



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

LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

**FINAL DECISION**

**April 25, 2023 Government Records Council Meeting**

Marc Liebeskind  
Complainant

Complaint No. 2021-318

v.

Borough of Highland Park (Middlesex)  
Custodian of Record

At the April 25, 2023 public meeting, the Government Records Council (“Council”) considered the April 18, 2023 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 did not unlawfully deny access to the redacted personal e-mail address of the Blue Horse property owner in the responsive e-mail. N.J.S.A. 47:1A-1; N.J.S.A. 47:1A-6. Specifically, the Custodian’s redaction is consistent with the Council’s decision in Gettler v. Twp. of Wantage (Sussex), GRC Complaint No. 2009-73 *et seq.* (Interim Order dated June 25, 2013), and there is sufficient information in the e-mail to determine the identity of the sender.

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 25<sup>th</sup> Day of April 2023

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: May 1, 2023**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
April 25, 2023 Council Meeting**

**Marc Liebeskind<sup>1</sup>  
Complainant**

**GRC Complaint No. 2021-318**

v.

**Borough of Highland Park (Middlesex)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies via e-mail of records related to the new tenant in the former Blue Horse restaurant building.

**Custodian of Record:** Jennifer Santiago

**Request Received by Custodian:** November 17, 2021

**Response Made by Custodian:** November 17, 2021

**GRC Complaint Received:** December 2, 2021

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

**Request and Response:**

On November 17, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On the same day, the Custodian responded in writing stating that the Complainant’s request was invalid and seeking clarification through specifically identifiable records. The Complainant responded disagreeing that his request was invalid; however, he identified e-mails, communications, permits, licenses, leases, and construction plans as potentially responsive records. On November 30, 2021, the Custodian responded in writing disclosing multiple records and noting that a portion of a personal e-mail address was redacted under the privacy exemption. N.J.S.A. 47:1A-1; Doe v. Poritz, 142 N.J. 1 (1995).

**Denial of Access Complaint:**

On December 2, 2021, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian willfully and unlawfully redacted the personal e-mail address contained in the disclosed records. The

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

<sup>2</sup> Represented by Lucille E. Davy, Esq., of Mason, Griffin & Pierson, P.C. (Princeton, 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.

Complainant argued that N.J.S.A. 47:1A-1.1 did not include e-mail addresses as part of the exempt personal information, except in hunting licenses issued by the Division of Fish and Wildlife. The Complainant also argued that the e-mail in question contains a disclaimer warning that “[e]-mails received by or sent to Borough officials and employees” were subject to OPRA and that “[t]his means absent some specific privilege, all such communications are considered a public record and are subject to” disclosure upon request. The Complainant contended that no basis existed to redact the e-mail address, noting that she selectively redacted one address while disclosing others. The Complainant finally noted that this issue is also presented by him in Liebeskind v. Borough of Highland Park (Middlesex), GRC Complaint Nos. 2021-186 and 2021-312.

#### Statement of Information:

On January 7, 2022, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on November 17, 2021. The Custodian certified that upon receiving clarification of the request, she contacted the Borough of Highland Park’s (“Borough”) tax, code enforcement, and health departments, as well as the Mayor, Council, and consultants to obtain responsive records. The Custodian certified that she responded in writing on November 30, 2021 disclosing responsive records with redactions of a personal information. N.J.S.A. 47:1A-1.

The Custodian argued that OPRA allows for the redaction of personal e-mail addresses under the privacy interest exemption. N.J.S.A. 47:1A-1. The Custodian asserted that the Borough will provide the individual’s name and full text of the correspondence, but withholds the e-mail address to avoid identity theft. The Custodian noted that the GRC has previously recognized the need for such protection, and she has adhered to same upon consultation with Custodian’s Counsel. Mayer v. Borough of Tinton Falls (Monmouth), GRC Complaint No. 2008-245 (January 2013). The Custodian also refuted the Complainant’s assertion that she was selective in her redaction; she only redacts personal e-mail addresses and not public or business addresses.

### 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 “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.

The 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. Cnty. of Bergen, 198 N.J. 408, 422-23, 427 (2009) (citing Doe, 142 N.J. 1).

In Gettler v. Twp. of Wantage (Sussex), GRC Complaint No. 2009-73 *et seq.* (Interim Order dated June 25, 2013), the Council was tasked with determining whether the custodian lawfully denied access to redacted personal e-mail addresses. After determining that additional development of the record was necessary, the Council referred the complaint to the Office of Administrative Law (“OAL”). As part of that referral, the Council asked the OAL to determine whether personal e-mail addresses were disclosable, both in the instance when a name is displayed or not displayed within the address.

The OAL obtained balancing test responses from the parties and conducted the test based on the Burnett factors. Based on its application of the test, the OAL determined that the factors weighed in favor of redaction of personal e-mail addresses. In reaching its conclusion, the OAL reasoned that the potential for harm in subsequent nonconsensual disclosure and the lack of any adequate safeguards preventing unauthorized disclosure of the email addresses outweighed the complainant’s degree of need for access to the email addresses. The OAL applied that reasoning to all e-mails where names accompanied the personal e-mail addresses but did require the disclosure of those e-mail addresses not accompanied by a name. The Council accepted the OAL’s Initial Decision without modification.

In Gettler, the development of the record required the Council to refer the complaint to OAL, which employed a balancing test to determine whether a private e-mail address was disclosable. However, the facts and reasoning of Gettler are clearly applicable here. Specifically, the Custodian certified in the SOI that she redacted the prefix of a personal e-mail address; the chain clearly shows said e-mail address belonged to the Blue Horse property owner. The Custodian further averred that the Borough has routinely redacted personal e-mail addresses only. The GRC is compelled to follow Gettler here, noting that although a name is not directly situated next to the redacted e-mail address, the evidence easily allows a reasonable person to determine that the address belongs to the property owner. The Custodian’s redaction is consistent with those the OAL determined to be lawful in Gettler. The GRC also notes that this decision is consistent with Liebeskind, GRC 2021-186<sup>4</sup> decided during the pendency of this complaint.

Further, the GRC is not persuaded by the Complainant’s arguments against redaction of the e-mail address. First, while e-mail addresses are not specifically identified in N.J.S.A. 47:1A-1.1 as exempt from disclosure, the GRC has routinely applied the privacy interest analysis to them through N.J.S.A. 47:1A-1. See *e.g.* Smith v. N.J. Dep’t of Banking & Ins., GRC Complaint No. 2014-301. Further, that test was derived from Doe, 142 N.J. 1 and later adopted by the Burnett Court. Second, the presence of a disclaimer in an e-mail does not supersede OPRA; thus, alerting recipients that an e-mail may be subject to disclosure does not abrogate potential exemptions thereto. Further, by the Complainant’s asserted standard, agencies could apply disclaimers with language exempting e-mails from OPRA and the GRC would be required to adhere accordingly. Such a standard would result in an absurd outcome. Third, whether the Custodian chose to redact

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<sup>4</sup> The Council subsequently denied the Complainant’s request for reconsideration on this issue. Liebeskind v. Borough of Highland Park (Middlesex), GRC Complaint No. 2021-186 (Final Decision dated November 9, 2022).

other e-mail addresses, which ranged from Borough-issued addresses to business addresses, is of no moment. Instead, only the redacted addresses issue is properly before the Council.

Therefore, the Custodian did not unlawfully deny access to the redacted personal e-mail address of the Blue Horse property owner in the responsive e-mail. N.J.S.A. 47:1A-1; N.J.S.A. 47:1A-6. Specifically, the Custodian's redaction is consistent with the Council's decision in Gettler, GRC 2009-73 *et seq.*, and there is sufficient information in the e-mail to determine the identity of the sender.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that the Custodian did not unlawfully deny access to the redacted personal e-mail address of the Blue Horse property owner in the responsive e-mail. N.J.S.A. 47:1A-1; N.J.S.A. 47:1A-6. Specifically, the Custodian's redaction is consistent with the Council's decision in Gettler v. Twp. of Wantage (Sussex), GRC Complaint No. 2009-73 *et seq.* (Interim Order dated June 25, 2013), and there is sufficient information in the e-mail to determine the identity of the sender.

Prepared By: Frank F. Caruso  
Executive Director

April 18, 2023