



State of New Jersey
GOVERNMENT RECORDS COUNCIL

101 SOUTH BROAD STREET
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TRENTON, NJ 08625-0819

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

FINAL DECISION

August 27, 2013 Government Records Council Meeting

Stephen B. Levitt
Complainant

Complaint No. 2012-150

v.

Montclair Parking Authority (Essex)
Custodian of Record

At the August 27, 2013 public meeting, the Government Records Council (“Council”) considered the August 20, 2013 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian failed to fully comply with the Council’s June 25, 2013 Interim Order because she failed to timely provide the responsive records to the Complainant and further failed to timely provide certified confirmation of compliance to the Executive Director.
2. Although the Custodian unlawfully denied access to names and towns of overnight parking permit holders and failed to fully comply with the Council’s June 25, 2013 Interim Order, the Custodian disclosed the responsive records to Complainant through Ms. Merrick on July 18, 2013. Additionally, the evidence of record does not indicate that the Custodian’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian’s actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk’s Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.



Final Decision Rendered by the
Government Records Council
On The 27th Day of August, 2013

Robin Berg Tabakin, Esq., Chair
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: August 29, 2013

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
August 27, 2013 Council Meeting**

**Stephen B. Levitt¹
Complainant**

GRC Complaint No. 2012-150

v.

**Montclair Parking Authority (Essex)²
Custodial Agency**

Records Relevant to Complaint: Names and addresses of overnight permit holders.

Custodian of Record: Tina Iordamlis
Request Received by Custodian: May 15, 2012
Response Made by Custodian: May 15, 2012
GRC Complaint Received: May 21, 2012

Background

June 25, 2013 Council Meeting:

At its June 25, 2013 public meeting, the Council considered the June 18, 2013 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, found that:

1. The potential for unsolicited contact of a certain group of individuals registered with the Township for overnight parking warrants non-disclosure of the responsive full addresses. However, this potential does not extend to limited disclosure of just the names and town of residence. N.J.S.A. 47:1A-1. Thus, the Custodian has failed to bear her burden of proving that disclosure of the names and town of residence would violate the reasonable expectation of privacy of permit holders in the Township. N.J.S.A. 47:1A-6. The Custodian shall disclose the responsive record or records, if any exist, containing names and town of residence but redacting home addresses for all parking permit holders.
2. **The Custodian shall comply with Item No. 1 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each**

¹ No legal representation listed on record.

² Represented by Ira Karasick, Esq. (Montclair, NJ). As of January 1, 2013, the Montclair Parking Authority was dissolved and its duties were retained by the City of Montclair.

redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,³ to the Executive Director.⁴

3. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Procedural History:

On June 26, 2013, the Council distributed its Interim Order to all parties. On July 18, 2013, Sarah Merrick, Township of Montclair's Records Licensing & Data Coordinator, sent a letter to the Complainant attaching a list of all permit holders. Ms. Merrick further noted that every individual listed resides in Montclair. On July 19, 2013, Ms. Merrick submitted certified confirmation of compliance to the Executive Director that she received the responsive cover letter and list from the Custodian and provided same to the Complainant on July 18, 2013.

Analysis

Compliance

On June 25, 2013, the Council ordered the above-referenced compliance. On June 26, 2013, the Council distributed its Interim Order to all parties, providing the Custodian five (5) business days to comply with the terms of said Order. On July 18, 2013, ten (10) business days after the expiration of the time frame to comply, Ms. Merrick sent the responsive records to the Complainant. On July 19, 2013, eleven (11) business days after the expiration of the time frame, Ms. Merrick provided certified confirmation of compliance to the Executive Director.

Therefore, the Custodian failed to fully comply with the Council's June 25, 2013 Interim Order because she failed to timely provide the responsive records to the Complainant and further failed to timely provide certified confirmation of compliance to the Executive Director.

Knowing & Willful

OPRA states that "[a] public official, officer, employee or custodian who knowingly or willfully violates [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, shall be subject to a civil penalty ..." N.J.S.A. 47:1A-11(a). OPRA allows the Council to determine a knowing and willful violation of the law and unreasonable denial of access under the totality of the circumstances. Specifically OPRA states "... [i]f the council determines, by a majority vote of its members, that a custodian has knowingly and willfully violated [OPRA], and is found to have unreasonably denied access under the totality of the

³ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

⁴ Satisfactory compliance requires that the Custodian deliver the records to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

circumstances, the council may impose the penalties provided for in [OPRA]...” N.J.S.A. 47:1A-7(e).

Certain legal standards must be considered when making the determination of whether the Custodian’s actions rise to the level of a “knowing and willful” violation of OPRA. The following statements must be true for a determination that the Custodian “knowingly and willfully” violated OPRA: the Custodian’s actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 185 (2001)); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian’s actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian’s actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (Berg); the Custodian’s actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J. Super. 86, 107 (App. Div. 1996)).

Although the Custodian unlawfully denied access to names and towns of overnight parking permit holders and failed to fully comply with the Council’s June 25, 2013 Interim Order, the Custodian disclosed the responsive records to Complainant through Ms. Merrick on July 18, 2013. Additionally, the evidence of record does not indicate that the Custodian’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian’s actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian failed to fully comply with the Council’s June 25, 2013 Interim Order because she failed to timely provide the responsive records to the Complainant and further failed to timely provide certified confirmation of compliance to the Executive Director.
2. Although the Custodian unlawfully denied access to names and towns of overnight parking permit holders and failed to fully comply with the Council’s June 25, 2013 Interim Order, the Custodian disclosed the responsive records to Complainant through Ms. Merrick on July 18, 2013. Additionally, the evidence of record does not indicate that the Custodian’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian’s actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Prepared By: Frank F. Caruso
Senior Case Manager

Approved By: Brandon D. Minde, Esq.
Executive Director

August 20, 2013



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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CHRIS CHRISTIE
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Commissioner

INTERIM ORDER

June 25, 2013 Government Records Council Meeting

Stephen B. Levitt
Complainant

Complaint No. 2012-150

v.

Montclair Parking Authority (Essex)
Custodian of Record

At the June 25, 2013 public meeting, the Government Records Council (“Council”) considered the June 18, 2013 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The potential for unsolicited contact of a certain group of individuals registered with the Township for overnight parking warrants non-disclosure of the responsive full addresses. However, this potential does not extend to limited disclosure of just the names and town of residence. N.J.S.A. 47:1A-1. Thus, the Custodian has failed to bear her burden of proving that disclosure of the names and town of residence would violate the reasonable expectation of privacy of permit holders in the Township. N.J.S.A. 47:1A-6. The Custodian shall disclose the responsive record or records, if any exist, containing names and town of residence but redacting home addresses for all parking permit holders.
2. **The Custodian shall comply with Item No. 1 above within five (5) business days from receipt of the Council’s Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,¹ to the Executive Director.²**
3. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian’s compliance with the Council’s Interim Order.

¹ “I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.”

² Satisfactory compliance requires that the Custodian deliver the records to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.



Interim Order Rendered by the
Government Records Council
On The 25th Day of June, 2013

I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Acting Chair
Government Records Council

Decision Distribution Date: June 26, 2013

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
June 25, 2013 Council Meeting**

**Stephen B. Levitt¹
Complainant**

GRC Complaint No. 2012-150

v.

**Montclair Parking Authority (Essex)²
Custodian of Records**

Records Relevant to Complaint: Names and addresses of overnight permit holders.

Request Made: May 14, 2012

Response Made: May 15, 2012

GRC Complaint Filed: May 21, 2012³

Background⁴

Request and Response:

On May 14, 2012, the Complainant submitted an Open Public Records Act (“OPRA”) request seeking the above-listed records. On May 15, 2012,⁵ the same day as receipt of said request, the Custodian responded in writing stating that the responsive information is exempt from disclosure since it is not public information.

Denial of Access Complaint:

On May 21, 2012, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”) arguing that the Montclair Parking Authority (“MPA”) previously disclosed responsive information to him. The Complainant disputes the Custodian’s denial of access.

¹ No legal representation listed on record.

² Tina Iordamlis, Custodian of Records. Represented by Ira Karasick, Esq. (Montclair, NJ). As of January 1, 2013, the Montclair Parking Authority was dissolved and its duties were retained by the City of Montclair.

³ The GRC received the Denial of Access Complaint on said date.

⁴ The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

⁵ The Custodian certified in the Statement of Information that she received the Complainant’s OPRA request on May 15, 2012.

Statement of Information:

On June 13, 2012, the Custodian filed a Statement of Information (“SOI”) certifying that she received the Complainant’s OPRA request on May 15, 2012, and responded on the same day denying access to the responsive information.

The Custodian contends that the MPA did not disclose the responsive information as policy and for security purposes. The Custodian contends that the MPA wishes to prevent danger to the patrons of the MPA through the unlawful use of their addresses which may create a risk to the safety of their persons or property.

Additional Submissions:

On August 12, 2012, the Complainant submitted a letter to the GRC arguing that the Custodian did not provide a sufficient defense of the denial of access. The Complainant contends that the Custodian failed to argue why the responsive information is exempt. The Complainant contends that voter registration lists and tax records are not private. *See also Renna v. County of Union*, Docket No. A-1811-10T3 (App. Div. May 14, 2013); *NJFOG v. GRC*, Docket No. MER-L-1177-09 (July 17, 2009).⁶ The Complainant contends that as these examples weigh in favor of disclosure, so does this complaint. The Complainant contends that the evidence of record does not support that disclosure of the information will result in a security issue. *Avin v. Borough of Oradell*, GRC Complaint No. 2004-176 (March 2005); *Bernstein v. Borough of Allendale*, GRC Complaint No. 2004-195 (July 2005); *Faulkner v. Rutgers University*, GRC Complaint No. 2007-149 (May 2008). The Complainant finally contends that the MPA offers no security to the actual lots themselves thus leaving the persons and property of patrons at risk regularly.

Balancing Test Questionnaires:

Since the Custodian relied on OPRA’s privacy exemption, it became necessary for the parties to complete balancing test questionnaires. On May 1, 2013, the GRC sent balancing test questionnaires to both the Complainant and Custodian. On May 9, 2013, the last day of a brief extension of time to respond, the Custodian submitted her questionnaire with the following responses:

1. The type of record requested.

Response: Full names and addresses of overnight parking permit holders.

2. The information the requested records do or might contain.

Response: See above.

3. The potential harm in any subsequent non-consensual disclosure of the requested records.

⁶ In *NJFOG*, no ruling actually occurred because the case was settled prior to adjudication; however, the GRC did release the e-mail addresses at issue based on the GRC’s status as a quasi-judicial agency.

Response: The Complainant may use the information to invade residents' privacy by tracking the location of their vehicles to determine whether they are home. The Complainant would also have the ability to directly communicate with and harass permit holders. The Complainant will also have the advantage of tracking use of the permits in an attempt to bargain with a resident for his own overnight parking needs.

4. The injury from disclosure to the relationship in which the requested record was generated.

Response: The Complainant seeks personally identifying information of residents for an unknown purpose. The Township's primary concern is the protection of its residents and disclosure of the information would violate the residents' reasonable expectation of privacy. Disclosure of the information could also deter residents from providing the Township with accurate addresses in the future.

5. The adequacy of safeguards to prevent unauthorized disclosure.

Response: The information is currently held on a password protected computer for parking utility employees only.

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

Response: N.J.S.A. 47:1A-1.1.⁷

On May 9, 2013, the Complainant submitted his questionnaire with the following responses:

1. Why do you need the requested record or information?

Response: The parking issues in the Township are very problematic. The information is needed to compare to a voter registration list in order to determine those permit holders that are unregistered voters. The Complainant plans to communicate by mail with constituents in order to contact unregistered voters about registering and joining a political action group regarding parking issues in the Township.

2. How important is the requested record or information to you?

Response: The list is very important as part of the Complainant's goal of bettering his community.

3. Do you plan to redistribute the requested record or information?

Response: The Complainant does not intend to share the list.

⁷ The cited exemption actually exempt access to personally identifying information.

4. **Will you use the requested record or information for unsolicited contact of the individuals named in the government record?**

Response: Yes. The list will be used to identify and contact holders of nighttime parking permits that are not registered voters.

Analysis⁸

Unlawful Denial of Access

OPRA provides that government records made, maintained, kept on file, or received by a public agency in the course of its official business are subject to public access unless otherwise exempt. N.J.S.A. 47:1A-1.1. A custodian must release all records responsive to an OPRA request “with certain exceptions.” N.J.S.A. 47:1A-1. Additionally, OPRA places the burden on a custodian to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6.

OPRA 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...” N.J.S.A. 47:1A-1. As privacy interests are at issue here, the GRC asked both the Complainant and the Custodian to respond to balancing test questions so the Council could employ the common law balancing test established by the New Jersey Supreme Court in Doe v. Poritz, 142 N.J. 1 (1995). The New Jersey Supreme Court has explained that N.J.S.A. 47:1A-1's safeguard against disclosure of personal information is substantive and requires “a balancing test that weighs both the public’s strong interest in disclosure with the need to safeguard from public access personal information that would violate a reasonable expectation of privacy.” Burnett v. County of Bergen, 198 N.J. 408, 422-23, 427 (2009).

When “balanc[ing] OPRA’s interests in privacy and access” courts consider the following factors:

- (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 v. Poritz, 142 N.J. 1, 88 (1995)).

This test will enable the Council to weigh the Township’s asserted need to protect the privacy of individuals against the Complainant’s asserted need to access the requested records.

⁸ There may be other OPRA issues in this matter; however, the Council’s analysis is based solely on the claims made in the Complainant’s Denial of Access Complaint.

A. *Courts Have Required that Certain Personal Information Be Redacted From Records Released In Response to an OPRA Request Where OPRA’s Interest in Privacy Outweighs the Interest in Access*

In Burnett, a commercial business requested approximately eight million pages of land title records extending over a twenty-two year period; the records contained names, addresses, social security numbers, and signatures of numerous individuals. Burnett, *supra*, 198 N.J. at 418. After balancing the seven factors, the Court “[found] that the twin aims of public access and protection of personal information weigh in favor of redacting [social security numbers] from the requested records before releasing them” because “[i]n that way, disclosure would not violate the reasonable expectation of privacy citizens have in their personal information.” *Id.* at 437. The Court emphasized that the “balance [was] heavily influenced by concerns about the bulk sale and disclosure of a large amount of social security numbers—which [the commercial business] admittedly does not need, and which are not an essential part of the records sought.” *Id.* at 414. Moreover, “the requested records [were] not related to OPRA’s core concern of transparency in government.” *Ibid.*

Similarly, the Appellate Division has concluded that the identity of an individual who attempted suicide by jumping off a bridge should not be disclosed in an OPRA request seeking police and fire department reports about the incident under Burnett. *See also Alfano v. Margate City*, Docket No. A-3797-11 (App. Div. September 25, 2012)(slip op. at 1-2, 8-10), <http://njlaw.rutgers.edu/collections/courts/>.

B. *Courts Have Not Required Redaction of Certain Personal Information From Records Released In Response to an OPRA Request Where OPRA’s Interest in Access Outweighs the Interest in Privacy*

In contrast, the Appellate Division has affirmed a trial court’s determination that the identity of a person who called 911 complaining about illegal parking blocking his driveway should not be redacted when the owner of the car filed an OPRA request seeking a copy of the 911 call under Burnett. Ponce v. Town of W. New York, Docket No. A-3475-10 (App. Div. February 27, 2013)(slip op. at 3-4, 10), <http://njlaw.rutgers.edu/collections/courts/>. The trial judge explained that:

The type of information requested by [the car owner] is not particularly sensitive or confidential. When the caller made a complaint [to] the police department that someone was blocking his or her driveway he or she could reasonably expect that his name may be revealed in connection with the complaint. There has not been evidence presented to suggest that revealing the caller's identity or the call itself would result in any serious harm or confrontation between the caller and the - - [sic] and the [car owner]. It may in fact be helpful for the [car owner] to know the information in order to challenge his parking violation. [*Id.* at 7-8.]

The Appellate Division emphasized that the City's arguments against disclosure of the caller's identity were "predicated on the notion that if [the car owner] learns the identity of his accuser he will retaliate in some fashion, thus discouraging the average person from reporting incidents to the police via the 911 emergency system." *Id.* at 9. However, the city "[had] not presented any evidence of past hostility between these two individuals" and the court emphasized that "[a]bsent compelling reasons, which are conspicuously absent in this record, few can argue that in a free society an accused is not entitled to know the identity of his accuser." *Id.* at 9-10. Therefore, the court concluded that "[n]one of the concerns in favor of confidentiality articulated by the Court in Burnett, *supra*, 198 N.J. at 427, [were] applicable" and affirmed the trial court's decision ordering disclosure of the caller's identity. Ponce, *supra*, A-3475-10 at 10.

Similarly, the Appellate Division has concluded that addresses should not be redacted from a mailing list of self-identified "senior citizens" compiled by a county to contact those individuals through a newsletter. Renna v. County of Union, Docket No. A-1811-10 (App. Div. February 17, 2012) (slip op. at 1, 11-12), <http://njlaw.rutgers.edu/collections/courts/>. A website operator filed an OPRA request seeking access to that mailing list so that she could disseminate information in furtherance of non-profit activities related to monitoring county government. *Id.* at 2. The court applied the Burnett factors. *Id.* at 11. The first two factors weighed in favor of disclosure, because "the intent and spirit of OPRA are to maximize public awareness of governmental matters" and "the interest in the dissemination of information, even that unrelated to senior matters, outweighs a perceived notion of expectation of privacy." *Id.* at 12.

C. *Application of the Burnett Factors to Balance OPRA's Interests in Privacy and Access in the Present Matter Dictates that the Responsive Names and Addresses Not Be Disclosed in Their Totality*

The present matter requires application of the Burnett factors to balance OPRA's dual interests in privacy and access as applied to the release of names and addresses of persons possessing an overnight parking permit.

i. *Burnett Factors One and Two*

The first and second Burnett factors require consideration of the records requested, and the type of information contained therein, respectively. Regarding the type of records requested, the Complainant did not identify a specific record that may contain the names and addresses. This issue is problematic as OPRA "... *is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records 'readily accessible for inspection, copying, or examination.'* N.J.S.A. 47:1A-1." (Emphasis added.) MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005). Further, since the Custodian has not identified a record containing the responsive information, the GRC is unaware whether such a record even exists.

The type of information at issue is names and addresses of overnight parking permit holders.

ii. *Burnett Factors Three and Four*

The third and fourth Burnett factors address the potential for harm in subsequent nonconsensual disclosure of the names and addresses, and the injury from disclosure to the relationship in which the names and addresses were generated, respectively.

The Custodian asserted that there is potential for harm in that the Complainant may attempt to use the permit holders' information to track their parking habits, which could lead to criminal activity. The Custodian further asserted that the Complainant could use the information to directly contact the permit holders and attempt to bargain with the resident for his own overnight parking needs. The Custodian further asserted that the Township's primary concern is protection of those permit holders and their reasonable expectation of privacy. The Custodian asserted that disclosure could deter future residents applying for overnight parking from providing accurate addresses.

Significant concerns about the potential harm from disclosure of the names and addresses disclosed in their totality exist here. However, although the GRC agrees that disclosure of both names and full addresses could lead to certain potential harm, this potential could be eliminated by disclosure of just the names and town of residence. This limited disclosure would unlikely deter persons living in the Township from disclosing this information to the Township.

iii. *Burnett Factor Five*

The fifth Burnett factor requires consideration of the adequacy of safeguards to prevent unauthorized disclosure of the names and addresses. The Custodian stated that the records are currently on a password protected computer. The Custodian relied upon the application of privacy exemptions within the OPRA statute. Conversely, the Complainant asserted that he did not intend to redistribute the list. However, the Complainant's intention does not equate to adequate safeguards that the responsive information will remain secure. Thus, there are no reasonable safeguards in place to protect from unauthorized dissemination of the information, which exposes individuals to a number of risks to their person or property.

However, the GRC notes that disclosing only names and the town of residence does not carry the same amount of risk as disclosure of the responsive information in its totality.

iv. *Burnett Factor Six*

The sixth Burnett factor addresses the degree of need for access to the names and addresses. The Complainant asserted that his need for the information is high because it is important to his goal of bettering his community. The Complainant asserts that he wants to compare the permit holders' information to a voter registration list to determine which holders are not registered to vote. The Complainant asserted that he then planned to contact those unregistered voters to help them register and to join a political action group regarding Township parking issues.

The degree of need weighs in favor of confidentiality of all information in its totality. The Complainant's stated use for the responsive information is to cross-reference the voter registration list and identify a subset of persons who are not registered to vote. The Complainant then, by his own admission, would contact those persons soliciting them to register and join a political action committee. The Complainant's endeavor will necessarily cause unsolicited contact with certain individuals that goes against the Township's obligation to safeguard the permit holders' reasonable expectation of privacy. Unlike in Renna, this is not a mailing list of people who signed up to receive correspondence from the Township.

However, there is not a total reasonable expectation of privacy to all of the information submitted to the Township for a parking permit. A limited disclosure of just the names and town of residence would not garner the same level of risk of unsolicited contact.

v. Burnett Factor Seven

The seventh Burnett factor requires consideration as to whether an express statutory mandate, articulated public policy, or other recognized public interest militating toward access to the names and addresses exists. The Custodian asserted that N.J.S.A. 47:1A-1.1 protects a citizen's reasonable expectation of privacy.

vi. Balancing of the Burnett Factors

On balancing the Burnett factors, OPRA's dual object to provide both public access and protection of personal information weigh in favor of not disclosing the responsive names and addresses of the permit holders in their totality. Most notably, there are concerns regarding security and unwanted solicitations. The Complainant admittedly planned to contact a subset of persons registered with the Township for overnight parking in order to solicit voting registration and membership into a political action group. Thus, the potential harm to the individuals outweighs the degree of need for access to the names and addresses in their totality.

However, the disclosure of just the responsive names and town of residence does not weigh in favor of confidentiality for the reason expressed above. *See Livecchia v. Borough of Mount Arlington*, 421 N.J. Super. 24 (App. Div. 2011). Disclosure of just the names and town of residence strikes a fair balance as limited access will mitigate the possibility of unsolicited contact while promoted OPRA's purpose of maximizing "... 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 (2005)(quoting *Asbury Park Press v. Ocean County Prosecutor's Office*, 374 N.J. Super. 312, 329 (Law Div. 2004)). Disclosure of the names and town of residence will further mitigate any security risks and protect the reasonable expectation of privacy of current and future permit holders.

The Council has recognized that although a request on its face may be invalid, a custodian nonetheless was provided with enough information to identify responsive records. *See Bond v. Borough of Washington (Warren)*, GRC Complaint No. 2009-324 (Final Decision dated March 29, 2011). Here, the Complainant did not identify records in his OPRA request; rather, the

Complainant sought access to information. However, the Custodian exempted access to said information and further did not identify any record or records that exist containing the requisite information. Thus, in light of the Complainant's failure to request a record and the Custodian's failure to definitively identify a record, it is not clear as to whether a record responsive to the Complainant's OPRA request exist. If there is a record responsive that exists, containing the requested information, same should be disclosed with redactions.

Therefore, the potential for unsolicited contact of a certain group of individuals registered with the Township for overnight parking warrants non-disclosure of the full addresses. However, this potential does not extend to limited disclosure of just the names and town of residence. N.J.S.A. 47:1A-1. Thus, the Custodian has failed to bear her burden of proving that disclosure of the names and town of residence would violate the reasonable expectation of privacy of permit holders in the Township. N.J.S.A. 47:1A-6. The Custodian shall disclose the responsive record or records, if any exist, containing names and town of residence but redacting home addresses for all parking permit holders.

Knowing & Willful

The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The potential for unsolicited contact of a certain group of individuals registered with the Township for overnight parking warrants non-disclosure of the responsive full addresses. However, this potential does not extend to limited disclosure of just the names and town of residence. N.J.S.A. 47:1A-1. Thus, the Custodian has failed to bear her burden of proving that disclosure of the names and town of residence would violate the reasonable expectation of privacy of permit holders in the Township. N.J.S.A. 47:1A-6. The Custodian shall disclose the responsive record or records, if any exist, containing names and town of residence but redacting home addresses for all parking permit holders.
2. **The Custodian shall comply with Item No. 1 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,⁹ to the Executive Director.¹⁰**

⁹ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

¹⁰ Satisfactory compliance requires that the Custodian deliver the records to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the

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3. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

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Senior Case Manager

Approved By: Brandon D. Minde, Esq.
Executive Director

June 18, 2013

record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

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