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PERRY BOLKIN, *Plaintiff* v. BOROUGH OF FAIR LAWN and JOANNE M. KWASNIEWSKI, Custodian of Records for the Borough of Fair Lawn, *Defendants.*	SUPERIOR COURT OF NEW JERSEY LAW DIVISION BERGEN COUNTY DOCKET No. BER-L-6547-12 CIVIL ACTION OPINION

Argued: November 30, 2012
Decided: December 5, 2012

Honorable Peter E. Doyne, A.J.S.C.

Walter M Luers, Esq. appearing on behalf of the plaintiff, Perry Bolkin (Law Office of Walter M. Luers, LLC).

Ronald P. Mondello, Esq. appearing on behalf of the defendants, Borough of Fair Lawn and Joanne M. Kwasniewski, Custodian of Records for Borough of Fair Lawn (Ronald P. Mondello, P.C.).

Introduction

On August 24, 2012, Perry Bolkin ("plaintiff" or "Bolkin") had filed on his behalf a verified complaint and an order to show cause. Bolkin sought a judgment declaring defendants, the Borough of Fair Lawn and Joanne Kwasniewski, Custodian of Records for the Borough of Fair Lawn ("Fair Lawn" or "defendant" and "Joanne" when addressed individually, "defendants" when referenced collectively), in violation of the Open Public Records Act, N.J.S.A. 47:1A-1 to -13 ("OPRA" or the "Act"), directing defendants to release the requested records to plaintiff, and requested counsel fees and costs pursuant to

the Act. Bolkin also sought similar relief by way of the common-law right of access to public records.

Facts/ Procedural History

Bolkin is a resident of Fair Law, New Jersey. He supports the activities of the New Jersey chapter of the League of Humane Voters ("LOHV"). The LOHV is a non-profit political action committee. Its mission is to promote the enactment of animal-friendly legislation and elect candidates for public office who will use their votes and influence for animal protection. Fair Lawn is a municipality organized pursuant to the laws of the State of New Jersey. Joanne is the custodian of records for Fair Lawn.

In order to promote its mission, plaintiff expects to mail literature directly to pet owners in Fair Lawn endorsing candidates for office with the hope that those candidates will support "animal-friendly legislation" and to provide additional information about these candidates. LOHV acquires lists of the names and addresses of pet owners in various municipalities in order to mail its literature to its targeted audience. Fair Lawn and other municipalities maintain copies of applications that residents submit to it in order to receive licenses for their cats and dogs.

On June 28, 2012, plaintiff submitted an OPRA request seeking the names and addresses of pet owners in Fair Lawn. Joanne sent a timely response on July 11, 2012 denying the request. In denying the request, Joanne relied on privacy concerns set forth in N.J.S.A. 47:1A-1,[1] Governor McGreevy's Executive Order Number 21,[2] Doe v. Poritz,

[1] The relevant part of N.J.S.A. 47:1A-1 states:

> 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; and nothing contained in [the Act], as amended and supplemented, shall be construed as affecting in any

142 N.J. 1, 82 (1995),[3] and the Government Record Council's ("GRC's") Bernstein decisions.[4]

On August 10, 2012, plaintiff's counsel responded to Joanne's denial by amending plaintiff's original request for documents. Plaintiff's amended request sought documents showing names and addresses of all licensed dog and cat owners in Fair Lawn, including all dog and cat applications or licenses on file, or a list of all licensed dog and cat owners if available. The latter does not exist.

On August 15, 2012, counsel for defendants responded to the August 10th letter by email. The email reiterated Joanne's denial pursuant to the GRC rulings. In response, on August 24, 2012, plaintiff had filed on his behalf a verified complaint seeking access to the documents pursuant to the Act and the common law right of access, as well as reasonable attorney's fees. On that same date, plaintiff filed an order to show cause, which was signed by the Honorable Robert P. Contillo, P.J.Ch. on August 27, 2012,

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> way the common law right of access to any record, including but not limited to criminal investigatory records of a law enforcement agency.

[2] The order states:

> **WHEREAS**, the Legislature further found and declared in [the 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) (Aug. 5, 2002)

[3] In Doe, the Court held:

> Our analysis is altered, however, by the disclosure of plaintiff's home address, and more importantly, by the totality of the information disclosed to the public. We believe that public disclosure of plaintiff's home address does implicate privacy interests. We are reluctant to disparage the privacy of the home, which is accorded special consideration in our Constitution, laws, and traditions.
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> (internal marks and citations omitted)
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> Doe, 142 N.J. at 82.

[4] In brief, these decisions by the GRC denied the complainant's access to lists of names and addresses of dog license owners pursuant to N.J.S.A. 47:1A-1, Executive Order 21, and, among other cases, Doe v. Poritz.

directing defendants to appear and show cause why the requested documents should not be disclosed, and why reasonable attorney's fees should not be awarded to plaintiff.

Plaintiff argues that defendant's stated privacy concerns are insufficient to uphold a denial of the requested documents, outlining the factors regarding disclosure of personal information discussed in Doe, supra, 142 N.J. at 88. Plaintiff presents a similar argument regarding the common law right of access, and the balancing factors outlined in Loigman v. Kimmelman, 102 N.J. 98, 113 (1986). Plaintiff also cites to an unpublished opinion, Atlantic County Society for the Prevention of Cruelty to Animals v. City of Absecon, 2009 N.J. Super. Unpub. LEXIS 1370, *1 (App. Div. June 5, 2009) in support of his position.[5]

Defendant filed an answer on October 12, 2012. Defendant's primary argument, as discussed supra, is the information requested cannot be disclosed due to privacy concerns. Defendant also argues that the information should not be disclosed due to security concerns, essentially urging that listing dog and cat owners could make pet owners, or non-pet owners, more susceptible to burglaries or "pet theft." Plaintiff filed a response on October 16, 2012. The court entertained oral arguments on November 30, 2012.

Legal Standards

A. OPRA

1. Generally

The Act, N.J.S.A. 47:1A-1 to -13, "plainly identifies its purpose at the outset: to ensure that government records, unless exempted, are readily accessible to citizens of New Jersey for the protection of the public interest. To accomplish that aim, OPRA sets

[5] But see R. 1:36-3.

forth a comprehensive framework for access to public records." Mason v. City of Hoboken, 196 N.J. 51, 57 (2008) (internal citation omitted).

OPRA provides "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, and any limitations on the right of access [under the Act] shall be construed in favor of the public's right of access." N.J.S.A. 47:1A-1. A government record is defined as:

> any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been made, maintained or kept on file in the course of his or its official business by any officer, commission, agency or authority of the State or of any political subdivision thereof, including subordinate boards thereof, or that has been received in the course of his or its official business by any such officer, commission, agency, or authority of the State or of any political subdivision thereof, including subordinate boards thereof. The terms shall not include inter-agency or intra-agency advisory, consultative, or deliberative material.
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> [Id. § 1.1.]

Records are typically available during the public agency's regular business hours with an exception for smaller towns, agencies, and school districts. Id. § 5. The records may be redacted to protect personal information, and the records custodian may charge a fee for copying and related services. Ibid. Typically, any request for a record must be made using the agency's official request form. Ibid. The custodian must respond to all requests within seven business days, unless the applicant fails to provide necessary contact information. Ibid.

If access to a government record is denied, the person denied access, and only that person, may challenge the decision by filing a complaint in Superior Court or with the Government Records Counsel. Id. § 6. The application must be brought within forty-five days of the denial. Mason, supra, 196 N.J. at 68 ("[A] 45-day statute of limitations should apply to OPRA actions, consistent with the limitations period in actions in lieu of prerogative writs.").

The proceeding will go forward in a summary or expedited manner. N.J.S.A. 47:1A-6; see Courier News v. Hunterdon Cnty. Prosecutor's Office, 358 N.J. Super. 373, 378 (App. Div. 2003). As such, "the action is commenced by order to show cause supported by a verified complaint." Ibid. In Courier News, the Appellate Division held the trial court had failed to follow proper procedure when it denied a newspaper its right to summary adjudication on an OPRA action. The trial judge had erroneously applied the standard for preliminary relief to the summary action and dismissed plaintiff's action without prejudice. Id. at 377. As a result, the Appellate Division, recognizing the Act's policy of expediency, invoked original jurisdiction over the matter. Id. at 379.

In OPRA actions, the public agency has the burden of proving the denial is authorized by law. N.J.S.A. 47:1A-6. As such, the agency "must produce specific reliable evidence sufficient to meet a statutorily recognized basis for confidentiality. Absent such a showing, a citizen's right of access is unfettered." Courier News, supra, 358 N.J. Super. at 383. In establishing legal support, "[a] decision of the [Government Records Council] shall not have value as a precedent for any case initiated in Superior Court," N.J.S.A. 47:1A-7, though such decisions are normally accorded deference unless "arbitrary, capricious or unreasonable" or violative of "legislative policies expressed or

implied in the act governing the agency." Serrano v. S. Brunswick Twp., 358 N.J. Super. 352, 363 (App. Div. 2003) (citing Campbell v. Dep't of Civil Serv., 39 N.J. 556, 562 (1963)). Lastly, "a court must be guided by the overarching public policy in favor of a citizen's right of access." Courier News, supra, 358 N.J. Super. at 383. If it is determined access was improperly denied, such access shall be granted, and a successful requestor shall be entitled to reasonable attorney's fees. N.J.S.A. 47:1A-6.

2. Privacy Exceptions to OPRA

Exceptions to OPRA can come from a variety of sources:

> [A]ll government records shall be subject to public access unless exempt from such access by: [other provisions of OPRA]; any other statute; resolution of either or both houses of the New Jersey Legislature; regulation promulgated under the authority of any statute or Executive Order of the Governor; Rules of Court; any federal law, federal regulation, or federal order.
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> [N.J.S.A. 47:1A-1]

In addition to the exclusions/exceptions found throughout the Act, the first section of OPRA sets forth the public policy of the statute, stating "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*." N.J.S.A. 47:1A-1 (emphasis added); see also Burnett v. County of Bergen, 198 N.J. 408, 422-23 (2009) (stating this portion of OPRA is a substantive part of the statute, not a preface or a preamble).

The Burnett Court found "OPRA's language provides for a balancing of interests in privacy and disclosure." Ibid. at 420. In that case, a commercial entity requested the bulk release of "eight million pages of land title records of all types, extending over a

period of twenty-two years, which contained names, addresses, social security numbers, and signatures of countless citizens of this State." Ibid. at 414. The Court stated "OPRA's twin aims--of ready access to government records and protection of citizen's personal information--require a careful balancing of the interests at stake." Ibid. The Court found the requested records were unrelated to "OPRA's core concern of transparency in government." Ibid. The Court held, "[U]nder the unusual circumstances of this case, the balance tip[ped] in favor of the citizens' reasonable expectation of privacy in one respect: the records [were permitted to be] disclosed after redaction of individual social security numbers." Ibid. at 415. Further, the Court held "the cost of redaction [was] borne by the requestor." Ibid. In reaching that conclusion, the court adopted the factors set forth in Doe v. Poritz, 142 N.J. 1, 88 (1995):

> (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.

The Court stated OPRA's "privacy provision [was] directly implicated [as] the requested documents contained [social security numbers] along with names, addresses, signatures, and marital status of a substantial number of New Jersey residents." Burnett. 198 N.J. at 428. The Court therefore turned to the balancing test outlined in Doe "to harmonize OPRA's competing concerns and evaluate whether disclosure without redacting [social security numbers was] proper." Ibid.

The Court found the following factors favored disclosure of the records without first redacting the social security numbers: (1) the records were public records, (2) the very purpose of the records was to place the world on notice of their contents, and (3) the realty records in question did not require inclusion of social security number. Ibid. at 429. Conversely, the Court considered the following in its determination the social security numbers were to be redacted: (1) that a social security number being available at a clerk's office did not eliminate a person's expectation of privacy, (2) the social security numbers were paired with other personal information, elevating the privacy concern at stake, (3) the bulk disclosure of realty records to a commercial entity to be included in a searchable electronic database would eliminate the practical obscurity that enveloped records held at the Bergen County Clerk's Office, and (4) the documents were composite documents, which "implicate privacy concerns more broadly than documents with one item alone." Ibid. at 430-31.

The court concluded, "In short, 'interest in privacy may fade when the information is a matter of public record, but they are not non-existent.'" Ibid. at 431 (quoting Doe, 142 N.J. at 87).

B. New Jersey Common Law

In addition to OPRA, disclosure of public records can be sought under the common law. Thus, even if the names and addresses of pet license holders fall within one of the exceptions to access under the statutory construct of OPRA, plaintiff may still prevail by resorting to the common-law right to access government records, a thorough background of which is provided by Mason, supra, 196 N.J. at 67-68:

> The common law definition of a public record is broader than the definition contained in OPRA.

. . .

> To access this broader class of documents, requestors must make a greater showing than required under OPRA: (1) the person seeking access must establish an interest in the subject matter of the material; and (2) the citizen's right to access must be balanced against the State's interest in preventing disclosure.
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> [Ibid. (internal citations and quotations omitted).]

Thus, to prevail under the common law, plaintiffs must show the record sought constitutes a "public record" and establish a right in the record sought, which outweighs the State's interest in preventing disclosure.

Once it is shown the record is a "public record" and is therefore subject to disclosure, and the plaintiff's interest in the record is established, the court must weigh the plaintiff's interest against the government's interest in non-disclosure. The Supreme Court has set forth the following factors for use in conducting this balance:

> (1) the extent to which disclosure will impede agency functions by discouraging citizens from providing information to the government; (2) the effect disclosure may have upon persons who have given such information, and whether they did so in reliance that their identities would not be disclosed; (3) the extent to which agency self-evaluation, program improvement, or other decisionmaking will be chilled by disclosure; (4) the degree to which the information sought includes factual data as opposed to evaluative reports of policymakers; (5) whether any findings of public misconduct have been insufficiently corrected by remedial measures instituted by the investigative agency; and (6) whether any agency disciplinary or investigatory proceedings have arisen that may circumscribe the individual's asserted need for the materials.
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> [Loigman v. Kimmelman, 102 N.J. 98, 113 (1986).]

The Court in South Jersey Publishing, in discussing the second requirement for common law disclosure, found:

> In its balancing, a court may find it necessary to compel production of the sought-after records and conduct an in camera review thereof. It may, indeed, decide that to release the records in a redacted form, editing out any privileged or confidential subject matter, is appropriate. A mere summary of the record is inadequate, however, where a more complete record reflecting the underlying facts is available and the plaintiff's need therefore outweighs any threat disclosure may pose to the public or private interest.
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> [S. Jersey Pub. Co. v. N.J. Expressway Auth., 124 N.J. 478, 488-9 (1991).]

Analysis

A. OPRA

1. The License Applications are Government Records

In order to be subject to OPRA's disclosure requirements, the records sought must qualify as government records. It is clear that the records sought here – the license applications for dog and cat owners – are government records for purposes of OPRA, as the statute defines a government record as, in short, any document or recording made, maintained, or kept by any government entity, or officer or official thereof, in the course of its or his official business. See N.J.S.A. 47:1A-1.1; see also Serrano, supra, 358 N.J. Super. at 365 (holding audiotape of a 911 phone call was a government record). Fair Lawn clearly maintains records of license applications in order to conduct official business, e.g. issuing pet owner licenses. Regardless, there is no argument that the documents are not public records.

2. Privacy Concerns and Balancing Test

Privacy concerns surely arise where an individual's home address, name, and social security number are disclosed. However, in order to determine if the need for disclosure under OPRA outweighs the need to protect the disclosed individual's privacy, it is necessary to apply the Doe factors. Further, it should also be determined whether any reasonable concerns can be minimized through a redaction of specified information. At oral argument, plaintiff's counsel agreed that plaintiff would consent to prohibiting the use of information other than for the requested purpose: dissemination of political literature to inform pet owners of a particular candidate's stance on animal rights issues. Plaintiff also agreed, through counsel, he would agree to a redaction of all information other than the names and addresses of pet owners.[6] As the documents are to be used solely for political purposes and as potentially private information such as pet breed and reasons for owning the pets can be redacted, disclosure interests outweigh privacy concerns, and thus disclosure is appropriate.

a. Type of record requested and the information it does or might contain.

The documents requested, applications for dog or cat licenses, are government records and do contain some private information that *may* not be appropriate for disclosure. The documents contain the names, addresses, phone numbers, whether the dogs are being used as guide dogs or to assist handicapped individuals, and whether the owner is a senior citizen. Defendants argue that the information beyond the names and addresses is arguably *too* private to warrant disclosure. However, plaintiff has only requested the names and addresses of those who obtained licenses, and has agreed to

[6] Redacted information would include pet breeds, SSN (if present), nature of the ownership (i.e. whether the dog is used for protection, disability, etc.), the age or other descriptive data of the owner or pet, or any other data that was not merely the name and address of the owner.

accept this data with all other information redacted. Names and addresses are not exempt from disclosure under OPRA, and disclosure of this information should be favored barring significant concerns under the remaining factors. Accordingly, the first two factors favor plaintiff.

> b. The potential for harm in any subsequent nonconsensual disclosure and injury from the disclosure relationship in which the record was generated.

Regarding the third factor, there does not appear to be significant potential harm in any subsequent disclosure of the information. Plaintiff has stated that he intends to use the information to distribute documents endorsing political candidates. Defendant argues that the information *could* subsequently be used for unsolicited commercial enterprises. While this may be a valid concern, as was the case in the Bernstein decision,[7] plaintiff has not made any suggestion and presents no intention to use the names and addresses for commercial purposes. Plaintiff's intention here, unlike the plaintiff in Bernstein, is political, not commercial. The greatest harm would be the combination of names and addresses with another personal identifier, such as a social security number. See e.g., Burnett, 198 N.J. at 428. This problem is not present here.

Further, at oral argument, plaintiff consented to retaining the information only for his personal use and distribution—to be used for political distribution only—and thus will be barred from allowing others to use the data, including the LOHV. Because the LOHV is a third party not bound by this litigation, defendant fears it might use the pet owners' names and addresses beyond the scope of plaintiff's limited use. Plaintiff, as a member

[7] The Bernstein decision, as an opinion by the GRC, is not precedential in this case. However, plaintiff cites to an unpublished opinion, Atlantic County, supra, which, pursuant to R. 1:36-3, also does not constitute precedent. Accordingly, while this court is not bound by either decision, both will be considered in fairness to the parties.

of LOHV, although not acting on its behalf, has expressed his intention to allow the LOHV to use the data. Defendant further fears a key member of the LOHV, Angie Mettler ("Mettler"), will use the data beyond the scope of the agreed limited use.[8] As discussed at oral argument, however, plaintiff has agreed he will not disseminate the data to LOHV and that he would have LOHV submit a request to obtain the information with the permission of the court, limiting LOHV to the same conditions for use as plaintiff.

Defendant also argues that dog and cat owners will be negatively affected by unsolicited mail every time an election occurs in New Jersey. It is unclear how this position relates to potential "nonconsensual" disclosures, although it is important to note that generally, open political discourse and disclosure in elections should be favored over nondisclosure. Accordingly, the third factor favors plaintiff.

Similarly, regarding the fourth factor, there is little potential for injury to the disclosure relationship from dissemination of the requested information. The applications are required for a dog or cat license. The disclosure, while potentially causing some possible nuisance due to unwanted solicitation, does not include extremely personal or private information that would outweigh or discourage an individual from owning, and properly licensing, a dog or cat. Defendant argues that disclosure of the requested information will be so damaging that it will encourage law-abiding pet owners to stop complying with the law by refusing to file for pet licenses. In support of this

[8] Defendant also points to Mettler's zealous promotion of animal rights as a concern regarding the dissemination of the requested information to the LOHV. As part of its submission, plaintiff included a certification of Mettler, which indicated that she intended to use the data to further the LOHV's mission of promoting "animal-friendly legislation." Defendant notes that Mettler has broken the law to promote the LOHV's mission, citing to a youtube.com video where Mettler states "we know [removing bears from snare traps] is illegal" but "come arrest me and I'll do it again." www.youtube.com/watch?v=EQxRPruEomU at 2:40/8:56. Regardless of Mettler's past actions, however, the court will not presume that an organization will break the law in the future particularly where there are sufficient deterrents in place should the order be violated.

contention, defendant offers the certifications of a few concerned citizens regarding disclosure of the information.[9]

Defendant's position, however, cannot be supported. It is unreasonable to suggest that the mere receipt of potentially unwanted information is enough to encourage law-abiding citizens to ignore other deterrents to illegal actions, and thus begin ignoring laws as they deem appropriate. Surely individuals would not start ignoring stop signs and stop lights if they received information as a result of the use of data from their driver's license. Accordingly, the fourth factor favors plaintiff.

c. The adequacy of safeguards to prevent unauthorized disclosure.

As to the fifth factor, unauthorized disclosure of addresses and names is of little concern. Without additional identifiers, the only information available to plaintiff is a name and an address, information that is available to essentially anyone with an available internet connection, phone book, or disposable income.[10] While an individual may seek to hide this information in various instances, this information has historically been available to the public, and thus the fear of unauthorized disclosure, even absent "safeguards" is of little concern. See Higg-A-Rella, Inc. v. County of Essex, 141 N.J. 35, 49 (1995). Further, as stated above, plaintiff has agreed to be limited with regard to disclosure of the information and will seek court approval before allowing his organization, LOHV, to use the data. Accordingly, the fifth factor favors plaintiff.

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[9] Notably, none of these citizens states their intent to engage in a form of civil disobedience or any other illegal activity should the information be disclosed. Further, based on defendant's papers, it is unclear whether some of the individuals do in fact own dogs or cats, thus including their information as part of the disclosure. Defendant, however, presented at oral argument that all five individuals who submitted certifications are in fact pet owners in Fair Lawn.

[10] Defendant's counsel notes that he was unable to locate his and Mr. Luer's home address using the internet, although he admits that he is not as "computer savvy" as his children. Various address and informational databases are available online, which will provide information for free or at times for a small fee. See e.g., www.whitepages.com.

d. The degree of need for access.

As to the sixth factor, as discussed supra, plaintiff is seeking to use the information for political purposes. Specifically, plaintiff wishes to endorse specific candidates who share plaintiff's political views with regard to the treatment of animals. Open discussion of a politician's political views is surely in the public interest. Plaintiff requests a targeted list of individuals who might be most amenable to his position in order to reduce costs and to avoid unwanted solicitation of other voters who may not share a similar interest. Overall, plaintiff's need is not overwhelming; however, it is reasonable and beneficial to the public interest as a whole.[11] Accordingly, the sixth factor favors plaintiff.

e. Whether there is an express statutory mandate, articulated public policy, or other recognized public interest militating toward access.

Regarding the final prong, as there appears to be no strong reason supporting denial of the information, the Legislature's overarching intention to favor OPRA and disclosure of government records must prevail. As already discussed, defendant argues that the information should not be disclosed for fear of encouraging citizens to break the law, fear of annoying voters with unwanted information,[12] and fear of the disclosure of

[11] Plaintiff also notes that it requires a shortened list of pet owners that filed for licenses in Fair Lawn in order to avoid excessive bulk mailing costs. At oral argument, plaintiff's counsel stated that he believed costs of bulk mail to be approximately 17 to 19 cents per item mailed. According to the United States Postal Service, mailing a standard postcard in bulk appears to be approximately 18.5 cents, with additional costs of about 6 cents per piece. United States Postal Service Price List, Notice 123, June 24, 2012, page 13, http://pe.usps.com/cpim/ftp/manuals/dmm300/Notice123.pdf. Plaintiff further estimated that there are approximately 7,600 voters in Fair Lawn—the likely recipients, if untargeted, plaintiff would mail political literature to—which, according to defendant, has a population of around 40,000. Plaintiff's papers indicate there are approximately 2,250 dog and cat license applicants in Fair Lawn. Accordingly, assuming costs of about 25 cents per mailing, plaintiff's costs would diminish by approximately $1335 per mailing with a targeted list of solely pet license applicants as opposed to a list of voters. While this cost issue is not particularly crucial to the court's decision, the need for a targeted list to avoid costs is notable.

[12] Candidly, as this was an election year, an "overabundance" of solicitations regarding political issues and candidates may well be argued persuasively. However, there is nothing to suggest that any additional

private information. As discussed, these fears are not well supported for various reasons. Defendant's raise a few other concerns, however, which should be addressed.

Defendant argues that the disclosure of home addresses is a public policy concern, as outlined in Executive Order 21, paragraph 3, which exempted home addresses from OPRA. As plaintiff notes, this paragraph was rescinded in Executive Order 26.[13] The current legal posture regarding names and addresses at present is to allow this information so long as there are no additional personal identifiers. See Burnett, supra, 198 N.J. at 428. At oral argument, plaintiff posited that the GRC's Bernstein decision (1) is merely advisory due to the authority granted to the GRC by the legislature; (2) has been diminished by the rescission of Executive Order 21, which Bernstein heavily relied upon; and (3) has been superseded by Burnett and other opinions since the rescission of Executive Order 21. Defendant argued that Bernstein is still relevant as it was referenced favorably in Burnett, noting that Burnett still implicated privacy interests where only names and addresses were disseminated through an OPRA request. As to points (1) and (2), plaintiff is correct. Regarding point (3), defendant correctly notes that privacy interests are implicated solely where names and addresses are released, as is the case in the instant matter. Defendant, however, has not sufficiently demonstrated, as is its burden, that the privacy interests implicated through the disclosure of the redacted information outweigh the overall interests of disclosure pursuant to OPRA. Burnett itself

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information, notably targeted and minimal information regarding a group's endorsement of a candidate, would have the devastating impact defendant suggests. To the contrary, endorsement and disclosure of information regarding political candidates should be encouraged and disseminated as frequently as possible, particularly to those who might have the greatest interest in this information. OPRA itself is designed to encourage an engaged and informed electorate, thus promoting accountability. It is not the court's place to evaluate the nature of the disseminating organization, but instead to determine whether an OPRA request is valid.

[13] Defense counsel conceded this at oral argument as well.

found that names and addresses alone, without any other identifiers, did not sufficiently implicate privacy concerns to warrant nondisclosure under OPRA. 198 N.J. at 437.

Finally, regarding Bernstein, a key difference between it and the instant case is the intended use of the information. Plaintiff intends to use the names and addresses to create a mailing list to send political literature and inform the public at large, while the plaintiff in Bernstein intended to use the information purely for commercial gain. Defendant notes that privacy concerns and the protection of the home are of the utmost importance under this country's Constitution, laws, and traditions. While defendant is surely correct, as voluminous case law and legal literature can attest, the privacy concerns implicated in allowing an organization to inform the public of political issues simply do not outweigh the overall disclosure policies behind OPRA. Even if Bernstein were not diminished by subsequent decisions and the rescission of Executive Order 21, the distinguishing characteristic of the intent of the plaintiffs regarding the use of the requested information warrants disclosure.

Defendant argues that people have the right to take their name *off* mailing lists, which shows that information should not be sent unsolicited. There is nothing to indicate that plaintiff would not remove an individual from the mailing list if so requested.

Notably, defendant repeatedly cites security concerns that might arise should the list be disclosed to plaintiff. Defendant suggests that individuals with dogs or cats and those without dogs or cats would be targeted more frequently by criminals. The former would be targeted for "dog or cat theft," possibly depending on the breed of the animal, and the latter as a result of the protection animals provide to a home. These *potential*

concerns, however, appear minimal at best, particularly as very limited information is requested, and are outweighed by the overall disclosure goals of OPRA.

Accordingly, because the privacy concerns of the individuals in the disclosed information are outweighed by the overall public interest in disclosure through OPRA, defendant must disclose the requested names and addresses.

B. Attorney's Fees

Plaintiff seeks an award of counsel fees and costs pursuant to N.J.S.A. 47:1A-6. OPRA provides that a prevailing party shall be entitled to attorney's fees:

> A person who is denied access to a government record by the custodian of the record, at the option of the requestor, may . . . institute a proceeding to challenge the custodian's decision by filing an action in Superior Court . . . If it is determined that access has been improperly denied, the court . . . shall order that access be allowed. A requestor who prevails . . . shall be entitled to a reasonable attorney's fee.
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> N.J.S.A. 47:1A-6.

As plaintiff has prevailed with respect to access to the names and addresses of dog and cat owner license applicants, he is entitled to reasonable attorney's fees and costs for services pertaining to that issue. Defendant's argument the position it adopted was reasonable, and therefore fees should not be awarded, is not supported in existing case law.[14]

C. Common Law

[14] At oral argument, plaintiff concedes, and the court agrees, that Joanne's denial of access to the requested records was made in good faith and that her position was reasonable, even if not supported herein. With regard to attorney's fees, however, there is simply no legislative or legal support for a denial of reasonable attorney's fees where a defendant denied access in good faith. It is up to the legislature, not the court, to create such a provision.

The analysis for disclosure pursuant to the common law is similar to the statutory analysis. Initially, the records at issue must be determined to be a public record. As noted supra, this is undisputed. Next, it is necessary to perform a similar balancing test, but in this case, applying the factors set out in Loigman.

The first factor is the extent to which disclosure will impede agency functions by discouraging citizens from providing information to the government. As discussed supra under factor four of the Doe balancing test, defendant argues that citizens will be encouraged to disobey the law by failing to apply for pet licenses if they know that their names and addresses are subject to disclosure. Again, defendant does not provide sufficient support for the proposition that law-abiding citizens will suddenly decide to change their ways as a result of receiving occasional literature on political candidates. Accordingly, the first factor weighs in favor of plaintiff.

The second factor is the effect disclosure may have upon persons who have given such information and whether they did so in reliance that their identities would not be disclosed. As already discussed, the greatest effect resulting from plaintiff's requested disclosure on those who applied for dog and cat licenses is that they will likely receive occasional literature regarding political candidates. Plaintiff has not specified any intent to solicit individuals unreasonably or commercially. Further, there is no indication that those applying for licenses from a public entity for a pet license relied on the fact that their names and addresses would be kept secret. The application information is not particularly sensitive in nature. Accordingly, this second factor weighs in favor of plaintiff.

The third factor is the extent to which agency self-evaluation, program improvement, or other decision-making will be chilled by disclosure. As pet license applications are fairly routine and do not require particularly sensitive information, there is little to suggest that any agency activities will be chilled by the disclosure of the names and addresses of those applying for licenses. In fact, the disclosure may encourage Fair Lawn to come up with a short and easily accessible list of the requested information for future use. Accordingly, the third factor weighs in favor of plaintiff.

The fourth factor is the degree to which the information sought includes factual data as opposed to evaluative reports of policymakers. The only information sought is factual in nature, i.e. names and addresses. The data is not particularly sensitive or complex, and thus this factor does not weigh towards nondisclosure.

The fifth factor is whether any findings of public misconduct have been insufficiently corrected by remedial measures instituted by the investigative agency. This factor does not appear particularly informative either way and thus does not weigh towards nondisclosure.

The final factor is whether any agency disciplinary or investigatory proceedings have arisen that may circumscribe the individual's asserted need for the materials. As with the previous factor, this factor is not particularly applicable and thus does not way towards nondisclosure.

Looking to all the factors, disclosure of the requested information is not an unreasonable invasion of the applicants' privacy and notably is not a large burden on the defendant. Accordingly, disclosure is warranted under the common law.

Conclusion

The OPRA statute is intended to be construed in favor of the public's right of access. It is then the burden of the public agency to demonstrate the law permits a withholding of such access. "[T]he court must maintain a sharp focus on the purpose of OPRA and resist attempts to limit its scope, absent a clear showing that one of its exemptions or exceptions incorporated in the statute by reference is applicable to the requested disclosure." Asbury Park Press v. Ocean County Prosecutor's Office, 374 N.J. Super. 312, 329 (Law Div. 2004).[15] "The salutary goal, simply put, is to maximize public knowledge about public affairs in order to ensure an informed citizenry and minimize the evils inherent in a secluded process." Ibid. The court noted, "Exposure of records to the light of public scrutiny may perhaps cause discomfort to some. However, OPRA is founded on the premise that society as a whole suffers far more if governmental bodies are permitted to operate in secrecy." Ibid. The court went on to state, "However, having recognized the overarching value and objective of providing broad access to government records, the court must ask how the release of [those records] in any way contributes to the purpose of OPRA or provides a scintilla of insight into the functioning of government." Ibid. at 330. The court admitted "the general rule is one seeking to obtain government records need not explain why they are requested if there is a clear right to obtain them under the statute . . . Yet, that principle becomes less absolute if there is some protection of a privacy right afforded in the Act." Ibid.

All considerations in the instant matter weigh in favor of rejecting defendant's reasonable expectation of privacy argument. N.J.S.A. 47:1A-1. The intrusion in this

[15] The court acknowledges Asbury Park Press was written by a trial court and is not binding authority. However, the opinion is scholarly and has been commented upon favorably by multiple appellate courts which continue to recognize its vitality and strength. See Burnett, supra, 198 N.J. at 417.

matter, names and addresses, is minimal. Any further intrusion shall be offset by a redaction of additional identifiers, including pet breed or reasons for owning the pets. It is notable that plaintiff's intent in acquiring the requested information is for political disclosure and not for a commercial enterprise. An overarching goal of OPRA is to "maximize public knowledge about public affairs," which at times may "cause discomfort to some." Asbury Park Press, supra, 374 N.J. Super. at 329. The discomfort of having one's name and address provided to a political interest group does not outweigh the interests of open disclosure in the political process. Many of those who receive LOHV's literature may welcome the information, and overall an educated electorate is to be promoted, not hindered. The security issues similarly may raise some concerns; however these are at best quite minimal, and at worst, non-existent.

Overall, the possible negative consequences in releasing the requested information to plaintiff do not outweigh the benefit of adhering to the broad disclosure policies that are promoted through OPRA. Accordingly, plaintiff must be provided with the names and addresses of people who submitted cat and dog applications in Fair Lawn, and acquired licenses. Any additional identifiers, including but not limited to breeds of pet, age of parties, or reasons for the application, shall be redacted.

Similarly, plaintiff is also entitled to relief under the common law, and defendant is directed to provide the information as stated regarding OPRA.

By consent, plaintiff is prohibited from disseminating the names and addresses of cat and dog license applicants to LOHV barring further approval from this court regarding LOHV's agreement to abide by the limited use consented to by plaintiff.

Plaintiff is entitled to reasonable attorney's fees and costs with respect to services performed in connection with release of the names and addresses of pet license applicants in Fair Lawn. N.J.S.A. 47:1A-6.

Plaintiff's attorney is directed to submit the appropriate order in conformity with this decision.