



**State of New Jersey**  
**GOVERNMENT RECORDS COUNCIL**

101 SOUTH BROAD STREET  
PO BOX 819  
TRENTON, NJ 08625-0819

Toll Free: 866-850-0511  
Fax: 609-633-6337  
E-mail: [grc@dca.state.nj.us](mailto:grc@dca.state.nj.us)  
Web Address:  
[www.nj.gov/grc](http://www.nj.gov/grc)

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CATHERINE STARGHILL Esq., Executive Director

**FINAL DECISION**

**February 28, 2007 Government Records Council Meeting**

Elizabeth Wulster  
Complainant

Complaint No. 2006-143

v.

Old Bridge Township  
Custodian of Record

At the February 28, 2007 public meeting, the Government Records Council (“Council”) considered the February 21, 2007 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:

1. Since the Custodian’s basis for denial is Executive Order No. 21’s exemption from disclosure of home addresses (Paragraph 3) which was rescinded by Executive Order No. 26, the Custodian has not borne his burden of proving that the denial of access is authorized by law pursuant to N.J.S.A. 47:1A-6.
2. Based on the Complainant’s stated need and use of the voter registration list as provided in her responses to the balancing test questions, the Custodian is legally precluded from disclosing the requested records. Specifically, the Complainant’s intended charitable solicitation of the voters listed on the voter registration list is explicitly prohibited by law pursuant to N.J.S.A. 19:31-18.1.c.

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 28<sup>th</sup> Day of February, 2007

Robin Berg Tabakin, Vice Chairman & Secretary  
Government Records Council

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

Kathryn Forsyth  
Government Records Council

**Decision Distribution Date: March 7, 2007**

**Findings and Recommendations of the Executive Director  
February 28, 2007 Council Meeting**

Elizabeth Wulster<sup>1</sup>

GRC Complaint No. 2006-143

**Complainant**

v.

**Old Bridge Township<sup>2</sup>**  
*Custodian of Records*

**Records Relevant to Complaint:**

*Middlesex County registered voters list for Ward 1, Districts 6 & 7.*

*Request Made: June 28, 2006*

*Response Made: June 29, 2006*

*Custodian: Rosemarie Saracino*

**GRC Complaint Filed: July 27, 2006**

**Background**

June 28, 2006

*Complainant's Open Public Records Act ("OPRA") request. The Complainant requests the Middlesex registered voters list for Ward 1, Districts 6 & 7.*

June 29, 2006

Custodian's response to the Complainant. The Custodian responds by telephone to the OPRA request one (1) business day following the date the request was received. The Custodian states that they were not allowed to release the requested records pursuant to OPRA. (The Custodian later mailed the OPRA request form back to the Complainant indicating the denial on June 29, 2006).

July 14, 2006

Denial of Access Complaint filed with the Government Records Council ("GRC") with the following attachments:

- Complainant's OPRA request dated June 28, 2006.
- Letter from the Complainant to the GRC dated July 11, 2006.

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

<sup>2</sup> Represented by Jerome J. Convery, Esq. (Old Bridge, NJ).

The Complainant asserts completing the OPRA request on June 28, 2006, and receiving a response from the Custodian on June 29, 2006. The Complainant asserts that the Custodian informed her that according to OPRA, a citizen's personal information such as addresses and phone numbers cannot be disclosed. The Complainant further asserts that she previously received the same requested record from the Custodian in the year 2004.

August 11, 2006

Offer of Mediation sent to both parties. Neither party agreed to mediation.

**August 16, 2006**

Letter from the Custodian to the GRC. The Custodian asserts receiving the complaint. The Custodian also attaches a memo from the Assistant Township Attorney stating that on July 8, 2002, Governor James McGreevy signed Executive Order No. 21 which clearly exempts from disclosure an individual's home address, phone number, or social security number.

**August 18, 2006**

Letter from the Complainant to the GRC. The Complainant states that she is not a terrorist, and that she has lived in Old Bridge since 1982 and East Brunswick prior to that since 1960. The Complainant also questions whether telephone books are considered terrorist material because the telephone books provide names, addresses and telephone numbers.

The Complainant asserts that she has been a poll clerk for forty (40) years and the books have always been open to public scrutiny. The Complainant also asserts that Deputy Clerk's denial of access is wrong unless she only provides the lists to certain people. The Complainant further asserts that she received the same list in the year 2004 from the Clerk's Office.

**September 1, 2006**

Request for Statement of Information sent to the Custodian.

**September 13, 2006**

Custodian's Statement of Information ("SOI") with the following attachments:

- Complainant's OPRA request form dated June 28, 2006.
- Letter from the Complainant to the GRC dated September 11, 2006.

The Custodian asserts that the denial of the names, addresses and phone numbers was made by taking in consideration Governor McGreevy's Executive Order No. 21.

**September 15, 2006**

Letter from the GRC to the Complainant and Custodian. The GRC required answers to specific questions, in which the GRC will use in its balancing analysis of the

requestor's need for access versus the privacy interest of the citizens whose personal information is contained in the requested records.

### September 18, 2006

Letter from the Complainant to the GRC. The Complainant's response to the GRC's letter is as follows:

Questions	Complainant's Response
<b>Why do you need the requested record or information?</b>	Ward 1-District 6 & 7 is Cheesequake Village, a senior citizen community where the Complainant resides. The list provides names and addresses, which will help the Complainant's Sunshine Club visit the residents in the community in order to facilitate the recycling of medical equipment. The Sunshine Club also visits the residents that are in nursing homes, as well as hospitals to inquire about unneeded medical equipment that may be recycled and used by others.
<b>How important is the requested record or information to you?</b>	The Complainant freely takes in and gives out wheel chairs, shower chairs, potty seats, crutches and canes. The list will help facilitate the recycling of such medical equipment that is disposed of which wastes Medicare funds.
<b>Do you plan to redistribute the requested record or information?</b>	The lists are only used by the Complainant's Sunshine Club.
<b>Will you use the requested record or information for unsolicited contact of the individuals named on the list?</b>	No, the Complainant will not use the requested record for unsolicited contact. People contact the Complainant's club for medical equipment and visitation. The Complainant seeks the list to have a record of the residents in the community.

### September 22, 2006<sup>3</sup>

Letter from the Custodian to the GRC. The Custodian's response to the GRC's letter is as follows:

Questions	Custodian's Response
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<sup>3</sup> There was an additional submission from the Complainant dated November 27, 2006, which was not relevant to this denial of access complaint.

<b>Type of record request:</b>	Complete listing of registered voters for Old Bridge. <sup>4</sup>
<b>The type of information it does or might contain:</b>	The information requested would include the home addresses of the residents.
<b>The potential for harm in any subsequent nonconsensual disclosure:</b>	The potential harm is unsolicited contact with the resident which would violate the privacy interests of the residents.
<b>The injury from disclosure to the relationship in which the record was generated:</b>	Just because a public record contains home addresses does not justify producing it simply because someone wants a mailing list.
<b>The adequacy of safeguards to prevent unauthorized disclosure:</b>	If the record contains a home address, telephone number or social security number, it will not be released.
<b>The degree of need for access:</b>	N/A
<b>Whether there is an express statutory mandate, articulated public policy or other recognized public interest militating toward access:</b>	Executive Order No. 21 prohibits the release of home addresses. No overriding interest has been shown in this case.

## Analysis

### Whether the Custodian unlawfully denied access to the Middlesex registered voters list for Ward 1, Districts 6 & 7?

OPRA provides that:

“...government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, *with certain exceptions...*” (Emphasis added.) N.J.S.A. 47:1A-1.

Additionally, OPRA defines a government record 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 ... or that has been received* in the course of his or its official business ...” (Emphasis added.) N.J.S.A. 47:1A-1.1.

OPRA also provides that:

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<sup>4</sup> The Complainant specifically requests Ward 1, Districts 6 & 7 of Middlesex County.

“[t]he provisions of [OPRA] shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to [OPRA] any other statute; resolution of either or both Houses of the Legislature; regulation promulgated under the authority of any statute or Executive Order of the Governor; Executive Order of the Governor; Rules of Court; any federal law; federal regulation; or federal order...” N.J.S.A. 47:1A-9.a.

Executive Order No. 21, Paragraph 3 provides that:

“...a public governmental agency has the responsibility and the obligation to safeguard from public access a citizen’s personal information with which it has been entrusted, an individual’s home address and home telephone number, as well as his or her social security number, shall not be disclosed by a public agency at any level of government to anyone other than a person duly authorized by this State or the United States...” (Executive Order 21, Governor James E. McGreevey, July 8, 2002).

Executive Order No. 26, Paragraph 1 provides that:

“[p]aragraphs 2 and 3 of Executive Order No. 21 are hereby rescinded and replaced with the following paragraphs...” (Executive Order 21, Governor James E. McGreevey, July 8, 2002).

The Elections Law provides that:

“[n]o person shall use voter registration lists or copies thereof prepared pursuant to this section as a basis for *commercial or charitable* solicitation of the voters listed thereon...any person making such use of such lists or copies thereof shall be a disorderly person, and shall be punished by a fine not exceeding \$500.00.” (Emphasis added.) N.J.S.A. 19:31-18.1.c.

OPRA places the onus on the Custodian to prove that a denial of access is lawful. Specifically, OPRA states:

“...[t]he public agency shall have the burden of proving that the denial of access is authorized by law...” N.J.S.A. 47:1A-6.

The Complainant asserts that the Custodian informed her that according to OPRA, a citizen’s personal information such as addresses and phone numbers cannot be disclosed. The Complainant further asserts that she received the same requested record from the Clerk’s Office in the year 2004.

The Custodian asserts that the denial to the requested record was based on Governor McGreevey’s Executive Order No. 21.

Furthermore, since the Complainant requests information that could adversely affect the privacy of the citizens, it is necessary to employ the balancing test set forth by the New Jersey Supreme Court and utilized in previous GRC cases.

In Merino v. Ho-Ho-Kus, GRC Complaint 2003-110 (Feb. 18, 2004), the Council addressed the citizen's reasonable expectation of privacy pursuant to N.J.S.A. 47:1A-1 and found that the New Jersey Supreme Court, Appellate Division held that the GRC must enforce OPRA's declaration, in N.J.S.A. 47:1A-1, 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." Serrano v. South Brunswick Twp., 358 N.J. Super. 352, 368-69 (App. Div. 2003). See also National Archives and Records Administration v. Favish, 541 U.S. 157, 124 S.Ct. 1570 (U.S. March 30, 2004) (personal privacy interests are protected under FOIA).

The New Jersey Supreme Court has indicated that, as a general matter, the public disclosure of an individual's home address "does implicate privacy interests." Doe v. Poritz, 142 N.J. 1, 82 (1995). The Court specifically noted that such privacy interests are affected where disclosure of a person's address results in unsolicited contact. The Court quoted with approval a federal court decision that indicated that significant privacy concerns are raised where disclosure of the address "can invite unsolicited contact or intrusion based on the additional revealed information." *Id.* (citing Aronson v. Internal Revenue Service, 767 F. Supp. 378, 389 n. 14 (D. Mass. 1991)).

The Supreme Court concluded that the privacy interest in a home address must be balanced against the interest in disclosure. It stated that the following factors should be considered:

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;
7. Whether there is an express statutory mandate, articulated public policy or other recognized public interest militating toward access [*Id.* at 87-88].

The foregoing criteria was applied accordingly by the Court in exercising its discretion as to whether the privacy interests of the individuals named in the summonses are outweighed by any factors militating in favor of disclosure of the addresses.

To ascertain the degree of need for access from the Complainant, the GRC asked the Complainant the following questions:

1. Why do you need the requested record or information?
2. How important is the requested record or information to you?



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

<b>Questions</b>	<b>Custodian's Response</b>
<b>Type of record requested:</b>	Complete listing of registered voters for Old Bridge. <sup>5</sup>
<b>The type of information it does or might contain:</b>	The information requested would include the home addresses of the residents.
<b>The potential for harm in any subsequent nonconsensual disclosure:</b>	The potential harm is unsolicited contact with the resident which would violate the privacy interests of the residents.
<b>The injury from disclosure to the relationship in which the record was generated:</b>	Just because a public record contains home addresses does not justify producing it simply because someone wants a mailing list.
<b>The adequacy of safeguards to prevent unauthorized disclosure:</b>	If the record contains a home address, telephone number or social security number, it will not be released.
<b>The degree of need for access:</b>	N/A
<b>Whether there is an express statutory mandate, articulated public policy or other recognized public interest militating toward access:</b>	Executive Order No. 21 prohibits the release of home addresses. No overriding interest has been shown in this case.

<b>Questions</b>	<b>Complainant's Response</b>
<b>Why do you need the requested record or information?</b>	Ward 1-District 6 & 7 is Cheesequake Village, a senior citizen community where the Complainant resides. The list provides names and addresses which will help the Complainant's Sunshine Club visit the residents in the community in order to facilitate the recycling of medical equipment. The Sunshine Club also visits the residents that are in nursing homes, as well as hospitals to inquire about unneeded medical equipment that may be recycled and used by others.
<b>How important is the requested record or information to you?</b>	The Complainant freely takes in and gives out wheel chairs, shower chairs, potty seats, crutches and canes. The list will help facilitate the recycling of such medical

<sup>5</sup> The Complainant specifically requests Ward 1, Districts 6 & 7 of Middlesex County.

	equipment that is disposed of which wastes Medicare funds.
<b>Do you plan to redistribute the requested record or information?</b>	The lists are only used by the Complainant's Sunshine Club.
<b>Will you use the requested record or information for unsolicited contact of the individuals named on the list?</b>	No, the Complainant will not use the requested record for unsolicited contact. People contact the Complainant's club for medical equipment and visitation. The Complainant seeks the list to have a record of the residents in the community.

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. 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.

The Custodian unlawfully denied access to the Complainant based on Executive Order No. 21's exemption from disclosure of home addresses and telephone numbers. Executive Order No. 26, adopted on August 13, 2002, rescinded paragraphs 2 and 3 of Executive Order No. 21 which exempted from disclosure home addresses and telephone numbers. Therefore, the Custodian's basis for denial should not have been solely dependent on Executive Order No. 21 prohibiting the release of home addresses.

However, OPRA provides that access otherwise provided under its provisions may be superseded by other state or federal laws. N.J.S.A. 47:1A-9.a.c.

Under Title 19 (The Elections Law) of the New Jersey Statutes, the law provides that no person shall use voter registration lists or copies thereof as a basis for commercial or charitable solicitation of the voters listed thereon. Any person making such use of such lists or copies thereof shall be a disorderly person, and shall be punished by a fine not exceeding \$500.00. N.J.S.A. 19:31-18.1.c. Based on the Complainant's stated need and use of the voter registration list as provided in her responses to the balancing test questions above, the Complainant's intended charitable solicitation of the voters listed on the voter registration list is explicitly prohibited by law pursuant to N.J.S.A. 19:31-18.1.c.

## Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

3. Since the Custodian's basis for denial is Executive Order No. 21's exemption from disclosure of home addresses (Paragraph 3) which was rescinded by Executive Order No. 26, the Custodian has not borne his

burden of proving that the denial of access is authorized by law pursuant to N.J.S.A. 47:1A-6.

4. Based on the Complainant's stated need and use of the voter registration list as provided in her responses to the balancing test questions, the Custodian is legally precluded from disclosing the requested records. Specifically, the Complainant's intended charitable solicitation of the voters listed on the voter registration list is explicitly prohibited by law pursuant to N.J.S.A. 19:31-18.1.c.

Prepared By:

Tiffany L. Mayers  
Case Manager

Approved By:

Catherine Starghill, Esq.  
Executive Director

February 21, 2007