

ERNEST BOZZI,

Plaintiff,

v.

JERSEY CITY AND IRENE MCNULTY,

Defendants.

SUPREME COURT OF NEW JERSEY
DOCKET NO. 084392

ON PETITION FOR CERTIFICATION
FROM A FINAL JUDGMENT OF THE
SUPERIOR COURT APPELLATE
DIVISION DOCKET NO. A-004205-
18T2

Sat Below:
Appellate Division:

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

**PETITION FOR CERTIFICATION AND APPENDIX ON BEHALF OF
DEFENDANTS/PETITIONERS JERSEY CITY AND IRENE MCNULTY**

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STATEMENT OF THE MATTER INVOLVED

This case involves a fundamental right to privacy for the citizens of the City of Jersey City ("the City") and for all citizens of the State of New Jersey. This petition is hereby submitted to the Supreme Court of New Jersey because the Appellate Division erroneously affirmed the trial Court's order requiring 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 under the Open Public Records Act, N.J.S.A. 47:1A-1 et. seq. ("OPRA"), despite the fact that plaintiff was only seeking the list in order to solicit customers for his invisible dog fence installation business.

In its decision, the Appellate Division contradicted the Legislature's intent by finding that disclosure of this information was not protected by the privacy exception to OPRA. See N.J.S.A. 47:1A-1. The Legislature enacted OPRA to "minimize the evils inherent in a secluded process" of government. Mason v. City of Hoboken, 196 N.J. 51, 64 (2008) (internal citations omitted). The Legislature did not enact OPRA with the intent of disclosing citizens' personal information in order to allow one citizen to generate business for his dog fence company.

The New Jersey Supreme Court has never previously addressed the question of whether the privacy exception to OPRA protects the

names, home addresses, and additional personal information of individuals who were reasonably unaware that their information would be subject to disclosure for a commercial purpose. In this case, neither the City ordinance, Section 90-13(a), nor the New Jersey statute requiring the licensure of dogs, N.J.S.A. 4:19-15.5, places citizens on notice that their names and home addresses, along with information regarding their dog ownership, will be disseminated to the general public for commercial solicitations.

The New Jersey Supreme Court has only addressed the issue of disclosure of names and addresses in situations where citizens were reasonably aware that their information would be subject to public disclosure. See Brennan v. Bergen County Prosecutor's Office, 233 N.J. 330, 343 (2018). Because there are no known published opinions in New Jersey which supported the Appellate Division's decision to require disclosure of dog license records in this matter, it would be appropriate for the New Jersey Supreme Court to now grant certification and settle this issue of public importance.

By way of background, 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*. Da56.¹ (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. See N.J.S.A. 47:1A-1. 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.

On February 21, 2020, the Appellate Division issued a published opinion in the matter Bozzi v. Borough of Roselle Park, 2020 N.J. Super. LEXIS 21 (App. Div. 2020). 5a-14a. The facts and

¹ “a” refers to the documents attached hereto. “Da” refers to defendants’ appendix submitted in the Appellate Division.

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

procedural history of Borough of Roselle Park are almost identical to those in the case presently before the Court. Ibid. In Borough of Roselle Park, the same plaintiff, Ernest Bozzi, filed OPRA requests seeking the names and addresses of dog license holders in the Borough of Roselle Park and the City of Summit. Id. at *3. The municipalities denied the requests based on the privacy exception to OPRA, N.J.S.A. 47:1A-1, and plaintiff filed complaints in the Superior Court. Id. at *4-5. The lower Court dismissed plaintiff's complaints and found that the municipalities correctly denied plaintiff's OPRA requests based on the privacy exception of OPRA, N.J.S.A. 47:1A-1. Id. at *5. The Appellate Division then reversed the lower Court's decisions and found that plaintiff was entitled to the information under OPRA. Id. at *14-15.

Thereafter, on April 15, 2020, the Appellate Division issued an opinion in the instant matter. 1a-3a. The Appellate Division affirmed the decision of the lower Court which required defendants to produce the documents requested in plaintiff's OPRA request. Id. The Appellate Division issued a brief four paragraph opinion, explaining: "[b]ecause the issues and arguments raised in this appeal mirror those resolved in our recent published decision in Bozzi v. Borough of Roselle Park, __ N.J. Super. __ (App. Div. 2020), where we held the plaintiff was entitled under OPRA to the names and addresses of dog licensees issued by the defendant

municipalities, we affirm.” 3a. Because the Appellate Division in the instant matter relied entirely on the reasoning set forth in its decision in the Borough of Roselle Park matter, any discussion of the Appellate Division’s decision herein will be in reference to its decision in Bozzi v. Borough of Roselle Park, 2020 N.J. Super. LEXIS 21 (App. Div. 2020).

The Appellate Division in this case inappropriately relied on precedent by the New Jersey Supreme Court which held that disclosure of home names and addresses was not protected by the privacy exception of OPRA in a circumstance in which citizens knowingly participated in a public process, and were therefore reasonably aware that their personal information would be subject to disclosure. See Borough of Roselle Park, supra, 2020 N.J. Super. LEXIS at *15-16 (citing Brennan, supra, 233 N.J. at 342-43 (2018)). In Brennan, supra, 233 N.J. at 342-43, the Supreme Court held that names and home addresses of citizens were not protected from disclosure in a situation where those citizens voluntarily participated in an open and public auction of government property. By contrast, citizens who apply for municipal dog licenses are not volunteering to participate in a similarly public forum, and it was improper for the Appellate Division to rely on Brennan in its opinion.

Although the New Jersey state Courts have not yet addressed whether the privacy exception of OPRA protects disclosure of names

and home addresses of citizens in any similar situation to the one presently before the Court, Federal Courts in New Jersey and beyond have addressed this issue. The Federal Court decisions discussing OPRA and its federal analog, the Freedom of Information Act ("FOIA"), 5 USCS § 552, reflect a consensus that disclosure of names and home addresses, coupled with another piece of personal information, such as dog ownership, violates a reasonable expectation of privacy. The New Jersey Supreme Court should now follow the Federal Court's lead and address this issue of public importance.

THE QUESTION PRESENTED:

1. Did the Legislature intend for OPRA to allow for disclosure of citizens' names and home addresses, coupled with an additional piece of personal information, for the purpose commercial solicitation, when those citizens were reasonably unaware that their information would be subject to public disclosure?

**THE REASONS TO ALLOW CERTIFICATION AND THE ERRORS COMPLAINED
OF/COMMENTS WITH RESPECT TO THE APPELLATE DIVISION DECISION**

This matter presents a question of general public importance which has not been previously addressed in this State, and which will have broad implications affecting citizens' fundamental right to privacy. The Supreme Court should establish clear and appropriate standards to apply in the context of OPRA when municipalities are determining whether it is proper to disclose names, home addresses, and other personal information about their citizens. New Jersey State Courts have thus far failed to delineate when it is appropriate for municipalities to disclose this information. Until clear standards are established, municipalities will either continue to err on the side of caution to protect their citizens' private information and risk the filing of lawsuits such as this one, or will improperly disclose troves of private information about their citizens in order to avoid the filing of lawsuits such as this one.

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, supra, 196 N.J. at 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[.]" Additionally, the Legislature has identified particular fields of information, such as "personal firearms records," which are specifically protected from disclosure. See N.J.S.A. 47:1A-1.1. However, because OPRA has created a general framework for when records should be protected from disclosure due to privacy concerns, it is not necessary for there to be a specific exception in order for the documents to be protected.

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, supra, 233 N.J. at 342. 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).

In this case, the Appellate Division erroneously determined that dog license holders had no reasonable expectation that their names and addresses would not be disseminated to the public for the purpose of commercial solicitation. Borough of Roselle Park, supra, 2020 N.J. Super. LEXIS at *15. As such, the Appellate Division failed to even go on to balance the interest in keeping the information private against the public’s interest in disclosure. The Appellate Division’s failure in this regard was contrary to established Supreme Court precedent which has held that public disclosure of names and home addresses in similar situations “does implicate privacy interests.” Doe, supra, 142 N.J. at 82. The Supreme Court in Doe 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).

Therefore, the issue here is not simply that plaintiff seeks Jersey City citizens' bare names and addresses, as the Appellate Division in this matter seemed to believe. See Borough of Roselle Park, 2020 N.J. Super. LEXIS at *15. Indeed, the issue here is that plaintiff is seeking names and addresses of Jersey City citizens along with the fact that those citizen own dogs, and that plaintiff seeks the information for a business interest.

Here, it is undisputed that the inclusion of status as "dog owner," along with these citizens' names and addresses, will have the effect of "invit[ing] unsolicited contact" upon those citizens. Doe, supra, 142 N.J. at 82-83. Plaintiff has already acknowledged that he is seeking this information for solicitation purposes. Da3. 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. While plaintiff himself 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.

The New Jersey District Court has addressed a similar issue in John Does v. City of Trenton, 565 F. Supp. 2d 560 (D.N.J. 2008), a case also addressing 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.

In its opinion in John Does, supra, 565 F. Supp. 2d at 570-71, the District Court cited with approval to a decision from the New Jersey Government Records Council ("GRC"), Bernstein v. Borough of Park Ridge Custodian of Records, GRC Complaint No. 2005-99 (July 21, 2005), which found the same information sought in this case, the names and addresses of dog license holders, violated the privacy exception to OPRA. Da63. The District Court in John Does noted that much like the risk of disclosing names and addresses of dog license holders, "once the personal information 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, much like the disclosure of dog owners' information 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).

The Federal Circuit courts have also held that disclosure of names and home addresses, coupled with another piece of personal information, was restricted by the privacy protections of FOIA, the federal analog to OPRA. For example, in Wine Hobby USA, Inc. v. United States IRS, 502 F.2d 133, 134 (3d Cir. 1974), the plaintiff, a company which sold "winemaking equipment and supplies to amateur winemakers" sought to obtain a list of names and addresses of all people who had registered with the United States Bureau of Alcohol, Tobacco and Firearms "to produce wine for family use in the Mid-Atlantic region." The plaintiff sought this information to solicit business from these registrants. Ibid.

In Wine Hobby USA, Inc., supra, 502 F. 2d at 137, the Third Circuit Court of Appeals found that this list of names and

addresses was not subject to disclosure under the privacy exemption of FOIA, which protects "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." See 5 U.S.C.S. §552 (b) (6). This exemption is analogous to the privacy exemption of OPRA, which prohibits disclosure of personal information which "would violate the citizen's reasonable expectation of privacy[.]" See N.J.S.A. 47:1A-1. The Third Circuit in Wine Hobby USA, Inc., supra, 502 F. 2d at 137, determined that the disclosure of the names and addresses would constitute an invasion of privacy, and explained that:

Disclosure of the requested lists would involve a release of each registrant's home address, information that the individual may fervently wish to remain confidential or only selectively released. One consequence of this disclosure is that a registrant will be subjected to unsolicited and possibly unwanted mail from Wine Hobby and perhaps offensive mail from others. Moreover, information concerning personal activities within the home, namely wine-making, is revealed by disclosure. (emphasis added).

Having determined that disclosure of these names and addresses would implicate privacy interests, the Third Circuit then went on to conclude that the interest in keeping this information private outweighed the public interest in disclosure, the plaintiff's interest in soliciting new customers for its

business. Ibid. The issue before the Court in the instant matter is almost identical to the issue before the Third Circuit in Wine Hobby USA, Inc., supra, 502 F. 2d at 137. Disclosure of names and addresses of dog owners, just like disclosure of names and addresses of wine-makers, subjects those citizens to "unsolicited and possibly unwanted mail" from plaintiff and "perhaps offensive mail from others." Ibid. Indeed, as the Third Circuit recognized in Wine Hobby USA, Inc., supra, 502 F. 2d at 136-37, "there are few things which pertain to an individual in which his privacy has traditionally been more respected than his own home."

Furthermore, the privacy interests at issue in this case are arguably even greater than those addressed in Wine Hobby USA, Inc., supra, 502 F. 2d at 137. Specifically, there are legitimate safety considerations which could be implicated if the 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 burglars or stalkers. Da57. Dogs themselves could also be targets for theft. See Bernstein, supra, GRC Complaint No. 2005-99.

Similarly, in the case National Ass'n of Retired Federal Employees v. Horner, 879 F.2d 873, 874 (D.C. Cir. 1989) the plaintiff, an organization which existed "to protect and to further

the interests of individuals eligible to participate in the federal Government's civilian retirement system" sought the names and addresses of retired and disabled federal employees from the Office of Personnel Management. The plaintiff sought this information to solicit new members to join its organization. Ibid. The Circuit Court of the District of Columbia determined that this information violated privacy interests, and was not subject to disclosure under FOIA. Id. at 878. The Circuit Court explained:

Every list of names and addresses sought under FOIA is delimited by one or more defining characteristics, as reflected in the FOIA request itself; no one would request simply all "names and addresses" in an agency's files, because without more, those data would not be informative. The extent of any invasion of privacy that release of the list might occasion thus depends upon the nature of the defining characteristics[.]

Id. at 876.

The Circuit Court concluded that there was a "substantial probability that the disclosure will lead to the threatened invasion: one need only assume that business people will not overlook an opportunity to get cheaply from the Government what otherwise comes dearly, a list of qualified prospects for all the special goods, services, and causes likely to appeal to financially secure retirees." Id. at 878. The Court then went on to determine that the public interest in disclosure, solicitation of new members and to aid the plaintiff in its "lobbying activities" did not

outweigh the interest in keeping the information private. Id. at 879.

The Federal Circuit Courts in Wine Hobby USA, Inc., supra, 502 F. 2d at 137, and National Ass'n of Retired Federal Employees, supra, 879 F.2d 873, 874, have established in regards to FOIA what the New Jersey Courts have not established in regards to OPRA: that disclosure of names and addresses, in addition to another personal piece of information, which invites unwanted solicitation, violates a reasonable expectation of privacy. Furthermore, the Federal Courts have established that when the information is only sought for purpose commercial solicitations, the interest in disclosure does not outweigh the interest in maintaining privacy. Therefore, it is appropriate for the New Jersey Supreme Court to now address this important issue.

CONCLUSION

For the reasons set forth herein, the Petition for Certification should be granted.

Respectfully submitted,

PETER BAKER
CORPORATION COUNSEL

Dated: June 12, 2020

By: /s/Maura Connelly
MAURA E. CONNELLY
Assistant Corporation Counsel

CERTIFICATION

I certify that this petition presents a substantial question and is filed in good faith and not for purposes of delay.

Dated: June 12, 2020

/s/Maura Connelly
MAURA E. CONNELLY

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4205-18T2**

ERNEST BOZZI,

Plaintiff-Respondent,

v.

**CITY OF JERSEY CITY, and
IRENE MCNULTY,**

Defendants-Appellants.

Submitted March 23, 2020 – Decided April 15, 2020

Before Judges Sabatino, Sumners and Geiger.

On appeal from the Superior Court of New Jersey, Law
Division, Hudson County, Docket No. L-0354-19.

Peter J. Baker, Corporation Counsel, attorney for
appellants (Maura E. Connelly, Assistant Corporation
Counsel, and John A. McKinney, III, Assistant
Corporation Counsel, on the briefs).

Donald M. Doherty, Jr., attorney for respondent.

PER CURIAM

Defendants Jersey City and Irene McNulty (City Clerk of Jersey City and Custodian of Records), appeal the order of Judge Francis B. Schultz directing defendants, in accordance with the Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 to -13, to provide plaintiff Ernest Bozzi with the names and addresses of individuals possessing a dog license issued by Jersey City. Plaintiff requested the information to solicit customers for his invisible dog fence installation business.

Before us, defendants contend:

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.

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.

Defendants add the following argument in their reply brief:

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

Because the issues and arguments raised in this appeal mirror those resolved in our recent published decision in Bozzi v. Borough of Roselle Park, ____ N.J. Super. ____ (App. Div. 2020), where we held the plaintiff was entitled under OPRA to the names and addresses of dog licensees issued by the defendant municipalities, we affirm.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION

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SUPREME COURT OF NEW JERSEY
App. Div. # A-004205-18
Supreme Court #

CIVIL ACTION

ERNEST BOZZI

**NOTICE OF PETITION
FOR CERTIFICATION**

V.

JERSEY CITY AND IRENE MCNULTY

PLEASE TAKE NOTICE that defendants/petitioners the City of Jersey City and Irene McNulty ("defendants") by and through the undersigned attorneys, hereby serve this Notice of Petition for Certification pursuant to R. 2:12-3(a) requesting that the New Jersey Supreme Court review the final judgment of the Appellate Division rendered on April 15, 2020, which affirmed the Superior Court's order directing defendants to provide the documents requested by plaintiff Ernest Bozzi under the Open Public Records Act, N.J.S.A. 47:1A-1 to -13. If certification is granted, defendants respectfully request that the New Jersey Supreme Court review the Appellate Division's entire decision dated April 15, 2020.

Dated: 05/04/2020

S/ MAURA E CONNELLY



Neutral

As of: June 10, 2020 4:56 PM Z

[Bozzi v. Borough of Roselle Park](#)

Superior Court of New Jersey, Appellate Division

October 21, 2019, Argued; February 21, 2020, Decided

DOCKET NOS. A-4742-17T4, A-4743-17T4

Reporter

2020 N.J. Super. LEXIS 21 *; 2020 WL 855853

ERNEST BOZZI, Plaintiff-Appellant, v. BOROUGH OF ROSELLE PARK, and ANDREW CASAIS, CLERK, Defendants-Respondents. ERNEST BOZZI, Plaintiff-Appellant, v. CITY OF SUMMIT, and ROSEMARY LICATESE, CITY CLERK, Defendants-Respondents.

Subsequent History: [*1] Approved for Publication February 21, 2020.

Related proceeding at [Bozzi v. City of Jersey City, 2020 N.J. Super. Unpub. LEXIS 678 \(N.J. Super. Ct., Apr. 15, 2020\)](#)

Prior History: On appeal from the Superior Court of New Jersey, Law Division, Union County, Docket Nos. L-1046-18 and L-0543-18.

Core Terms

disclosure, records, municipalities, privacy, dog license, exemption, government records, dog, requests, names and addresses, license, licensees, home address, factors, solicit, dog owner, personal information, public record, reasonable expectation of privacy, privacy interest, telephone number, trial court, common law, invisible, fences

Case Summary

Overview

ISSUE: In an action against municipalities to obtain names and addresses on dog license records pursuant to the Open Records Act (OPRA), whether the trial court erred in denying the claim based on a finding that plaintiff's sole purpose was to solicit licenses to install invisible fences at their homes. HOLDINGS: [1]-Plaintiff was entitled to receive access to the names and addresses under OPRA because they were public records in which the licensees had no, or an insufficient, expectation of privacy in the information; [2]-Disclosure was warranted because OPRA provided for ready access to government records by the citizens of New Jersey and it did not contain either a specific or a broad-based exception for the disclosure of names and home addresses that appear in government records.

Outcome

Judgment reversed.

LexisNexis® Headnotes

Governments > State & Territorial
Governments > Licenses

Governments > Agriculture & Food > Pets & Service
Animals

[HN1](#) [↓] [State & Territorial Governments, Licenses](#)

In accordance with [N.J.S.A. § 4:19-15.2](#), dog owners shall apply for a dog license from the municipal clerk where they reside. [N.J.S.A. § 4:19-15.5](#) details the information an applicant must provide. In part, the statute states: The application 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, and whether it has been surgically debarked or silenced; also the name, street and post-office address of the owner and the person who shall keep or harbor such dog. The information on the application and the registration number issued for the dog shall be preserved for a period of three years by the clerk or other local official designated to license dogs in the municipality. [N.J.S.A. § 4:19-15.5](#).

Administrative Law > Governmental Information > Freedom of Information > Compliance With Disclosure Requests

Administrative Law > ... > Freedom of Information > Enforcement > Judicial Review

[HN2](#) **Freedom of Information, Compliance With Disclosure Requests**

The Open Public Records Act (OPRA), [N.J.S.A. §§ 47:1A-1 to 47:1A-13](#), gives a person who is denied access to public records the option to file a complaint in court or with the Government Records Council to adjudicate the dispute. [N.J.S.A. § 47:1A-6](#).

Administrative Law > Governmental Information > Personal Information > Access to Records

Administrative Law > Governmental Information > Personal Information > Prohibition of Disclosure

[HN3](#) **Personal Information, Access to Records**

In Open Public Records Act (OPRA), [N.J.S.A. §§ 47:1A-1 to 47:1A-13](#), the Legislature has chosen to prevent disclosure of home addresses in select situations. Aside from those particular exemptions, OPRA does not contain a broad-based exception for the disclosure of names and home addresses that appear in government records.

Administrative Law > ... > Enforcement > Judicial Review > Standards of Review

Governments > Legislation > Interpretation

[HN4](#) **Judicial Review, Standards of Review**

In considering the trial judge's legal conclusions concerning the release of public records under the Open Public Records Act (OPRA), [N.J.S.A. §§ 47:1A-1 to 47:1A-13](#), and common law, the court's review is de novo. The court will not disturb factual findings if they are supported by adequate, substantial, and credible evidence. In examining the parameters of OPRA, the court determines the Legislature's intent by giving its words their ordinary meaning and significance. [N.J.S.A. § 1:1-1](#). Only if a statute's plain reading is ambiguous, meaning more than one plausible interpretation, or leads to an absurd result, do the court look at extrinsic evidence, such as legislative history and committee reports, to determine the Legislature's intent.

Administrative Law > Governmental Information > Freedom of Information > Defenses & Exemptions From Public Disclosure

Administrative Law > ... > Freedom of Information > Methods of Disclosure > Record Requests

[HN5](#) **Freedom of Information, Defenses & Exemptions From Public Disclosure**


The Open Public Records Act (OPRA), [N.J.S.A. §§ 47:1A-1 to 47:1A-13](#), provides for ready access to government records by the citizens of this State. The purpose of OPRA is to maximize public knowledge about public affairs in order to ensure an informed citizenry and to minimize the evils inherent in a secluded process. Accordingly, OPRA directs that all government records shall be subject to public access unless exempt, and 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](#).

Administrative Law > ... > Personal Information > Agency Duties > Administrative, Technical & Physical Safeguards

Administrative Law > ... > Freedom of

Information > Methods of Disclosure > Record Requests

Administrative Law > Governmental Information > Personal Information > Prohibition of Disclosure

[HN6](#)  Agency Duties, Administrative, Technical & Physical Safeguards

A government record is broadly defined as, any paper, document, data processed or image processed document, information stored or maintained electronically or any copy that has been made, maintained or kept on file in the course of official business by any officer, agency of the State or of any political subdivision thereof. [N.J.S.A. § 47:1A-1.1](#). The record custodian, however, must redact personal identifiers from any document which discloses the social security number, credit card number, unlisted telephone number, or driver license number of any person. [N.J.S.A. § 47:1A-1.1](#). There are 23 categories of documents identified in [N.J.S.A. § 47:1A-1.1](#) that fall outside the statutory definition of a government record; the Legislature considers those categories of documents confidential.

Administrative Law > ... > Freedom of Information > Methods of Disclosure > Record Requests

Administrative Law > ... > Personal Information > Prohibition of Disclosure > Specific Exemptions Allowing Disclosure

Administrative Law > ... > Freedom of Information > Defenses & Exemptions From Public Disclosure > Statutory Exemptions

[HN7](#)  Methods of Disclosure, Record Requests

The Open Public Records Act (OPRA), [N.J.S.A. §§ 47:1A-1 to 47:1A-13](#), affords no overarching exception for the disclosure of names or home addresses contained in government records. Hence, there is no specific exemption for a person's identity and address when it is received by a municipality from a dog license application.

Administrative Law > Governmental

Information > Personal Information > Access to Records

Administrative Law > ... > Freedom of Information > Methods of Disclosure > Record Requests

[HN8](#)  Personal Information, Access to Records

Generally, the court do not consider the reason behind requests pursuant to Open Public Records Act (OPRA), [N.J.S.A. §§ 47:1A-1 to 47:1A-13](#). A person seeking records for commercial reasons therefore has the same right to them as anyone else. That said, government records are subject to exemption when disclosure thereof would violate the citizen's reasonable expectation of privacy. [N.J.S.A. § 47:1A-1](#). When privacy concerns are imbedded in public records, the court must inquire 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.

Administrative Law > Governmental Information > Personal Information > Access to Records

Administrative Law > Governmental Information > Personal Information > Prohibition of Disclosure

[HN9](#)  Personal Information, Access to Records

The privacy provision of Open Public Records Act (OPRA), [N.J.S.A. §§ 47:1A-1 to 47:1A-13](#), is directly implicated where government records sought contain information not meant to be publicized, such as social security numbers (SSNs) along with the names, addresses, signatures, and marital status of a substantial number of New Jersey residents. Thus, there must be a balancing test as outlined in to harmonize OPRA's competing concerns and evaluate whether disclosure without redacting SSNs is proper.

Administrative Law > Governmental Information > Personal Information > Access to Records

Administrative Law > Governmental

Information > Personal Information > Prohibition of Disclosure

[HN10](#) [↓] **Personal Information, Access to Records**

The Doe 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.

Administrative Law > Governmental Information > Personal Information > Access to Records

Administrative Law > Governmental Information > Personal Information > Prohibition of Disclosure

[HN11](#) [↓] **Personal Information, Access to Records**

Before an extended analysis of the Doe factors is required, a custodian of records must present a colorable claim that public access to the records requested would invade a person's objectively reasonable expectation of privacy. Importantly, aside from particular exemptions, the Open Public Records Act (OPRA), [N.J.S.A. §§ 47:1A-1 to 47:1A-13](#), does not contain a broad-based exception for the disclosure of names and home addresses that appear in government records.

Administrative Law > ... > Freedom of Information > Enforcement > Judicial Review

Governments > Courts > Judicial Precedent

[HN12](#) [↓] **Enforcement, Judicial Review**

Bernstein rulings have no precedential value in the court's consideration of appeals in Open Public Records Act (OPRA), [N.J.S.A. §§ 47:1A-1 to 47:1A-13](#), cases. [N.J.S.A. 47:1A-7\(e\)](#).

Administrative Law > ... > Personal Information > Prohibition of Disclosure > General Exemptions From Privacy Act

Administrative Law > ... > Freedom of Information > Defenses & Exemptions From Public Disclosure > Statutory Exemptions

[HN13](#) [↓] **Prohibition of Disclosure, General Exemptions From Privacy Act**

Absent some specific exemption in the Open Public Records Act (OPRA), [N.J.S.A. §§ 47:1A-1 to 47:1A-13](#), a citizen's name and address should be disclosed.

Counsel: Donald Michael Doherty, Jr., argued the cause for appellant.

Jarrid H. Kantor argued the cause for respondents Borough of Roselle Park and Andrew Casais, Clerk (Antonelli Kantor, PC, attorneys; Jarrid H. Kantor, of counsel and on the brief; Daniel H. Kline, on the brief).

Bradley David Tishman argued the cause for respondents City of Summit and Rosemary Licatase, City Clerk (Cleary Giacobbe Alfieri & Jacobs, LLC, attorneys; Matthew J. Giacobbe and Bradley David Tishman, of counsel and on the brief).

Judges: Before Judges Sabatino, Sumners and Geiger.

Opinion by: SUMNERS, JR.

Opinion

The opinion of the court was delivered by SUMNERS, JR., J.A.D.

The matter before us concerns two consolidated appeals, calendared back-to-back for the purposes of

this single opinion, both brought by plaintiff Ernest Bozzi who seeks access to names and addresses on dog license records issued by defendants City of Summit and the Borough of Roselle Park (collectively "the municipalities"). Plaintiff claimed he was entitled to the information under the [Open Public Records Act \(OPRA\), N.J.S.A. 47:1A-1 to -13](#), [*2] and the common law right of access to public records. The municipalities separately denied plaintiff's requests, so plaintiff filed complaints in the Law Division to obtain the information. The trial court determined plaintiff was not entitled to the information because his sole purpose was to solicit dog licensees to install invisible fences at their homes.

Before us, plaintiff contends the names and addresses in dog license records are available to him under both OPRA and common law because they are public records in which the licensees have no, or an insufficient, expectation of privacy in the information. We agree with his OPRA argument and reverse. We do not reach plaintiff's common law argument.

I.

[HN1](#) In accordance with [N.J.S.A. 4:19-15.2](#) and [-15.2a](#), dog owners shall apply for a dog license from the municipal clerk where they reside. [N.J.S.A. 4:19-15.5](#) details the information an applicant must provide. In pertinent part, the statute states:

The application 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, and whether it has been surgically debarked or silenced; also the name, street and post-office address [*3] of the owner and the person who shall keep or harbor such dog. The information on the application and the registration number issued for the dog shall be preserved for a period of three years by the clerk or other local official designated to license dogs in the municipality.

[\[N.J.S.A. 4:19-15.5.\]](#)

Plaintiff is a licensed home improvement contractor who runs a business installing invisible fences for dog owners.¹ On January 26, 2018, he filed OPRA requests

¹An Invisible Fence is a trademark that is becoming genericized as people regularly use it to refer to radio-signalized barrier systems dog owners can install to keep their dogs on their property without erecting a traditional fence. Invisible

with the municipal clerks of both Summit and Roselle Park seeking copies of the municipalities' dog license records in order to solicit dog owners to purchase invisible fences for their homes. His requests stated:

I am requesting copies of your most recent dog license records that you have.

You may redact

. . . the breed/type of dog

. . . the name of the dog

. . . any information about why someone has the dog (comfort animal, handicap assistance, law enforcement of any other reason) if that information is in the record . . . any phone numbers whether unlisted or not.

I am trying to get the names and addresses of dog owners for our invisible fence installations (we are a licensed home improvement contractor) and I allow you to remove any information beyond that [*4] so there are no privacy concerns as determined by the Government Records Council [GRC] in *Bernstein v. Allendale*.²

On February 2, Summit's City Clerk denied plaintiff's request, citing the GRC's final decision in *Bernstein v. Allendale*. This decision was one of five rulings rendered by the GRC the same day involving the same complainant, Rich Bernstein, in which OPRA requests for dog license records were denied. The others were *Bernstein v. Borough of Woodcliff Lake*, GRC Complaint No. 2005-02 (July 14, 2005); *Bernstein v. Borough of Harrington Park*, GRC Complaint No. 2005-06 (July 14, 2005); *Bernstein v. Borough of Ho Ho Kus*, GRC Complaint No. 2005-13 (July 14, 2005); and *Bernstein v. Borough of Park Ridge*, GRC Complaint No. 2005-99 (July 14, 2005). Because the decisions involve the exact same issue — OPRA requests for dog license records in order to sell invisible fences to the dog license holders — resulting in the same factual findings and legal conclusions, unless noted otherwise, we will refer to them collectively as the "*Bernstein* rulings."

fences transmit radio signals to a receiver collar worn by a dog. When the collar gets within range of the boundary, it first emits a warning tone audible to the dog, then if the dog continues to cross the boundary, it signals the collar to cause a static shock. Kyle Schurman, *Three best invisible fences*, Chicago Tribune (Nov. 19, 2018), <https://www.chicagotribune.com/sns-pets-three-best-invisible-fences-bestreviews-20181119-story.html>.

² *Bernstein v. Borough of Allendale*, GRC Complaint No. 2004-195 (July 14, 2005).

Four days later, Roselle Park's Clerk denied the request because of "privacy" concerns [*5] and "Executive Order 21."³

In response to the denials of his requests, plaintiff sought relief in the Law Division. He initially filed a complaint against Summit and its City Clerk seeking the dog license records under OPRA and common law.⁴ This was shortly followed by the filing of a similar complaint against Roselle Park and its Clerk. In both matters, the trial court issued orders to show cause requiring the municipalities to explain why plaintiff was not entitled to the requested records, counsel fees, and the costs of suit.

On May 7, at the conclusion of oral argument, the trial court agreed with the municipalities' decisions not to disclose the dog license records based upon OPRA's privacy provision, [N.J.S.A. 47:1A-1](#). The court maintained the licensees did not expect their "personal information . . . [,] provided in order to comply with law[, to be given] to someone who is using it . . . to solicit them for something else." The court believed this constituted a substantial injury to the licensees' relationship with their municipal government such that "it would encourage people to not comply with the law." The court explained:

[T]o use OPRA for this commercial purpose against the [*6] privacy interests of citizens who are complying with the law and paying a fee, giving over that information because they must. Not because they want to, but because they must or because -- not because they've been given a ticket or want to build a house. They just simply want to own a dog. I think the privacy interest is greater than [plaintiff]'s need to have this to have - to have the government do its -- do his targeting marketing for him -- market research for him.

The court referred to the *Bernstein* rulings but did not specifically cite them in support of its ruling. The court also pointed out Chief Justice Rabner, writing for the Court in [Burnett v. Cty. of Bergen, 198 N.J. 408, 968 A.2d 1151 \(2009\)](#), mentioned one of the *Bernstein* rulings. The court stated: "Now, [Chief Justice Rabner]

³ *Exec. Order No. 21* (July 5, 2002), 34 N.J.R. 2487(a) (Aug. 5, 2002).

⁴ [HN2](#) [↑] OPRA gives a person who is denied access to public records the option to file a complaint in court or with the GRC to adjudicate the dispute. [N.J.S.A. 47:1A-6](#).

cites [*Bernstein v. Boro of Park Ridge Custodian of Records*, GRC Complaint No. 2005-99 (July 14, 2005)]. He notes it. He doesn't say it's wrong. And perhaps he wasn't necessarily focusing on that, but he certainly had done the research and seen that." The court did not make a ruling on plaintiff's common law claim. These appeals ensued.⁵

II.

Plaintiff maintains the municipalities' reliance on the *Bernstein* rulings is misplaced for several reasons. They are not [*7] controlling because OPRA specifically states that "a decision of the [GRC] shall not have value as a precedent for any case initiated in the Superior Court" [N.J.S.A. 47:1A-7\(e\)](#). Plaintiff contends the rulings, rendered in July 2005, incorrectly: (1) relied on the previously rescinded paragraph three of *Exec. Order 21* (July 5, 2002), 34 N.J.R. 2487(a) (Aug. 5, 2002); (2) misapplied the then controlling decision on privacy — [Higg-A-Rella v. Essex, 141 N.J. 35, 49, 660 A.2d 1163 \(1995\)](#) (holding there is no privacy interest in names and addresses in public records that would prevent disclosure under the common law); and (3) erred in applying [Doe v. Poritz, 142 N.J. 1, 79, 82, 662 A.2d 367 \(1995\)](#) (ruling there was no "privacy interest" in keeping the public from learning the names and addresses of those on the registered list of sex offenders).⁶

Plaintiff argues that under [Brennan v. Bergen Cty. Prosecutor's Office, 233 N.J. 330, 342, 185 A.3d 202 \(2018\)](#), there is no need to consider the *Doe* factors because his request for dog license records does not seek information that "a person has an objectively reasonable expectation of privacy in or normally has a justifiable basis to keep from the world." Plaintiff argues a record of dog ownership "is not a significant personal identifier" that imposes a realistic risk of harm.⁷ Plaintiff relies on the Court's recognition that in OPRA "the Legislature has chosen to prevent [*8] disclosure of home addresses in select situations. [HN3](#) [↑] Aside

⁵ This court granted plaintiffs' motion to consolidate the separately filed appeals.

⁶ Plaintiff also relies upon the "logic" of this court's unpublished decisions to support his position that he is entitled to the requested records. Because they have no precedential value, we do not address them. [R. 1:36-3](#)

⁷ We see no merit to the self-serving remarks made by plaintiff's counsel at argument before the trial court that he felt no risk of harm by stating his name, address, and his dog's name in open court.

from those particular exemptions, however, OPRA does not contain a broad-based exception for the disclosure of names and home addresses that appear in government records." *Id. at 338*. He further contends the court also misapplied the *Doe* factors in denying his request.⁸

The municipalities assert the trial court's analysis of OPRA's privacy provision was correct. They primarily rely on *Boro of Park Ridge Custodian of Records*, one of the *Bernstein* rulings, in which the GRC determined a person had a reasonable expectation of privacy in information provided to a municipality to obtain a dog license. Roselle Park contends that, despite the non-precedential value of GRC rulings as set [*9] forth in OPRA, *N.J.S.A. 47:1A-1*, the *Burnett* Court cited to *Boro of Park Ridge Custodian of Records*. *Burnett*, 198 N.J. at 424.

The municipalities contend the trial court correctly agreed with them that there was a colorable claim of privacy in the information contained in the dog license records. They further argue that *Brennan* is

distinguishable from the situation here. In that appeal, the personal information was sought from citizens who voluntarily participated in a public auction bidding process. Whereas here, a citizen's information was given privately to municipal clerks to satisfy a legal requirement imposed by the municipalities to own a dog. It is further argued that the disclosure of the licensees and their addresses sheds no light on government transparency and there is a reasonable expectation of privacy in the information. Hence, the court was obligated to apply the *Doe* factors and properly did so in rejecting plaintiff's OPRA requests.

III.

[HN4](#) [↑] In considering the trial judge's legal conclusions concerning the release of public records under OPRA and common law, our review is de novo. *N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst*, 441 N.J. Super. 70, 89, 116 A.3d 570 (App. Div. 2015). We will not disturb factual findings if they are supported by adequate, substantial, and credible evidence. See *Meshinsky v. Nichols Yacht Sales, Inc.*, 110 N.J. 464, 475, 541 A.2d 1063 (1988).

In examining the parameters of OPRA, we determine the Legislature's [*10] intent by giving its words "their ordinary meaning and significance." *DiProspero v. Penn.*, 183 N.J. 477, 492, 874 A.2d 1039 (2005) (citations omitted); *N.J.S.A. 1:1-1*. Only if a statute's plain reading is ambiguous, meaning "more than one plausible interpretation," or leads to an absurd result, do we look at extrinsic evidence, such as legislative history and committee reports, to determine the Legislature's intent. *DiProspero*, 183 N.J. at 492-93 (citations omitted).

[HN5](#) [↑] "OPRA provides for ready access to government records by the citizens of this State." *Burnett*, 198 N.J. at 421-22 (citing *Mason v. City of Hoboken*, 196 N.J. 51, 64-65, 951 A.2d 1017 (2008)). "The purpose of OPRA 'is to maximize public knowledge about public affairs in order to ensure an informed citizenry and to minimize the evils inherent in a secluded process.'" *Times of Trenton Publ'g Corp. v. Lafayette Yard Cmty. Dev. Corp.*, 183 N.J. 519, 535, 874 A.2d 1064 (2005) (quoting *Asbury Park Press v. Ocean Cty. Prosecutor's Office*, 374 N.J. Super. 312, 329, 864 A.2d 446 (Law Div. 2004)). Accordingly, OPRA directs that "all government records shall be subject to public access unless exempt," and "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*.

⁸ Plaintiff also argues Roselle Park's denial of his OPRA request relied upon paragraph three of *Exec. Order No. 21* (July 5, 2002), 34 N.J.R. 2487(a) (Aug. 5, 2002), which was issued for the purpose of implementing OPRA but rescinded one month later, *Exec. Order No. 26* (Aug. 13, 2002), 34 N.J.R. 3043(b) (Sept. 9, 2002). The rescinded paragraph provided, in pertinent part:

. . . an individual's home address and home telephone number, as well as his or her social security number, shall not be disclosed by a public agency at any level of government to anyone other than a person duly authorized by this State or the United States, except as otherwise provided by law, when essential to the performance of official duties, or when authorized by a person in interest.

[34 N.J.R. 2487(a) (emphasis added).]

Roselle Park cites *Exec. Order No. 21*'s fourth clause, stating: "WHEREAS the Legislature further found and declared in the Open Public Records Act 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[.]" 34 N.J.R. 2487(a). Although it is merely a preamble to the substantive clauses, which has not been rescinded, it is also set forth verbatim in *N.J.S.A. 47:1A-1* and is clearly part of the law. *Burnett*, 198 N.J. at 422-23 (citation omitted). Consequently, there is no merit to plaintiff's argument.

[HN6](#) [↑] A "[g]overnment record" is broadly defined as, "any paper, . . . document, . . . data processed or image processed document, information stored or maintained electronically . . . or any copy . . . that has been made, maintained or kept on file in the course of . . . official business by any officer, . . . agency . . . of the State [*11] or of any political subdivision thereof" [N.J.S.A. 47:1A-1.1](#). The record custodian, however, must redact personal identifiers from any document "which discloses the social security number, credit card number, unlisted telephone number, or driver license number of any person" [N.J.S.A. 47:1A-1.1](#) and [5\(a\)](#).

[HN7](#) [↑] There are twenty-three categories of documents identified in [N.J.S.A. 47:1A-1.1](#) that fall outside the statutory definition of a government record; the Legislature considers those categories of documents confidential. [Brennan, 233 N.J. at 337](#). One such exemption relates to "personal firearms records, except for use by any person authorized by law to have access to these records or for use by any government agency, including any court or law enforcement agency, for purposes of the administration of justice." [N.J.S.A. 47:1A-1.1](#). The other involves the Department of Environmental Protection, Division of Fish and Wildlife's receipt of personal identifying information — "name, address, social security number, telephone number, fax number, driver's license number, email address, or social media address of any applicant or licensee" — in any application for hunting with a firearm license is not considered a government record subject to disclosure. [N.J.S.A. 47:1A-1.1](#). However, OPRA affords [*12] no "overarching exception for the disclosure of names or home addresses" contained in government records. [Brennan, 233 N.J. at 337](#). Hence, there is no specific exemption for a person's identity and address when it is received by a municipality from a dog license application.⁹

[HN8](#) [↑] Generally, we do not consider the reason behind OPRA requests. [Michelson v. Wyatt, 379 N.J. Super. 611, 620, 880 A.2d 458 \(App. Div. 2005\)](#). A person "seeking records for commercial reasons therefore has the same right to them as anyone else." [Burnett, 198 N.J. at 435](#). That said, government records are subject to exemption when "disclosure thereof would

violate the citizen's reasonable expectation of privacy." [N.J.S.A. 47:1A-1](#). When privacy concerns are imbedded in public records, the court must inquire "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, 198 N.J. at 435](#) (quoting [Mason, 196 N.J. at 64](#)).

[HN9](#) [↑] In [Burnett](#), the Court held, "OPRA's privacy provision is directly implicated" where government records sought contain information not meant to be publicized, such as "[social security numbers (SSNs)] along with the names, addresses, signatures, and marital status of a substantial number of New Jersey residents." [198 N.J. at 428](#); [Asbury Park Press v. Cty. of Monmouth, 201 N.J. 5, 7, 986 A.2d 678 \(2009\)](#). Thus, [*13] there must be a "balancing test [as] outlined in [[Doe, 142 N.J. at 88](#)] to harmonize OPRA's competing concerns and evaluate whether disclosure without redacting SSNs is proper." [Burnett, 198 N.J. at 428](#).

[HN10](#) [↑] The [Doe](#) 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 427](#) (quoting [Doe, 142 N.J. at 88](#)).]

Applying these factors in [Burnett](#), the Court granted the plaintiff's request for eight million pages of various types of land title records regarding mortgages, deeds, and other documents containing individuals' addresses, signature specimens, marital status, and other details but ordered redaction of SSN's to avoid the increased risk of identity theft. [Id. at 415-16, 437](#). The information sought was purely for commercial reasons "to catalogue and sell the information by way of an easy-to-search computerized database" thus "enabling title [*14] insurance companies to connect regional title databases and to access them using computer software." [Id. at 414-15](#).

[HN11](#) [↑] Nine years later, the Court clarified when the balancing factors set forth in [Doe](#) must be applied. In [Brennan](#), which was decided after the trial court's

⁹Exemptions are given to "criminal investigatory records, victims' records, trade secrets, various materials received or prepared by the Legislature, certain records relating to higher education, and other items." [Mason, 196 N.J. at 65](#).

decision, it was held that "before an extended analysis of the *Doe* factors is required, a custodian [of records] must present a colorable claim that public access to the records requested would invade a person's objectively reasonable expectation of privacy." [233 N.J. at 342](#). Importantly, the Court recognized that "[a]side from . . . particular exemptions, . . . OPRA does not contain a broad-based exception for the disclosure of names and home addresses that appear in government records." [Id. at 338](#).

IV.

Considering the parties' respective arguments, we are persuaded that plaintiff is entitled to the dog licensees' names and addresses. We agree with plaintiff that the [HN12](#) [\[↑\]](#) *Bernstein* rulings have no precedential value in our consideration of OPRA appeals. [N.J.S.A. 47:1A-7\(e\)](#). The suggestion by the court and Roselle Park that the *Burnett* Court cited or specifically favored the *Bernstein* rulings is misplaced. Chief Justice Rabner, writing for the Court, merely mentioned *Boro of Park Ridge* [\[*15\]](#) *Custodian of Records* and another GRC ruling¹⁰ to illustrate the GRC "has also relied on the privacy provision [in OPRA] in addressing requests for access to government records." [Burnett, 198 N.J. at 424](#). Noting the GRC is "an informal mediation program designed to resolve disputes under OPRA," the Court did not pass judgment on the wisdom of those rulings. Accordingly, the GRC's rulings will not dictate our decision here.

Turning our analysis to the specifics of plaintiff's OPRA requests, we do not consider the *Doe* balancing factors because the municipalities have not presented a colorable claim that the requests for names and addresses of the dog licensees invades an "objectively reasonable expectation of privacy." [Brennan, 233 N.J. at 342](#). Based on the record before us, we do not see where the citizens in Summit and Roselle Park have a reasonable expectation of privacy in their names and addresses when they apply for a dog license. While they may not have anticipated OPRA requests such as plaintiff's, there is no indication that this information should be cloaked within privacy protection. Indeed, people who own dogs frequently walk them in public places and ordinarily do not conceal their status.

Granted, [\[*16\]](#) *Brennan* addressed the disclosure of releasing information related to a public auction

conducted by a governmental body. Nevertheless, we discern no erosion of protected privacy rights by allowing the release of the licensees' names and addresses. This is unlike the situation in [Burnett](#), where the Court applied the *Doe* factors to balance the privacy interest in an SSN, a personal identifier, contained in government records. [198 N.J. at 428](#).

Except for the exemptions of personal information provided for firearms and hunting licenses, the Legislature has provided no clear exemption in OPRA against the disclosure of citizens' names and addresses when they are provided to governmental bodies as a condition to acquire a license required by law. Hence, releasing the names and addresses of the dog license holders violates no directive in OPRA, or any other law for that matter.

While we appreciate the concerns of the trial court and the municipalities that the result of plaintiff's requests may be irritating — receiving unsolicited mail from individual or entities pursuing business opportunities related to their dog ownership — to some, it is not an infringement of any established privacy interest. Some dog owners [\[*17\]](#) receiving plaintiff's solicitation may be interested, while others may view it as unwanted clutter in their mailboxes. We note that plaintiff disavows any plan to call dog owners with solicitations. Simply put, the dog owners would take a few seconds to view the solicitation and discard it if it is of no interest. We have not been presented with any indication suggesting there is a reasonable expectation of privacy in the requested personal information because it could lead to identity theft or other unwelcomed consequences.

We recognize there is merit to the trial court's determination that plaintiff's request seeking personal information for business purposes may not be what the Legislature envisioned when it enacted OPRA. However, that is not the barometer to determine whether the request should be denied based on the statute's language. As with any new legislation, our Legislature could not foresee every type of information to be sought from the government's file cabinets, or now computer files, when OPRA was enacted. See [N.J.S.A. 47:1A-9\(a\)](#) (stating disclosure of any information that is protected by any other state or federal statute, regulation, executive order, or court rule is exempt from disclosure). [\[*18\]](#) Legislation evolves through amendments to address unforeseen concerns and societal changes. That said, we are fully aware that a proposed amendment to OPRA to exempt the disclosure of names and addresses imbedded in public

¹⁰ *Catrell v. N.J. Dep't of Corr.*, GRC Complaint No. 2006-121 (Feb. 28, 2007).

records has not come to fruition. Bill S. 2819 (2013) provided any "portion of a personal government record which discloses any personal information, including the name and address, of any person[.]" is exempt from OPRA. The bill defined a "[p]ersonal government record" as "a government record that pertains solely to a pet or home alarm system permit, license, or registration." *Ibid.* The bill did not become law. The Legislature, however, did pass L. 2013, c. 116, which resulted in an amendment to [N.J.S.A. 47:1A-1.1](#), exempting the disclosure of a person's "name, address, social security number, [or] telephone number" who applies for a personal firearm or hunting license. L. 2013, c. 116, § 1.

To further illustrate the Legislature's decision not to amend OPRA to exempt the disclosure of citizens' names and home addresses, we look back to the month shortly after its enactment. A provision of *Exec. Order No. 21* stated OPRA exempted the disclosure of names and home addresses, this was rescinded [*19] in *Exec. Order No. 26*.¹¹ To address the issue, the rescinding order further directed the Privacy Study Commission "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." *Exec. Order No. 26* ¶5, 34 N.J.R. 3043(b) (Aug. 13, 2002). After holding hearings, the Commission's final report in 2004 recommended, among other things, non-disclosure of home telephone numbers, and individuals' home addresses under OPRA, and "[i]ndividuals should be permitted to opt out of disclosure of their home addresses." STATE OF NEW JERSEY PRIVACY STUDY COMMISSION, FINAL REPORT: PRIVACY STUDY COMMISSION 16 (2004), <https://dspace.njstatelib.org/xmlui/bitstream/handle/10929/22262/c58152004.pdf?sequence=1&isAllowed=y>. Despite many OPRA amendments since that final report was issued, those recommendations have not been incorporated into the law through legislative action or executive order. [Brennan, 233 N.J. at 338-39](#). [HN13](#) [↑] Thus, it is apparent that absent some specific exemption in OPRA, a citizen's name and address should be disclosed. Because the municipalities can point to no such exemption regarding a licensee's name and address set forth in a dog [*20] license, plaintiff's request should have been granted.

We are mindful that through technology, our citizenry has constantly received unwanted solicitation by emails,

or calls to their home phones and cell phones, from for-profit and non-profit entities offering their services. In fact, those solicitations are probably viewed as more of a nuisance than the mailings plaintiff intends to send. Our legislative bodies have heard the public's outcry and have stepped in and created do-not-call registries regarding such solicitations. See [N.J.S.A. 56:8-127](#); [47 U.S.C. § 227](#). Accordingly, should the Legislature disagree with interpretation of OPRA, it can override our ruling by adding more definitive restrictions beyond those presently delineated in OPRA or other laws regarding the access to information that citizens seek. See [J.H. v. R&M Tagliareni, LLC, 239 N.J. 198, 247-48, 216 A.3d 169 \(2019\)](#) (Rabner, C.J. dissenting).

Given our conclusion that plaintiff is entitled to the requested information under OPRA, we need not address his common law claim. See [Brennan, 233 N.J. at 343](#).

Reversed.

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¹¹ See footnote 8.