 488-5556  
[cgriffin@pashmanstein.com](mailto:cgriffin@pashmanstein.com)

*Counsel for Amicus Curiae  
Libertarians for a  
Transparent Government*

Of Counsel and On the Brief:  
CJ Griffin (031422009)

**TABLE OF CONTENTS**

PRELIMINARY STATEMENT..... 1

STATEMENT OF INTEREST OF AMICUS CURIAE..... 4

STATEMENT OF FACTS..... 4

LEGAL ARGUMENT..... 4

    I.    OPRA DOES NOT CONTAIN AN INTEREST REQUIREMENT AND THE  
          COURT SHOULD REJECT ALL ATTEMPTS BY PUBLIC AGENCIES TO  
          INCORPORATE ONE INTO THE STATUTORY SCHEME ..... 4

    II.   THERE IS NO BROAD-BASED EXEMPTION FOR DOG LICENSES OR  
          HOME ADDRESSES, NOR IS THERE A COLORABLE CLAIM OF  
          PRIVACY IN THIS CASE ..... 11

        A. Our Legislature Has Opted to Exempt Only  
          Certain Types of Licenses From Public Access ..... 12

        B. Our Legislature Has Opted to Exempt Home  
          Addresses Only in Select Circumstances ..... 13

        C. Home Addresses Have Historically Been Accessible  
          and the Decisions Cited by Jersey City are  
          Irrelevant ..... 15

        D. There is no Colorable Claim of Privacy in a  
          Dog License ..... 20

    III. EVEN IF THERE WAS A COLORABLE CLAIM OF PRIVACY, THE  
          BALANCING TEST WEIGHS IN FAVOR OF DISCLOSURE ..... 23

CONCLUSION..... 30

**TABLE OF AUTHORITIES**

Page (s)

**Cases:**

<u>Asbury Park Press v. Ocean Cty. Prosecutor's Office,</u> 374 N.J. Super. 312 (Law. Div. 2004) .....	23
<u>Atl. Cnty. Soc. for Prevention of Cruelty to Animals v. City of Absecon,</u> 2009 WL 1562967 (App. Div. Sept. 29, 2009) .....	17
<u>Bolkin v. Borough of Fair Lawn,</u> 2014 WL 2679673 (App. Div. June 16, 2014) .....	17
<u>Brennan v. Bergen County Prosecutor's Office,</u> 233 N.J. 330 (2018) .....	passim
<u>Burnett v. Cty. of Bergen,</u> 198 N.J. 408 (2009) .....	5, 11, 18, 22
<u>Carter v. Doe (In re N.J. Firemen's Ass'n Obligation),</u> 230 N.J. 258 (2017) .....	23
<u>Conley v. N.J. Dep't of Corr.,</u> 452 N.J. Super. 605 (App. Div. 2018) .....	16
<u>Doe v. Poritz,</u> 142 N.J. 1 (1995) .....	11, 15, 23
<u>Does v. City of Trenton Dep't of Pub. Works,</u> 565 F. Supp. 2d 560 (D.N.J. 2008) .....	17
<u>Fair Share Hous. Ctr., Inc. v. N.J. State League of Municip.,</u> 207 N.J. 489 (2011) .....	16
<u>Higg-A-Rella, Inc. v. Cty. of Essex,</u> 141 N.J. 35 (1995) .....	5
<u>Keddie v. Rutgers, State Univ.,</u> 148 N.J. 36 (1997) .....	5
<u>Kovalcik v. Somerset Cty. Prosecutor's Office,</u> 206 N.J. 581 (2011) .....	5, 17

<u>Michelson v. Wyatt,</u> 379 N.J. Super. 611 (App. Div. 2005) .....	5
<u>Paff v. Galloway Twp.,</u> 229 N.J. 340 (2017) .....	16
<u>Renna v. Cty. of Union,</u> 407 N.J. Super. 230 (App. Div. 2009) .....	16
<u>Sheet Metal Workers Int'l Ass'n, Local Union No. 19 v. U.S. Dep't of Veterans Affairs,</u> 135 F.3d 891 (3d Cir. 1998) .....	17
<u>Techniscan Corp. v. Passaic Valley Water Comm'n,</u> 218 N.J. Super. 226 (App. Div. 1987) .....	6
<u>U.S. Dep't of Def. v. Fed. Labor Relations Auth.,</u> 510 U.S. 487 (1994) .....	17
<b><u>Statutes:</u></b>	
N.J.S.A. 1:1-2.....	4
N.J.S.A. 4:19-15.11.....	26
N.J.S.A. 4:19-15.3.....	26
N.J.S.A. 4:19-15.2a.....	25
N.J.S.A. 17:15A-35.....	19
N.J.S.A. 19:31-18.....	18
N.J.S.A. 22A:2-29.....	18
N.J.S.A. 34:13A-5.13.....	18
N.J.S.A. 39:2-3.4.....	12
N.J.S.A. 47:1A-1.....	4, 11, 29, 30
N.J.S.A. 47:1A-1.1.....	12
N.J.S.A. 47:1A-2.....	5

N.J.S.A. 47:1A-3 (b) .....	19
N.J.S.A. 47:1A-5 (a) .....	12
N.J.S.A. 47:1A-6.....	27
N.J.S.A. 47:1A-7 (e) .....	16
N.J.S.A. 54:4-55.....	18

**Other Authorities:**

Assembly Bill No. 256.....	13
Assembly Bill No. 1649.....	14
Assembly Bill No. 2542.....	13
Assembly Bill No. 4532.....	13
Assembly Bill No. 4813.....	15
Senate Bill No. 107.....	8
Senate Bill No. 380.....	8
Senate Bill No. 1046.....	8
Senate Bill No. 2575.....	15
Senate Bill No. 2819.....	13
Senate Bill No. 3648.....	8
Senate Bill Nos. 161.....	14, 20

## **PRELIMINARY STATEMENT**

The issue in this case is whether the plaintiff, a licensed home improvement contractor, may access the names and home addresses of residents who hold dog licenses pursuant to the Open Public Records Act (OPRA) so that he may contact license holders by mail regarding his invisible fence service. The answer must be yes because no one could reasonably believe that such information would be kept private, nor should such information be kept private. Although the City of Jersey City paints this case as a quest to protect the privacy rights of its residents, it is apparent to amicus curiae Libertarians for Transparent Government (LFTG) that the City has a larger desire to fend off OPRA requests by commercial requestors.

It is well-known that public agencies find OPRA requests by commercial requestors to be cumbersome, which is why both the New Jersey State League of Municipalities (League) and the Municipal Clerks' Association of New Jersey (MCANJ) have repeatedly lobbied the Legislature to place limits on commercial requests. Although bills have been introduced to treat commercial requestors differently than other requestors, as well as bills to exempt dog licenses from OPRA, such bills have never passed. Thus, as has been the case since it was enacted twenty

years ago, OPRA contains no interest requirement. All requestors enjoy the same statutory right to access to records, whether they are curious citizens trying to learn more about their government, nonprofit organizations seeking data to fulfill their missions, or for-profit companies seeking records to sell their services. Although the City argues that Plaintiff's OPRA request serves "no legitimate public purpose," OPRA simply does not treat some requests as more legitimate than others.

The Appellate Division correctly concluded that there was no colorable privacy claim that even warranted the application of the privacy balancing test in this case. As this Court recently recognized in Brennan v. Bergen County Prosecutor's Office, 233 N.J. 330 (2018), OPRA does not contain a broad-based exception for home addresses. The Legislature has instead opted to exempt home addresses from disclosure only in "select circumstances," none of which apply here. The Legislature has also provided exemptions for specific types of licenses but has chosen not to exempt dog licenses from access. There is no reasonable expectation of privacy in owning a licensed dog and the cries of potential harm that the City offers are on par with those that this Court deemed to be too "speculative" in Brennan to warrant the application of the privacy balancing test.

Unfortunately, public agencies sometimes use OPRA's privacy provision not as a shield to protect legitimate privacy rights, but rather as a sword to attack a requestor's reason for seeking records, something that should be irrelevant. In this case, a commercial requestor's right to obtain public records is under attack, but in other instances the ones under attack are the so-called "gadflies" or the persistent reporters who are thorns in the sides of politicians. If the Court decides in the City's favor in this case, the consequences will not be limited only to the addresses of dog license owners or to commercial requestors. Public agencies will undoubtedly think of far-fetched reasons to invoke OPRA's privacy provision so that the balancing test applies. Requestors will then have to sue and convince courts that their reasons for wanting the records serve a "legitimate public purpose." In other words, an interest requirement will be engrafted into OPRA where one does not exist, and as a result, all requestors, whether commercial or not, will have to fight harder to access information that should be statutorily available to them as of right.

The Court should reject any effort to expand OPRA's privacy provision and should re-affirm the holdings in Brennan: home addresses are not entitled to protection and the privacy



balancing test should be applied only where a colorable claim of privacy exists, which is not present here.

**STATEMENT OF INTEREST OF AMICUS CURIAE**

LFTG relies upon the attached certification of CJ Griffin to explain its interest.

**STATEMENT OF FACTS**

LFTG relies upon the statement of facts and procedural history as presented in the Defendants' Appellate Division brief,<sup>1</sup> which was adopted by Plaintiff in his Appellate Division opposition brief.

**LEGAL ARGUMENT**

**I. OPRA DOES NOT CONTAIN AN INTEREST REQUIREMENT AND THE COURT SHOULD REJECT ALL ATTEMPTS BY PUBLIC AGENCIES TO INCORPORATE ONE INTO THE STATUTORY SCHEME**

A fundamental principle of OPRA, and one that makes it far superior to the common law right of access, is that it provides any person<sup>2</sup> an absolute right to access government records unless an exemption applies. See N.J.S.A. 47:1A-1 (declaring it the public policy of this state that all government records "shall

---

<sup>1</sup>DAb = Def. Appellate Division Brief

<sup>2</sup> Unless otherwise stated, the Legislature has instructed that the word "person" in our statutes "includes corporations, companies, associations, societies, firms, partnerships and joint stock companies as well as individuals[.]" N.J.S.A. 1:1-2

be readily accessible"). As our courts have repeatedly recognized, "consideration of a request pursuant to OPRA for information maintained by a public entity does not include the reason for the request." Michelson v. Wyatt, 379 N.J. Super. 611, 620 (App. Div. 2005). See also Kovalcik v. Somerset Cty. Prosecutor's Office, 206 N.J. 581, 591 (2011) (status of requestor and reasons for request of documents not relevant to right of access to records under OPRA); Burnett v. Cty. of Bergen, 198 N.J. 408, 435 (2009) ("As a general rule, we do not consider the purpose behind OPRA requests."). This principle is not new, as the Right to Know Law<sup>3</sup> (RTKL) also contained no interest requirement. See Keddie v. Rutgers, State Univ., 148 N.J. 36, 44 (1997) ("A citizen is not required to make a showing of interest."); Higg-A-Rella, Inc. v. Cty. of Essex, 141 N.J. 35, 43 (1995) ("[C]itizens need make no showing of interest to exercise their rights under the [RTKL].").

Courts have also specifically held that commercial requestors are entitled to the same right of access as non-commercial requestors. See Burnett, 198 N.J. at 435 ("An entity seeking records for commercial reasons has the same right to

---

<sup>3</sup> The RTKL is OPRA's predecessor and provided a statutory right of access to all records that were "required by law to be made, maintained, or kept on file." N.J.S.A. 47:1A-2.

them as anyone else."); Techniscan Corp. v. Passaic Valley Water Comm'n, 218 N.J. Super. 226, 230 (App. Div. 1987), aff'd as modified, 113 N.J. 233 (1988) ("We perceive no reason to treat such commercially motivated 'citizens' seeking access under the [RTKL] differently from citizens seeking information for a purely 'private' reason or need."). Despite that fact, it is widely known that public agencies loathe commercial requests and do not think that businesses should have the same access to OPRA as individuals. See, e.g., Briana Vannozzi, Clerks Bogged Down By Commercial OPRA Requests, N.J. Spotlight (Jan. 21, 2015) ("I don't see why the taxpayers should be paying for us to do that for a private industry[.]"); Terrence T. McDonald, Companies Hijacking State's Open Public Records Act For Profit, Municipal Clerks Say, Jersey Journal (Jan. 16, 2015) ("Any company that wants to drum up business, they just come here and get all the public records that are available and then they're on the way[.]").

Within the past year alone, public agencies across this state, led by the League and MCANJ, have worked hard to curb the right of businesses to file OPRA requests. During its 2018 conference, the League passed League Conference Resolution 2018-10, which called for the creation of a commission "to review and examine the effects of OPRA on local government and what needs

are fulfilled by the law, and to use the findings of this review to perform a comprehensive reform of OPRA.” See N.J. State League of Municip., Legislation Introduced Creating Open Public Records Study Commission, The Town Crier (Jan. 28, 2020).<sup>4</sup> Among other things, the resolution stated that:

WHEREAS, over the course of 17 years OPRA has been a positive light, it has also been fraught with abuse, misuse, and costly to the taxpayers of New Jersey; and

**WHEREAS, OPRA has been used by Commercial enterprises as part of their research and development, marketing plan, or business plan of reselling government records; and**

WHEREAS, the general public demands an efficient and cost effective municipal government for citizens, but **for profit individuals are taking advantage of these laws, impeding the ability to operate efficiently . . .**

[League, League Conference Resolution 2018-10<sup>5</sup> (emphasis added).]

Not long thereafter, the League and MCANJ distributed a model resolution to municipalities across the state that closely mirrored League Conference Resolution 2018-10. See Jennifer Jean Miller, County Municipalities Seek OPRA Study, N.J. Herald (Dec. 22, 2019) (discussing model resolution by MCANJ and the

---

<sup>4</sup> <https://www.njlm.org/Blog.aspx?IID=23#item>

<sup>5</sup> <https://www.njlm.org/DocumentCenter/View/7195/2018-NJLM-Conference-Resolutions>

League). By January 1, 2020, more than 130 municipalities had passed it. See Olivia Rizzo, We're Being Bugged Down By Greedy Businesses, So This Law Should Change, Towns Say, NJ Advance Media (Jan. 5, 2020) ("I have not had an honest to goodness OPRA request in a long time . . . It's realtors, data mining companies, and business owners.").

In response to this rallying cry by municipalities, bills were introduced in the Senate to form a commission to study OPRA in both 2019 and 2020. See N.J. Senate Bill No. 3648 (218th Legislature); N.J. Senate Bill No. S180 (219th Legislature). Neither bill has even been passed out of a committee. Since at least 2016, bills have been introduced to permit agencies to impose special administrative charges for requests made "for a commercial purpose," but those bills have also never passed out of a committee. See N.J. Senate Bill No. 1046 (217th Legislature); N.J. Senate Bill No. 107 (218th Legislature); N.J. Senate Bill No. 380 (219th Legislature). Thus, despite being well-aware of the complaints that public agencies have about commercial requests, our Legislature has opted not to modify OPRA or even to form a commission to study the issue.

Having lost the battle in the Legislature, public agencies thus need use the courts to fight back against commercial requestors. That is difficult to do, however, when a

requestor's reason for seeking a record is supposed to be irrelevant under the statute. By claiming that OPRA's privacy provision applies, a public agency can call a requestor's motivations into question and have them scrutinized by the court. In the case of commercial requestors, their motivations are attacked as profit-driven and serving "no legitimate public purpose." [Dab17].

Although LFTG is not a commercial requestor and is instead a non-profit organization whose OPRA requests do in fact serve a "legitimate public purpose," it recognizes the danger of the over-application of OPRA's privacy provision and it knows that as soon as a requestor's reason for seeking records becomes an issue in a case it almost always works to the detriment of the requestor. Requestors are frequently attacked by agencies as "gadflies" and courts closely scrutinize whether the information they seek will actually serve their stated purpose, which they often have a difficult time articulating to a court's satisfaction.<sup>6</sup> That undermines OPRA's core purpose: to provide

---

<sup>6</sup> For example, in Brennan, the Appellate Division questioned whether the requestor's stated reasons for wanting the names and addresses of those who had placed successful bids at the public auction would really be advanced through disclosure of that information, suggesting the names and information actually revealed nothing about the government's conduct. Brennan v. Bergen Cty. Prosecutor's Office, A-5440-14T1 (App. Div. July 6,

an absolute statutory right of access to government records no matter what the person's reason for requesting the records may be. By trying to undermine the right of commercial requestors to utilize OPRA, public agencies will ultimately undermine the rights of *all* OPRA requestors.

Whether it is a wise public policy to permit businesses to access government records for commercial solicitation purposes is something worthy of public debate. It is not a question for our courts, however. The *Legislature* should decide and for now it has chosen not to treat commercial requestors any differently. Accordingly, LFTG asks the Court to deny the City's efforts in this case to make the fact that Plaintiff has a commercial reason for making the OPRA request relevant to the resolution of whether the records are accessible under OPRA. As argued in Point II below, there is no reasonable expectation of privacy in a home address or in holding a municipal dog license. Thus, as the Appellate Division correctly did below, this Court should refuse to even apply OPRA's privacy balancing test or consider the requestor's reason for wanting the records.

---

2016), rev'd, 233 N.J. 330 (2018) This Court, however, clearly saw a general public interest in disclosure of the names and addresses of purchasers of public property, even if the particular requestor had not articulated the interest well.

**II. THERE IS NO BROAD-BASED EXEMPTION FOR DOG LICENSES OR HOME ADDRESSES, NOR IS THERE A COLORABLE CLAIM OF PRIVACY IN THIS CASE**

OPRA instructs that government records are to be "readily accessible" to the public and that "any limitations on the right of access . . . shall be construed in favor of the public's right of access." N.J.S.A. 47:1A-1. One such limitation on the right of access is OPRA's instruction that a public agency must "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." Ibid. When OPRA's privacy provision is at issue, courts apply a seven-factor balancing test to determine whether the citizen's interest in privacy outweighs the requestor's interests. See Burnett, 198 N.J. at 427 (adopting factors identified in Doe v. Poritz, 142 N.J. 1, 88 (1995)).

In 2018, LFTG participated as amicus curiae in Brennan, 233 N.J. 330, to argue that lower courts had "over-applied" the Doe factors even in situations where there was clearly no reasonable expectation of privacy and thereby were effectively considering a requestor's reason for requesting records even where the reason should have been irrelevant. Id. at 336. This Court apparently understood those concerns and held that "before an



extended analysis of the Doe factors is required, a custodian must present a *colorable claim* that public access to the records requested would invade a person's objectively reasonable expectation of privacy." Id. at 342 (emphasis added).

As argued below, our Legislature has opted to exempt only certain types of licenses and certain categories of home addresses from public disclosure. Moreover, home addresses have historically been publicly accessible information and there is simply no colorable claim that disclosure of the names and addresses of dog license holders would violate an objectively reasonable person's expectation of privacy.

**A. Our Legislature Has Opted to Exempt Only Certain Types of Licenses From Public Access**

There is no protection in OPRA for dog license information. Instead, our Legislature has opted to exempt information about only three specific types of licenses. Since OPRA's enactment in 2001, the law has contained an exemption for the "driver license number of any person."<sup>7</sup> See N.J.S.A. 47:1A-5(a). Then, in 2013, the Legislature amended N.J.S.A. 47:1A-1.1 and chose to exempt all "personal identifying information," including names

---

<sup>7</sup> Since 1997, the Driver Privacy Protection Act exempts "personal information" within motor vehicle records, including names and addresses. See N.J.S.A. 39:2-3.4.

and addresses, of the holders of hunting licenses and personal firearm licenses. See L.2013, c. 116, § 1, eff. Aug. 8, 2013.

Over the past several years, bills have been introduced to exempt personal information contained in pet licenses, including names and addresses. See Senate Bill No. 2819 (215th Legislature); Assembly Bill No. 4532 (217th Legislature); Assembly Bill No. 2542 (218th Legislature); Assembly Bill No. 256 (219th Legislature). None of those bills have ever been passed. Thus, although the Legislature has been presented with opportunities to exempt dog licenses from public access, it has repeatedly declined to do so.

**B. Our Legislature Has Opted to Exempt Home Addresses Only in Select Circumstances**

In Brennan, this Court recognized that there is no “overarching exception for the disclosure of names or home addresses” and that instead the Legislature has chosen to prevent disclosure of home addresses in “select situations.” Brennan, 233 N.J. at 337-38. LFTG will not repeat the significant legislative history that the Court analyzed to reach that conclusion, but it notes that since Brennan was decided in 2018 there has been additional legislative activity to demonstrate that the Legislature does not deem home addresses

worthy of protection except in specific enumerated circumstances.

As this Court noted in Brennan, the Legislature previously amended OPRA in 2013 to exempt names and home addresses contained in records of firearm licenses and hunting licenses. See L.2013, c. 116, § 1, eff. Aug. 8, 2013. Recently, it added a new exemption for specific types of addresses. On November 20, 2020, Governor Phil Murphy signed Assembly Bill No. 1649 into law, a bill that was introduced in response to the attack at the home of United States District Judge Esther Salas, which resulted in her son's death. Rather than exempting all home addresses from access, the Legislature again carefully chose to narrowly exempt only the home addresses of active, formerly active, or retired judges, prosecutors, and law enforcement officers. See L.2020, c. 125.

OPRA was enacted nearly twenty years ago. The concern about public disclosure of home addresses, including the addresses of dog license holders, has been raised to the Legislature since day one. See Public Hearing Before Senate Judiciary Comm., Senate Bill Nos. 161, 351, 573, and 866, 209th Legislature (March 9, 2000) (Statement of Thomas J. Cafferty) at 59 (discussing the League's concern "that pet food suppliers will find out who has dog licenses and contact them" and noting

that such information was already publicly accessible under the RTKL because it was required by law to be made, maintained, or kept on file). Yet, despite these concerns being repeatedly raised by the League and others, the Legislature has chosen not to act. In fact, as noted above, bills to exempt pet licenses have failed to pass.

It is clear that the Legislature does not view home addresses as confidential. Although it has amended OPRA over the course of the past two decades to shield certain names and addresses from public disclosure,<sup>8</sup> it has decided not to do so for dog license holders. Thus, such information should be public because that is the Legislature's intention.

**C. Home Addresses Have Historically Been Accessible and the Decisions Cited by Jersey City are Irrelevant**

In addition to recognizing that there is no exemption under OPRA for home addresses, this Court has also stated that home addresses are not "deserving of a particularly high degree need of protection." Doe, 142 N.J. at 88. Jersey City disagrees and insists that the home addresses of dog license owners should be

---

<sup>8</sup> As December 11, 2020, the date this brief was finalized, the Legislature was poised to pass Senate Bill No. 2575/Assembly Bill No. 4813. These bills make records generated pursuant to the Emergency Health Powers Act subject to public access under OPRA, but exempt "personal identifying information," which includes a person's name and address.

confidential pursuant to a GRC decision and some federal court decisions. These cases are easy to reject.

In Bernstein v. Park Ridge, GRC Complaint No. 2005-99 (July 21, 2005), the GRC applied the Doe factors and concluded that a requestor was not entitled to the names and addresses of dog license owners. There are two things worth noting. First, GRC decisions are not precedential, nor does this Court owe them any deference whatsoever. See Paff v. Galloway Twp., 229 N.J. 340, 356 (2017) (refusing to give deference to opinions of the GRC); N.J.S.A. 47:1A-7(e).<sup>9</sup> Second, Bernstein is *fifteen years old*<sup>10</sup> and not in accord with this Court's decision in Brennan or with

---

<sup>9</sup> Our courts have disagreed with the GRC's rulings in numerous cases. See, e.g., Fair Share Hous. Ctr., Inc. v. N.J. State League of Municip., 207 N.J. 489, 497 (2011) (disagreeing with GRC's advisory opinion that the League was not a "public agency" that had to respond to OPRA requests); Conley v. N.J. Dep't of Corr., 452 N.J. Super. 605 (App. Div. 2018) (reversing GRC's denial of access to electronically stored information); Renna v. Cty. of Union, 407 N.J. Super. 230 (App. Div. 2009) (disagreeing with GRC's advisory opinion that agencies may deny requests not submitted on agency's specific request form).

<sup>10</sup> Older GRC decisions have exempted home addresses even where disclosure of such information clearly served a public interest purpose. See, e.g., Scheeler v. N.J. Dep't of Educ., GRC Complaint No. 2014-125 (Jan. 30, 2015) (exempting home addresses of school board members even though residency within a district is a requirement for the position); Levitt v. Montclair Parking Auth., GRC Complaint No. 2012-150 (Aug. 27, 2013) (denying access to addresses of overnight parking permit holders where resident wanted to contact them to ask them to join his political action group focused on local parking issues).

other unpublished opinions that involved OPRA requests for pet licenses. See, e.g., Bolkin v. Borough of Fair Lawn, 2014 WL 2679673 (App. Div. June 16, 2014) (granting access to names and addresses on pet licenses applications); Atl. Cnty. Soc. for Prevention of Cruelty to Animals v. City of Absecon, 2009 WL 1562967 (App. Div. Sept. 29, 2009) (same).

The City also cites to three federal decisions in support of its argument: Does v. City of Trenton Dep't of Pub. Works, 565 F. Supp. 2d 560 (D.N.J. 2008); Sheet Metal Workers Int'l Ass'n, Local Union No. 19 v. U.S. Dep't of Veterans Affairs, 135 F.3d 891 (3d Cir. 1998); and U.S. Dep't of Def. v. Fed. Labor Relations Auth., 510 U.S. 487 (1994). None of these opinions, the most recent one being more than a decade old, performed the type of in-depth analysis that this Court did in Brennan when it traced the Legislature's treatment of home addresses and determined that the law of *this state* is that addresses are generally subject to public access. But, more importantly, these decisions are very easy to distinguish because they all involve requests for the home addresses of government *employees*, or the employees of government contractors, by labor unions seeking to contact them about membership. Personnel files are exempt from OPRA and the privacy of employees has always been strictly safeguarded. See Kovalcik, 206 N.J. at 594 ("OPRA, as

it relates to personnel records, begins with a presumption of non-disclosure and proceeds with a few narrow exceptions that would need to be considered.”). It is also noteworthy that our Legislature clearly disagrees with these federal decisions because it enacted N.J.S.A. 34:13A-5.13, requiring public employers to disclose the name and home addresses of negotiations unit employees to unions, although the statute provides that the home addresses are exempt from public access which is consistent with OPRA’s personnel records exemption.

Where employees are not involved, home addresses have always historically been available in this state. That should not change now. For example, anyone can obtain a full list of all registered voters which includes names, addresses, dates of birth, voting history, and party affiliation. See N.J.S.A. 19:31-18 and -18.1. Land deeds are publicly accessible and contain the names and addresses of property owners. N.J.S.A. 22A:2-29. See also Burnett, 198 N.J. at 438 (denying access to social security numbers within “millions” of land use records but permitting disclosure of home addresses). Property tax lists are assessable, N.J.S.A. 54:4-55, and any individual can visit the State of New Jersey’s website and find the names, addresses, and amount of property tax paid for any property in the state. See N.J. Div. of Taxation, New Jersey Property Tax

List \_\_\_\_\_ Search, [https://tre-dotnet.state.nj.us/TYTR\\_TLSPS/TaxListSearch.aspx](https://tre-dotnet.state.nj.us/TYTR_TLSPS/TaxListSearch.aspx) (last visited December 9, 2020). Numerous other statutes make addresses public records. See, e.g., N.J.S.A. 47:1A-3(b) (requiring disclosure of the address of a person arrested for a crime and the victim of the crime); N.J.S.A. 17:15A-35 (making the name and address of check cashing licensee's a public record).

Home addresses should remain widely accessible because providing access to home addresses promotes transparency and accountability and keeps the public informed. For example, there are times when a home address on a document can help determine whether the "John Smith" who is listed as being charged with a crime is the same "John Smith" who is a public employee or government official. In other circumstances, addresses in financial disclosure statements or other public filings can confirm whether or not an elected official meets the residency requirement for holding their elected office. A home address is information that is widely public because so many of them are listed in land use records and other records that have long-been published in online databases and are accessible with a simple Google search. The proverbial cat cannot be put back in the bag and limiting access to a specific category of home addresses simply because the requestor's desire is to send them



commercial solicitations in the mail will no doubt lead to courts exempting additional addresses and applying the privacy balancing test too frequently, something that Brennan intended to curb and that would undoubtedly hinder the rights of requestors who do have a "legitimate public purpose" for their OPRA requests.

**D. There is no Colorable Claim of Privacy in a Dog License**

As explained above, the Legislature does not view the names and addresses of dog license owners as worthy of protection. Even during the public hearings on OPRA in 2000, the League presented its concerns that commercial users would access dog license lists to sell dog food but the Legislature took no steps to exempt such information. See Public Hearing Before Senate Judiciary Comm., Senate Bill Nos. 161, 351, 573, and 866, 209th Legislature (March 9, 2000) (Statement of Thomas J. Cafferty) at 59. Despite years of lobbying by the League and MCANJ, none of the bills that have been introduced to exempt dog license information from OPRA have ever passed. The dog license information is therefore not exempt.

Additionally, no objectively reasonable person would believe that their ownership of a dog is a private fact. As Plaintiff argues, dogs are constantly exposed to public view

when their owners walk them on public sidewalks, take them to public dog parks, or take them to the veterinarian. Most people share pictures of their pets on social media or show them to their friends and coworkers. Anyone who walks down a public sidewalk is likely to hear barking coming from houses or yards where dogs live. It is simply not a secret when someone owns a dog and no reasonable person would expect it to be a secret that they have licensed their dog, something that is required by law.

The City argues that the privacy interest is significant because burglars and stalkers could easily determine which homes do not have dogs and target those homes, or that the dogs themselves could be targeted and stolen. [Dab16]. In Brennan, the Appellate Division accepted similar arguments from the public agency when it stated:

We disagree with the trial court that the bidders' concerns were too speculative. The bidders may reasonably be concerned that plaintiff will contact them directly, or will publish their names and addresses and the products they purchased to criticize them or warn other collectors that the bidders obtained inauthentic items. It is plausible that the public would infer, based on the receipts and registration forms, that the bidders possess large collections of sports memorabilia. That could make the bidders targets of theft. While the risk is obviously indeterminable, the bidders' concerns appear to be genuine.

[Brennan, A-5440-14T1.]

This Court, however, quickly dismissed those claims of harms as “speculative” and not even sufficient enough to warrant application of the privacy balancing factors.

The concerns here are even more far-fetched than in Brennan because, as said above, it is largely no secret which households own dogs because dogs announce themselves to those who knock on the door, bark at passersby, and leave the house with their owners for walks. Moreover, while the agency argued in Brennan that high-value sports memorabilia was at stake, here the requestor did not seek any information about the dog breed<sup>11</sup> to distinguish houses with mutts from houses with rare breeds.

Therefore, because it is clear that the Legislature did not intend for the names and addresses of dog license owners to be exempt and because there is no colorable claim of privacy, this Court should affirm the Appellate Division’s decision. No privacy balancing test is warranted, nor is it relevant that Plaintiff has a commercial reason for requesting the records. Instead, OPRA’s privacy balancing test should be reserved for legitimate privacy claims, such as: millions of social security numbers, Burnett, 198 N.J. at 438; the personal financial

---

<sup>11</sup> LFTG does not believe such information about breed warrants non-disclosure, however.

history of individual applying for firemen relief funds, Carter v. Doe (In re N.J. Firemen's Ass'n Obligation), 230 N.J. 258, 280 (2017); or a "chilling, wrenching, [and] lingering" 9-1-1 audio recording depicting the dying words of a victim, Asbury Park Press v. Ocean Cty. Prosecutor's Office, 374 N.J. Super. 312, 330 (Law. Div. 2004).

**III. EVEN IF THERE WAS A COLORABLE CLAIM OF PRIVACY, THE BALANCING TEST WEIGHS IN FAVOR OF DISCLOSURE**

If this Court reaches the privacy balancing test, LFTG adopts the Plaintiff's arguments as to why the factors weigh in his favor based on his commercial interest and the lack of any harm that would flow from disclosure. LFTG asks the Court to slightly modify what information is considered in factors six and seven of the Burnett balancing test, however, so as to better protect the rights of all requestors and curb the ability of public agencies to use OPRA's privacy provision to stop commercial requests.

Factors six and seven of the balancing test analyze "the degree of need for access" and "whether there is an express statutory mandate, articulated public policy, or other recognized public interest militating toward access." Doe, 142 N.J. at 88. Generally, this means that a requestor must articulate a specific reason for wanting the records or how he

or she intends to use the records and the court will then scrutinize that reason and balance it against the right to privacy. In this case, that would generally mean the Court would consider only that Plaintiff intends to use the records to solicit dog owners by mail to try to sell them his invisible fence installation services, something that Jersey City deems to serve "no legitimate public purpose." [DAb17].

LFTG believes, however, that in analyzing Doe factors six and seven, courts should not limit their analysis only to the particular plaintiff's interests but rather should consider whether there is **any** interest that would overcome the privacy right at stake. If there is, then the court should grant access to the information. There are several valid reasons to take this approach, all of which promote the public's interest.

First, as noted above, requestors often do not articulate their interest in the records very well to the court, even where there is a valid reason for seeking the records. Sometimes the requestors are pro se and do not understand what is required or how to explain themselves; other times attorneys may not have solicited enough information from their clients because they are used to the reason behind a request being irrelevant. In other circumstances, a reporter might not want to disclose too much information about the reason for requesting the records because

it could allow another news agency to "scoop" their story. If a court is able on its own to identify any way in which the records could advance this state's public policy of transparency and openness in government or be useful to the public, it should consider those reasons in the balancing test. That is essentially what this Court did in Brennan when the plaintiff did not articulate his interest very well, but the Court nonetheless recognized why the public had a right to know who purchases government property.

Second, limiting the right of one type of requestor to receive the records will undoubtedly limit the rights of others who have valid reasons for seeking records. Even if this Court considered a commercial interest to be insufficient to gain access to the dog license records in this case, there are clearly other reasons for requesting these records that do advance "legitimate public purposes." For example, someone who encounters a neighbor's aggressive dog might want to determine if the dog is licensed and vaccinated. See N.J.S.A. 4:19-15.2a (prohibiting municipal clerks from issuing dog licenses "unless the owner thereof provides evidence that the dog to be licensed and registered has been inoculated with a rabies vaccine"). Someone who runs a local animal rights group might want to contact other dog owners to rally them to pass better animal

welfare laws, to lobby for a local dog park, or to alert them to local dangers to dogs. An animal rescue organization might want to independently verify that the dogs it has adopted out have been properly licensed and vaccinated, or it might want to screen prospective adopters to determine if they have other pets (or *had* other pets that they surrendered) that they are not disclosing on their adoption applications. A watchdog group like LFTG might want to investigate whether public officials are failing to license their own pets all while hypocritically ticketing members of the public for failing to do so. Or, it might want to verify that the list of licenses is accurate and that all of the money collected from licenses are distributed in the proper accounts and transmitted in full to the proper state agencies. See N.J.S.A. 4:19-15.11 (requiring all funds from animal license fees to be placed in a separate account); N.J.S.A. 4:19-15.3 (setting portion of fees to be distributed to State Department of Health). A research organization might seek the names and addresses of dog license owners so that it can map them and determine whether certain neighborhoods have more licensed dogs than others and whether there is any correlation to economic factors, such as income, in the ownership or licensure of dogs.

Yet, if the Court limits the right of *this* requestor to receive the names and addresses of pet license owners then public agencies will no doubt immediately stop granting *any* requestor the right to access them and trial courts will likely uphold those denials, even if this Court cautions that disclosure may be warranted in other circumstances. At a minimum, even requestors with "legitimate" reasons for the request will have to sue to obtain them, which only delays access far beyond the seven-day timeline that OPRA generally provides. Simply put, LFTG knows from experience that any denial of access that is upheld due to the requestor's particular lack of interest automatically ends up limiting the rights of all other requestors to obtain the records or information.

Third, considering the interests of the general public will promote judicial economy. If the court can identify a valid public interest in disclosure that would outweigh the privacy interest, even if the plaintiff does not personally have one, it should disclose the records to spare the time involved in adjudicating the lawsuit of a future requestor who has that interest. This also saves the public money, given that OPRA has a mandatory fee-shifting provision when requestors prevail. See N.J.S.A. 47:1A-6.



Fourth, the court should avoid applications of a statute that are easy to evade. Kovalcik, 2016 N.J. at 592 (rejecting agency's argument that criminal defendants should not be permitted to use OPRA because the Court recognized that the defendant could simply have someone else file the request). If the Court believes that any one of the reasons for wanting dog licenses that LFTG stated above would outweigh the weak privacy interest, then it should grant access to Plaintiff even though that is not his stated reason. Otherwise, Plaintiff could simply have someone else request the records for him and offer one of the "legitimate" reasons to the agency to gain access to the records.

Finally, considering public interests other than the plaintiff's own personal interest is fundamentally fair and puts the "balance" back in the balancing test. Most of the Doe factors, especially factors three and five, consider information that is not specific to the requestor and rather considers how the information could be utilized by others to cause harm. For example, in this case, Jersey City does not allege that Plaintiff has any nefarious purpose or would misuse the information, but rather that there is no safeguard to ensure that others do not receive it and misuse it to burglarize homes or steal dogs. It is inconsistent to consider the conduct of

third parties when analyzing the privacy concerns, but not consider the interests of third parties or the general public when determining whether the interest in disclosure outweighs the privacy concerns. The framework as currently applied automatically skews the balancing test in favor of non-disclosure because it widely searches for harm but then narrowly focuses only on the plaintiff's interest, despite OPRA's instruction that every limitation on the right of access is to be construed in favor of public disclosure. N.J.S.A. 47:1A-1. This skewing means that the balancing test almost always comes out in favor of non-disclosure, even when the privacy interest is very minimal.

This is not to say that a court should definitively determine that a certain document can *never* be released and that future requestors should not have their day in court where they present interests that a court did not consider. But, where a court is able to identify reasons for requesting a specific type of record that would outweigh the privacy interest at stake, or where a plaintiff can identify such reasons even if they are not the reasons that he or she is actually seeking the records, then courts should grant access to the records. Where there is **any** plausible interest in disclosure that outweighs the privacy rights at stake, the court should grant access to the records

even if that particular requestor is seeking the records for another purpose. This process would curb the practice of public agency's using OPRA's privacy provision to attack requestors they do not like and advance OPRA's instruction that limitations on the right of access should be "construed in favor of the *public's* right of access." N.J.S.A. 47:1A-1 (emphasis added).

**CONCLUSION**

Amicus Curiae Libertarians for Transparent Government asks this Court to affirm the Appellate Division's decision.

Respectfully submitted,

**PASHMAN STEIN WALDER HAYDEN, P.C.**

Dated: December 14, 2020

By: /s/ CJ Griffin  
CJ Griffin