



State of New Jersey  
DEPARTMENT OF COMMUNITY AFFAIRS  
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PHILIP D. MURPHY  
Governor

LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

**FINAL DECISION**

**November 10, 2020 Government Records Council Meeting**

Steven Vardakis  
Complainant

Complaint No. 2018-7

v.

Borough of Spring Lake Heights (Monmouth)  
Custodian of Record

At the November 10, 2020 public meeting, the Government Records Council (“Council”) considered the October 27, 2020 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 the Custodian lawfully redacted payor names from the receipt books and yearly reports provided to the Complainant. N.J.S.A. 47:1A-6. Specifically, the Complainant sought access to payor names that classify as “vital statistics information” and has not established a relationship authorizing him to access said information. N.J.S.A. 26:8-62(a); Fenton v. State of N.J. Dep’t of Health, GRC Complaint No. 2013-359 (July 2014). Finally, the GRC need not perform a balancing test because the payors names at the center of this complaint were lawfully redacted.

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 10<sup>th</sup> Day of November 2020

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: November 13, 2020**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
November 10, 2020 Council Meeting**

**Steven Vardakis<sup>1</sup>  
Complainant**

**GRC Complaint No. 2018-7**

v.

**Borough of Spring Lake Heights (Monmouth)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Paper copies via U.S. mail of a list of all marriage license numbers issued for 2015, 2016, and 2017 (to date) inclusive of the “application payer’s name” and in the absence of the such a list:

1. Receipt books, receipts, journals, and accounting ledgers documenting all fees collected for the above years.
2. Quarterly reporting, along with any updates, of marriage licenses issued by the Borough of Spring Lake Heights (“Borough”) Clerk’s Office or Registrar of Vital Records to the New Jersey Department of Human Services (“DHS”) for the above dates.
3. All documents, ledgers, and/or financial accounting records documenting quarterly payments disbursed to DHS services for marriage licenses (as required by N.J.S.A. 37:1-12.1) for the above years.
4. All checks, documentation, or accounting of funds or payments received by the Borough Clerk’s Office or Registrar of Vital Records in the amount of \$28.00 for the above years.

**Custodian of Record:** Janine Gillis

**Request Received by Custodian:** December 15, 2017

**Response Made by Custodian:** December 29, 2017

**GRC Complaint Received:** January 16, 2018

**Background<sup>3</sup>**

**Request and Response:**

On December 15, 2017, the Complainant submitted four (4) Open Public Records Act (“OPRA”) requests to the Custodian seeking the above-mentioned records. On December 29,

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<sup>1</sup> No legal representation listed on record.

<sup>2</sup> Represented by Dennis Collins, Esq., of Collins, Vella, & Casello, LLC (Manasquan, NJ).

<sup>3</sup> 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.

2017, the Custodian responded in writing granting access to records responsive to each individual item totaling 85, 36, 1, and 21 pages respectively.

Denial of Access Complaint:

On January 16, 2018, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian unlawfully redacted the names of all individual payors appearing in the records responsive to the subject OPRA requests. The Complainant argued that the disclosed records were akin to financial records no different from tax records, building permit applications, or special event applications. The Complainant noted that he was not seeking actual marriage certificates; rather, he sought payment information, which was a financial (not a vital statistic) record. The Complainant also contended that OPRA did not specifically identify payor names as a permissible redaction.

The Complainant contended that the Custodian actively attempted to hinder public access by redacting all payor names.

Supplemental Response:

On February 26, 2018, the Custodian responded in writing to the Complainant disclosing yearly reports of payments made for vital records over 2015, 2016, and 2017. The Custodian noted that the reports, which she did not include as part of her original response, indicated payments by cash or check. The Custodian noted that all payor names were redacted.

Statement of Information:<sup>4</sup>

On March 8, 2019, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s four (4) OPRA requests on December 15, 2017. The Custodian certified that she responded in writing on December 29, 2017 granting access to multiple records with redactions.

The Custodian contended that she lawfully denied access to the redacted payor names included in all records disclosed to the Complainant. The Custodian argued that N.J.S.A. 26:8-62 supported her denial because the provision prohibited disclosure of “a certified copy [of a vital statistic record], or release of data and information” contained therein without proper identification. Id. The Custodian argued that the Complainant has not argued that his identity allowed him to access payor names applying for a marriage license. The Custodian contended that requiring disclosure would negate the identification requirement.

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<sup>4</sup> On January 26, 2018, this complaint was referred to mediation. On February 21, 2018, this complaint was referred back to the GRC for adjudication. The GRC notes that the Complainant filed an amended Denial of Access Complaint on February 26, 2018. However, the GRC cannot consider this submission because the Complainant’s reasons for amending the complaint stemmed directly from mediation communications. Pursuant to the Uniform Mediation Act, N.J.S.A. 2A:23C-1 et seq., communications that take place during the mediation process are not deemed to be public records subject to disclosure under OPRA. N.J.S.A. 2A:23C-2. All communications which occur during the mediation process are privileged from disclosure and may not be used in any judicial, administrative or legislative proceeding, or in any arbitration, unless all parties and the mediator waive the privilege. N.J.S.A. 2A:23C-4.

### **Additional Submissions:**

On July 24, 2020, the GRC requested that both the Complainant and Custodian complete balancing test questionnaires and submit same by July 29, 2020. On the same day, Custodian's Counsel sought an extension through July 31, 2020, which the GRC granted for both parties.

On July 31, 2020, Custodian's Counsel submitted additional arguments regarding nondisclosure and a completed balancing test questionnaire. Counsel contended that the Complainant acknowledged in his e-mail submitting the subject OPRA request that he only sought the "financial accounting" of marriage applications as opposed to the actual licenses or personal information contained thereon. Counsel argued that the Custodian's disclosure here achieved that purpose while maintaining the required confidentiality of payors in accordance with N.J.S.A. 26:8-62. Counsel also noted that the Custodian's actions were consistent with guidance provided by Acting Deputy State Registrar Damon Koslow through e-mail on December 6, 2017.

Counsel also entered his concern that the GRC referenced Doe v. Poritz, 142 N.J. 1 (1995) in seeking a balancing test questionnaire. Counsel argued that the Doe Court conducted a common law balancing to determine whether statutory disclosure of sex offender records violated those individuals' constitutional rights. Counsel argued that Doe is contrary to this complaint because the Legislature "has reaffirmed the right to keep this personal information private with limited exceptions." N.J.S.A. 26:8-62. Counsel argued that the statute thus supports a local registrar's obligation to exempt from access any information contained on a vital statistics record. Counsel further argued that the statute provided for avenues beyond personal relationship to obtain access to the names at issue here. Counsel asserted that the Complainant, as a private investigator, could avail himself of those options outside of OPRA, but that the GRC "should not insert itself in that process.

Counsel provided the following responses to the balancing test questionnaire:

**1. The type of record(s) requested.**

**Response:** Counsel stated that the records at issue are the names of persons who paid for a marriage license from the redacted receipts disclosed to the Complainant.

**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.**

**Response:** Counsel stated that the Borough did not engage in a balancing test prior to responding due to the "clear statutory prohibition" on registrars from releasing vital statistics information. The acceptance of payment for a license means that same was issued by the Borough and "most of the data in that record" is exempt from disclosure.

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

**Response:** Counsel stated that any injury to disclosure was addressed in N.J.S.A. 26:8-62.

**5. The adequacy of safeguards to prevent unauthorized disclosure.**

**Response:** Counsel stated that the obligation to safeguard unauthorized disclosure rests with the registrar's responsibility to comply with the statutory exemption contained in N.J.S.A. 26:8-62.

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

**Response:** Counsel stated that N.J.S.A. 26:8-62 provides the express statutory mandate against disclosure.

On the same day, the Complainant submitted the following responses to the balancing test questionnaire:

**1. Why do you need the requested record(s) or information?**

**Response:** The Complainant stated that he sought the records as part of his investigation into financial fraud relating to a judicial order terminating alimony in the instance of "cohabitation and/or remarriage." The Complainant noted that he is a Licensed Private Investigator employed by an attorney to amass evidence of this fraud. The Complainant noted that he already obtained some evidence.

The Complainant further reiterated that he sought financial, and not vital statistics, records. The Complainant asserted that the existence of a marriage is not "a protected status." The Complainant noted that language present in deeds and mortgages posted to county websites and sharing common verbiage such as "Husband and Wife" prove this point. The Complainant contended that had the Legislature intended on such a status, it would have codified that position.

**2. How important is the requested record(s) or information to you?**

**Response:** The Complainant stated that the importance of those records was set forth in the original complaint. The Complainant noted that because the State eliminated "permanent" alimony in 2014, the disclosure of the names could provide him with evidence relevant to the fraud investigation for which he was hired.

**3. Do you plan to redistribute the requested record(s) or information?**

**Response:** The Complainant stated that he had no plans of redistributing payor names beyond his investigation. The Complainant noted that this would entail sharing with the attorney who hired him and potentially the New Jersey Superior Court should the matter rise to that level. The Complainant noted that even then, the court’s subpoena process would result in a “two-tier judicial review” prior to distribution.

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

**Response:** The Complainant stated that he would “absolutely not” use the information for unsolicited contact.

Finally, the Complainant contended that he believed he met all factors necessary to gain access to the redacted payor names. See Burnett v. Cnty. of Bergen, 198 N.J. 408 (2007). The Complainant argued that, like the Burnett Court’s decision, four (4) of the six (6) factors weigh in favor of disclosure.

**Analysis**

**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 its provisions “shall not abrogate or erode any . . . grant of confidentiality . . . recognized by statute . . . which privilege or grant of confidentiality may duly be claimed to restrict access.” N.J.S.A. 47:1A-9(b) (emphasis added). Further, N.J.S.A. 26:8-62(a) governs the disclosability of vital statistics records, inclusive of marriage certificates, as follows:

*The State registrar or local registrar shall, upon request, supply to a person who establishes himself as one of the following: the subject of the record of a . . . civil union or marriage, as applicable; the subject’s parent, legal guardian or other legal representative; the subject’s spouse, one partner in a civil union couple, child, grandchild or sibling, if of legal age, or the subject’s legal representative; an agency of State or federal government for official purposes; a person possessing an order of a court of competent jurisdiction; or a person who is authorized under other emergent circumstances as determined by the commissioner, a certified copy, or release of the data and information of that record . . . A certification may be issued in other circumstances and shall state that it is for informational purposes only, and is not to be used for identification purposes.*

[Id. (emphasis added).]

Further, in Fenton v. State of N.J. Dep't of Health, GRC Complaint No. 2013-359 (July 2014), the complainant sought “computerized . . . death records containing the name, address, age or birthdate” of every deceased Passaic County resident. The custodian denied access under EO 18, N.J.S.A. 26:8-62, and N.J.A.C. 8:2A-2.2. In the Denial of Access Complaint, the complainant argued that the forgoing did not apply because he was not seeking “death certificates,” but information contained therein. The custodian argued in the SOI that, in addition to her initial denial, that the complainant failed to identify a record that could be provided “for informational purposes. The Council agreed, holding that the custodian lawfully denied access to the subject request because:

The Complainant failed to demonstrate that he was authorized to receive the requested records because he failed to establish that he is an eligible person as listed in N.J.S.A. 26:8-62(a), N.J.A.C. 8:2A-2.1(a). Further, the Complainant failed to identify the records sought with the degree of specificity required by the agency; therefore, *he was not eligible to receive the records for informational purposes pursuant to N.J.A.C. 8:2A-2.2.*

[Id. (emphasis added).]

In reaching this conclusion, the Council noted that the complainant correctly stated that he could obtain certain information without the required identification. However, the Council stressed that the complainant failed to identify a specific government record sought.

In the matter before the Council, the Complainant sought access to access to financial records for marriage licenses issued over a three (3) year period. The Custodian disclosed several records, including receipt books and yearly reports. However, the Custodian redacted the names of all payors under N.J.S.A. 26:8-62. In his complaint, the Complainant argued that the Custodian unlawfully redacted the responsive records because they were akin to tax records and building permits, as opposed to the actual marriage certificates. In the SOI, the Custodian argued that N.J.S.A. 26:8-62 did not permit her to disclose the names of payors without proper identification.

The issue currently before the Council is novel, thus requiring a measured application of the current statutory language, as well as instructive prior case law. In looking to a plain reading of N.J.S.A. 26:8-62 and comparing the facts here to Fenton, GRC 2013-359, the GRC is persuaded that the Custodian lawfully denied access to the redacted payor names contained in the receipts and yearly reports.

N.J.S.A. 26:8-62(a) requires registrars to disclose vital statistic certificates or “data and information of that record” to individuals meeting statutory identification requirements. They are the subject of the marriage record; the subject’s parent, legal guardian or other legal representative; the subject’s spouse, child, grandchild, or sibling, if of legal age, or the subject’s legal representative; an agency of State or federal government for official purposes; a person possessing an order of a court of competent jurisdiction; or a person who is authorized under other emergent circumstances as determined by the Commissioner of Health and Senior Services. Id.

Alternatively, “[c]ertificates *may be issued* in other circumstances and shall state that they are for *informational purposes only*, and are not to be used for identification or legal purposes.” N.J.S.A. 26:8-62(a) (emphasis added). Thus, and as noted in Fenton, the statute also provides that individuals may obtain uncertified copies of certificates absent the identification requirement. In responding to a request for vital statistics information, the State or local registrar is charged with authenticating the identity of the requestor and the requestor’s relationship with the subject(s) of the vital record. Ibid. It should be noted that the Legislature, in its 2003 amendment to N.J.S.A. 26:8-62, strengthened the standards for obtaining copies of vital records. See New Jersey Assembly Committee Statement AB 2476 3102003.

The same vital statistics information contained in a marriage certificate appears on the marriage license application. See Application for License “REG-77.”<sup>5</sup> The application includes fields for the two applicants’ respective names, addresses, municipalities, places of birth, social security numbers, and domestic status. Ibid. The application is a public record disclosable under OPRA but only in redacted form in view of N.J.S.A. 26:8-62’s protection of vital statistics information from access by the general public. Receipts memorializing payment of fees for marriage license applications and certificates are financial records that are also publicly accessible. However, payor names are recorded on each receipt, and that name is a vital statistic exempt from disclosure under N.J.S.A. 26:8-62. In many, if not all, cases, the payor is one of the two license applicants; thus, their names are categorized as confidential “data or information” of the marriage certificate requiring identification authentication. In fact, the New Jersey Department of Health identifies “proof of identity” amongst the “[r]equired documents when applying for a marriage license.” See “REG-D30.”<sup>6</sup> Even in limited instances where the payor may be a “witness,” the clerk may also verify the payor’s identity to determine that they meet the requirement necessary to appear as such.

Here, the Complainant is correct that the disclosed records are financial in nature. However, the payor names contained thereon are still inextricably considered “vital statistics information” exempt from disclosure under N.J.S.A. 26:8-62(a) and the information that the Legislature sought to strengthen protection of in its 2003 amendment. Further, the Complainant’s argument that these records are akin to tax payments or building permits is inapposite here: there is no evidence that information contained in those records is privy to a statutory exemption like that contained in N.J.S.A. 26:8-62. Instead, the disclosure of the responsive receipts and reports, absent individual names, satisfies the public’s ability to account for those monies remitted to the Borough for marriage licenses. Further, and as in Fenton, the Complainant has not established that his relationship to the payors named on the receipts and reports authorizes him to obtain the vital statistics information contained thereon. Thus, the Complainant is not authorized to receive vital statistics information relating to those payors. Therefore, the Custodian properly redacted said names contained within the responsive receipts and reports.

Accordingly, the Custodian lawfully redacted payor names from the receipt books and yearly reports provided to the Complainant. N.J.S.A. 47:1A-6. Specifically, the Complainant sought access to payor names that classify as “vital statistics information” and has not established a relationship authorizing him to access said information. N.J.S.A. 26:8-62(a); Fenton, GRC 2013-

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<sup>5</sup> <https://healthapps.state.nj.us/forms/index.aspx#reg-77> (accessed October 8, 2020).

<sup>6</sup> <https://www.nj.gov/health/forms/reg-d30.pdf> (accessed October 8, 2020).



359. Finally, the GRC need not perform a balancing test because the payors names at the center of this complaint were lawfully redacted.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that the Custodian lawfully redacted payor names from the receipt books and yearly reports provided to the Complainant. N.J.S.A. 47:1A-6. Specifically, the Complainant sought access to payor names that classify as “vital statistics information” and has not established a relationship authorizing him to access said information. N.J.S.A. 26:8-62(a); Fenton v. State of N.J. Dep’t of Health, GRC Complaint No. 2013-359 (July 2014). Finally, the GRC need not perform a balancing test because the payors names at the center of this complaint were lawfully redacted.

Prepared By: Frank F. Caruso  
Executive Director

October 30, 2019<sup>7</sup>

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<sup>7</sup> This complaint was prepared for adjudication at the Council’s November 12, 2019 meeting; however, the Council tabled same for additional review.