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JOHN M. DEITCH, J.S.C.

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JOHN MIGUEIS, Plaintiff, v. TOWNSHIP OF BERKELEY HEIGHTS, ANGELA LAZZARI in her official capacity as Municipal Clerk and Records Custodian of Berkeley Heights Township, BERKELEY HEIGHTS BOARD OF EDUCATION, and JENNIFER NICHOLSON in her official capacity as the Business Administrator, Board Secretary and Records Custodian of the Berkeley Heights Board of Education, Defendants.	**SUPERIOR COURT OF NEW JERSEY LAW DIVISION: UNION COUNTY** **DOCKET NO.** L-4548-25 **CIVIL ACTION** **ORDER**

THIS MATTER having been brought before the Court pursuant to R. 4:67-1 and R. 4:67-2(a) by Cohn Lifland Pearlman Herrmann & Knopf, LLP (Walter M. Luers, Esq., appearing), counsel for Plaintiff, by Verified Complaint and Order to Show Cause for an Order requiring Defendants Berkeley Heights Township, Angela Lazzari in her official capacity as Municipal Clerk and Records Custodian of Berkeley Heights Township, Berkeley Heights Board of Education, and Jennifer Nicholson in her official capacity as the Berkeley Heights Board of

Education Business Administrator and Board Secretary and Records Custodian, to provide Plaintiff with unredacted emails and email logs, and the Court having considered the papers submitted by the parties, and having heard oral argument on January 23, 2026, ~~2025~~; and for the reasons set forth ~~on the record on~~ in the attached Statement of Reasons, ~~2022~~ and for good cause shown,

IT IS on this 29 day of January, 2026 ~~2025~~

A. **ORDERED** that within 20 days after service of this Order upon them, Defendants Berkeley Township Board of Education and Nicholson shall provide to Plaintiff emails responsive to Plaintiff's September 21, 2025 OPRA request with names and email addressed unredacted; and it is further

B. **ORDERED** that within 20 days after service of this Order upon them, Defendants Berkeley Township and Lazzari shall provide to Plaintiff unredacted email logs responsive to Plaintiff's October 6, 2025, request.

C. **ORDERED** that Plaintiff is the prevailing party in this matter and that counsel for Plaintiff shall serve and file their motion and fee certification for reasonable attorneys' fees and costs within 20 days after service of this order upon Plaintiff; and it is further

D. **ORDERED** that this Order shall be deemed served upon all parties upon the upload to E-Courts. Pursuant to Rule 1:5-1(a), the movant shall serve a copy of this Order on all parties not served electronically within seven days of the date of this Order.

HON. JOHN M. ~~DIETCH~~ Deitch, J.S.C.

This order was:

OPPOSED ✓
UNOPPOSED ____

See attached Statement of Reasons

STATEMENT OF REASONS

Order to Show Cause

Migueis v. Twp. Of Berkeley Heights, et al.

UNN-L-4548-25

The court was able to glean the following underlying events from the papers. Plaintiff is an individual residing within the township of Berkely Heights. He runs the website NJ21st.com, which is reported to be a 501(c)(4) non-profit civic journalism association focused on New Jersey's 21st Legislative District. The focus of NJ21st is "transparency, accountability and evidence-based reporting" within the 21st Legislative District. See Verified Comp. at para. 10.

Plaintiff sought records from the Township relating to the lease of an athletic field within the Township. In particular, Plaintiff sought records relating to: "CMS field"; "lease" or "lease agreement" as well as any emails to or from an email address containing the word "varnerin".

Debra Varnerin was the Chairwoman of the Berkeley Heights Recreation Commission, among her other duties. It seems that Ms. Varnerin communicated electronically with local Recreation Commission volunteers regarding CMS field, etc.

The parties conferred and narrowed the requests to a mutually agreeable scope, and the records have apparently been provided, with one exception. The documents that were produced had the volunteers' names included on the document(s), but their personal email addresses were redacted, as was the personal email address for Ms. Varnerin. The Township informed the Plaintiff that the

personal email addresses had been redacted because they were "Personal Identifying Information" under N.J.S.A. 47:1A-1.1.

The documents have not been provided to the court, and no party has made a request for an *in camera* review of the records.

Plaintiff brought this action to obtain an order compelling the production of these personal email addresses. Defendants oppose. No individual who may be affected by this matter has appeared or made submission to the court. There is no dispute that Plaintiff has standing to make the request at issue. There is also no dispute that the emails in question are public records.

Indeed, Defendants concede that there is no statutory bar to the production of the email addresses. Instead, it is argued that, since the Plaintiff has admittedly received the substantive information within the emails, as well as the identification of the author / recipient of the emails, Plaintiff's request has been fully satisfied.

It is further argued that OPRA protects personal contact information and the individuals' right to privacy outweighs Plaintiff's right to the information where the substance of the communication has been disclosed. Defendants rely upon Marc Lebeskind v. Borough of Highland Park, GRC Complaint No 2021-186 (Final Decision Nov. 9, 2022) and Burnett v. Cnty. of Bergen, 198 N.J. 408 (2009) in this regard.

In addition to the written arguments submitted by the Plaintiff, at oral argument, Plaintiff asserted that the email addresses are necessary so that Plaintiff can contact the volunteers. Plaintiff argued that he is entitled to equal access to the volunteers and the Commissioner. As best as the court understands this argument, Plaintiff asserts that he should be entitled to the same freedom of communication that the volunteers and the Commissioner enjoy among themselves.

Plaintiff also argues that the court should not condone a communication system whereby the government can shield information from the public by simply failing to provide persons doing government work with a government email address.

Plaintiff seeks the records under the Open Public Records Act as well as the Common Law Right of Access. Each theory will be addressed in turn below.

Common Law Right of Access

A Common Law right of access to public records exists parallel and unrestricted by OPRA. See Mason v. City of Hoboken, 196 N.J. 51, 67 (2008). The Common Law definition of a public record is broader than the definition contained in OPRA. Bergen County Improvement Auth. v. N. Jersey Media Group, Inc., 370 N.J. Super. 504, 509-10 (App.Div.), certif. denied, 182 N.J. 143 (2004); see also Keddie v. Rutgers, 148 N.J. 36, 49 (1997) (comparing Common Law right of access to RTKL).

The common law right of access remains a distinct basis upon which to access public records. Bergen Cty. Improvement Auth. v. N. Jersey Media Grp., Inc., 370 N.J. Super. 504, 516 (App. Div. 2004). Under the common law, a public record is:

> one required by law to be kept, or necessary to be kept in the discharge of a duty imposed by law, or directed by law to serve as a memorial and evidence of something written, said, or done, or a written memorial made by a public officer authorized to perform that function, or a writing filed in a public office. The elements essential to constitute a public record are that it be a written memorial, that it be made by a public officer, and that the officer be authorized by law to make it.
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> Nero v. Hyland, 76 N.J. 213, 222 (1978) (alterations removed) (quoting Josefowicz v. Porter, 32 N.J. Super. 585, 591 (App. Div. 1954).

Thus, to receive access to a public record under the Common Law, (1) the record requested must be a Common Law public document; "(2) the person seeking access must 'establish an interest in the subject matter of the material,'" Keddie v. Rutgers, 148 N.J. 36, 50 (1997) (quoting S. Jersey Publ'g Co. v. N.J. Expressway Auth., 124 N.J. 478, 487 (1991); "and (3) the citizen's right to access 'must be balanced against the State's interest in preventing disclosure,' " ibid. (quoting Higg-A-Rella, Inc. v. County of Essex, 141 N.J. 35, 46 (1995)).

"[O]ne seeking access to such records must establish that the balance of its interest in disclosure against the public interest in maintaining confidentiality weighs in favor of disclosure." Home News v. Dep't of Health, 144 N.J. 446, 454 (1996)).

With this in mind, courts consider whether the confidentiality claim is "premised upon a purpose which tends to advance or further a wholesome public interest or a legitimate private interest." Loigman v. Kimmelman, 102 N.J. 98, 112 (1986).

In Loigman, a case that was factually distinct from the matter at bar, our Supreme Court set forth a non-exhaustive list of factors to consider in balancing the requester's needs against the public agency's interest in confidentiality:

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

Loigman, 102 N.J. at 113.

Plaintiff seeks the personal email addresses of the volunteer recreation commissioners. The court must first address whether the email addresses themselves are a public record under the Common Law in the context of this case. The court finds that they are part of a record that was "required by law to be kept, or necessary to be kept in the discharge of a duty imposed by law, or directed by law to serve as a memorial and evidence of something written, said, or done". Said differently, as part of a communication regarding public matters sent to or received by the volunteer, the address is part of the public record. The Defendants argue that the email addresses do not memorialize anything and should be redacted from the public record. This argument fails for at least two reasons. Firstly, the Plaintiff should not have to take representation of the Township to who was on a particular email. Secondly, the email address itself may provide information of public interest if the individual chose an email that was something other than their name.

Plaintiff has satisfied the "public document" test under Common Law.

It is undisputed that the Plaintiff hosts a website and podcast where he addresses goings on in the Township. Therefore, not only does the Plaintiff have an interest as a taxpayer within the Township, but he is publicly involved in political discourse within the Township through his endeavors. He has therefore satisfied the "interest" prong under Common Law.

Regarding the "balancing test" contained within the third prong, Plaintiff has shown a need as a taxpayer and in relation to the public's interest in open governance. Defendants have argued that they have concerns for public participation in Township events if the private email addresses of volunteers are released. However, that is a concern that is of the Township's own making, as the issue could have easily been avoided by the Township providing its volunteers with email

addresses for communications related to their positions. Similarly, if the Recreation Commissioner chose to use her personal email to conduct Township business, that is not a basis to shield the communications from public light.

Since Defendants have not provided any evidence of such a concern from the volunteers of Commissioner here, Defendants' arguments are speculative in nature.

Using the Loigman factors as a general guide,

> 1) the extent to which disclosure will impede agency functions by discouraging citizens from providing information to the government – there is no evidence of such a potentiality here and there seems a low likelihood that volunteer participation will be chilled if the information is released. The Township can cure any such concern by issuing government email addresses for volunteers to use in the future.
>
> (2) the effect disclosure may have upon persons who have given such information, and whether they did so in reliance that their identities would not be disclosed – the volunteers here were appointed by the Mayor to a public position. There was no expectation of privacy in their participation on the Commission.
>
> (3) the extent to which agency self-evaluation, program improvement, or other decision making will be chilled by disclosure – the likelihood of volunteer participation being impacted by this decision is low. The Township can cure any such concern by issuing government email addresses for volunteers to use.
>
> (4) the degree to which the information sought includes factual data as opposed to evaluative reports of policymakers – the email addresses are factual information.
>
> (5) whether any findings of public misconduct have been insufficiently corrected by remedial measures instituted by the investigative agency – this factor appears to be inapplicable.
>
> (6) whether any agency disciplinary or investigatory proceedings have arisen that may circumscribe the individual's asserted need for the materials - this factor appears to be inapplicable.

Plaintiff has sustained his burden under the Common Law. Plaintiff is entitled to the email addresses under the Common Law.

The Open Public Records Act.

OPRA's purpose is "to maximize public knowledge about public affairs in order to ensure an informed citizenry and to minimize the evils inherent in a secluded process." Asbury Park Press v. Ocean County Prosecutor's Office, 374 N.J. Super. 312, 329 (Law Div.2004). To bring about that purpose, OPRA declares that "government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, with certain exceptions, for the protection of the public interest, and any limitations on the right of access … shall be construed in favor of the public's right of access." N.J.S.A. 47:1A-1.

The statute defines "government record" broadly but also excludes certain categories of information from the definition. See N.J.S.A. 47:1A-1.1. A "government record" includes "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." Ibid. To be considered a "government record," an item must be maintained or received in the course of official business by an "officer, commission, agency, or authority of the State or of any political subdivision." Ibid. "[A]dvisory, consultative, or deliberative material[s]" are not included. Ibid.

Certain information deemed "confidential" is excluded from the definition of "government records" that are available to the public. Ibid. Protected categories include criminal investigatory records, victims' records, trade secrets, various materials received or prepared by the Legislature, certain records relating to higher

education, and other items. Ibid. Also excluded are records within the attorney-client privilege or any executive or legislative privilege, as well as items exempted from disclosure by any statute, legislative resolution, executive order, or court rule. There is no general exception for email addresses.

The Legislature specifically addressed email addresses within the definition of Personal Identifying Information as follows:

> As used in this section, "personal identifying information" means information that may be used, alone or in conjunction with any other information, to identify a specific individual. Personal identifying information shall include, but shall not be limited to, the following data elements: name, social security number, credit card number, debit card number, bank account information, month and day of birth, any personal email address required by a public agency for government applications, services, or programs, personal telephone number, the street address portion of any person's primary or secondary home address, or driver license number of any person. "Personal identifying information" shall not include any street address, mailing address, email address, or telephone number of a public agency. "Personal identifying information" shall not include the email address of a governmental affairs agent.
> (emphasis added)

While the canon *inclusio unius est exclusio alterius* cannot be used to subvert the Legislature's intent, Bunk v. Port Auth. of N.Y. & N.J., 144 N.J. 176, 190 (1996), "where the Legislature has carefully employed a term in one place and excluded it in another, it should not be implied where excluded." G.E. Solid State, Inc. v. Dir., Div. of Taxation, 132 N.J. 298, 308 (1993). The inclusion of email among Personal Identifying Information in certain select definitions, *e.g.*, hunting license or firearm applications, and the express limitation of protection only to email addresses required by a governmental agency as part of an application, indicate a clear intention not to protect email addresses in the context of this case.

Furthermore, exemptions from disclosure under OPRA should be construed "narrowly." Asbury Park Press v. Cty. of Monmouth, 406 N.J. Super. 1, 8 (App. Div. 2009). The reasons for non-disclosure "must be specific" and courts should not "accept conclusory and generalized allegations of exemptions." Newark Morning Ledger Co. v. N.J. Sports & Exposition Auth., 423 N.J. Super. 140, 162 (App. Div. 2011) (quoting Loigman v. Kimmelman, 102 N.J. 98, 110 (1986)). "The public agency [has] the burden of proving that the denial of access is authorized by law." N.J.S.A. 47:1A-6. "To justify nondisclosure, the agency must make a 'clear showing' that one of the law's listed exemptions is applicable." Asbury Park Press v. Ocean Cty. Prosecutor's Office, 374 N.J. Super. 312, 329 (Law Div. 2004)).

As noted above, the defense relies upon the Doe[1] factors set forth in Burnett v. Cnty. of Bergen, 198 N.J. 408 (2009). However, this court finds that the analysis of Burnett is not reached in this case.

In Brennan v. Bergen County Prosecutor's Office, 233 N.J. 330, 341-342 (2018) our Supreme Court held:

> As OPRA states, it is only "when disclosure . . . would violate the citizen's *reasonable* expectation of privacy" that a public agency must safeguard records from public access. N.J.S.A. 47:1A-1 (emphasis added). When courts interpret a statute, they strive to give meaning to the Legislature's intent by following the statute's plain language if it is clear. Carter, 230 N.J. at 274; State v. Morrison, 227 N.J. 295, 308 (2016). We therefore find that, before an extended analysis of the Doe factors is required, a custodian must present a colorable claim that public access to the records requested would invade a person's objectively reasonable expectation of privacy.

Here, Defendants have not made a colorable claim regarding any volunteer member's reasonable expectation of privacy. As is undisputed, these are individuals

[1] Doe v. Poritz, 142 N.J. 1 (1995).

participating in government through their volunteer efforts. There has been no showing that they expected that their communications regarding the substance of their work, made to the Chairman of the Recreation Commission, to be confidential. Furthermore, it appears that they were publicly appointed to these positions by the Mayor. And, the court assumes, participated publicly at various events in their appointed roles. Their email addresses were not compelled by the Town as part of their position. As volunteers, they could have chosen to refrain from using their private email in furtherance of their duties.

Defendants have not come forward with any objection from any involved individual. Instead, the defense has asserted conclusory arguments based upon speculative concerns about junk email and "heightened risks of data breaches". Defendants' argument based upon the deterrence of public participation in government is just as speculative, as Defendants have the ability to issue volunteers governmental email accounts for communication purposes.

Because Defendants have not shown a colorable claim regarding any affected person's expectation of privacy, Defendants' arguments must fail.

As noted earlier, even if the court were to consider this matter under Burnett, *arguendo*, Defendants' arguments would still fail.

Burnett presented "unusual" factual circumstances. Id. at 414. There, the Plaintiff sought to create a commercial database from land records filed with the county. Certain of those records contained the social security numbers of the property owners. In holding that the social security numbers must be redacted, the Burnett court engaged in a balancing test under Doe v. Poritz, 142 N.J. 1, 88 (1995) and 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; and (7) whether there is an express statutory mandate, articulated public policy, or other recognized public interest militating toward access.

In deciding in favor of redaction, it was very significant to the Burnett court that many of the affected individuals did not place their social security numbers on the documents. Instead, it appeared that the numbers were put there by third parties as a matter of convenience or their business practices. Id. at 429. It was also significant that the requestor meant to aggregate the documents into a searchable database, thereby eliminating the "practical obscurity" that the records presently enjoyed. Id. at 430-431. Lastly, the obvious opportunity for mischief in the release of social security numbers connected to real property was a compelling argument for privacy to prevail over public access.

None of the Burnett concerns are present here. In the first instance, we are dealing with email addresses, an information point that cannot be compared to a social security number in terms of privacy interest. Indeed, the court takes judicial notice of the unmistakable fact that email addresses are routinely solicited from and given by consumers in the modern marketplace. Secondly, the individuals here voluntarily provided their email addresses, and used them in connection with uncompensated government work. As such, their communications are much more akin to the discoverable email logs in Rosetti v. Ramapo-Indian Hills, Regional High School BOE 1, 481 N.J. Super. 1 (App. Div. 2025) than anything in Burnett. In this regard, it is significant that the Plaintiff is not seeking to invade the accounts of the individuals, but rather fully view what was sent by them to the local government.

If it were to be reached *arguendo*, Defendants' arguments fail under the Burnett analysis:

1) the type of record requested – a personal email address voluntarily submitted as part of a communication in furtherance of government work.

(2) the information it does or might contain – a personal email address.

(3) the potential for harm in any subsequent nonconsensual disclosure – the risk of harm is extremely minimal, and in this casse, entirely speculative. No involved individual has come forward to express any concern regarding disclosure.

(4) the injury from disclosure to the relationship in which the record was generated – if this factor is deemed to address the risk to public volunteer participation in government, the concern is addressed by the governmental body issuing email addresses for communication.

(5) the adequacy of safeguards to prevent unauthorized disclosure – there has been no proof that the email addresses would be used for nefarious purposes.

(6) the degree of need for access – it seems that Burnett is in conflict with the general rule is that one seeking to obtain government records need not explain why they are requested if there is a clear right to obtain them under the statute. See Williams v. Bd. of Educ. of Atlantic City Public Schools, 329 N.J. Super. 308, 314 (App.Div.), certif. denied, 165 N.J. 488 (2000). In any event, the Plaintiff has expressed a public need in connection with his public reporting activities.

(7) whether there is an express statutory mandate, articulated public policy, or other recognized public interest militating toward access – the Legislature has not imposed a blanket protection upon personal email addresses. As a remedial statute, OPRA is to be construed in favor of public access.

Attorney Fees

New Jersey generally follows the "American Rule," under which a prevailing party cannot recover attorney's fees from the loser. Rendine v. Pantzer, 141 N.J. 292,

322 (1995). Fees may be awarded, however, when a statute, court rule, or contractual agreement provides for them. OPRA is such a statute.

Under OPRA, the New Jersey Supreme Court has held that requestors are entitled to attorney's fees when "either (1) records are disclosed "*after* the entry of some form of court order or enforceable settlement" granting access, or (2) "when a government agency voluntarily discloses records after a lawsuit is filed" and under the catalyst theory the plaintiff "can establish a 'causal nexus' between the litigation and the production of requested records" and "'that the relief ultimately secured by plaintiffs had a basis in law.'" Mason v. City of Hoboken, 196 N.J. 51, 57, 76-77, 79 (2008) (quoting Singer v. State, 95 N.J. 487, 494-95 (1984)).

Effective September 3, 2024, the payment of attorney fees under OPRA was modified. The amended statute provides:

> A requestor who prevails in any proceeding may be entitled to a reasonable attorney's fee. While the court or Government Records Council may award a reasonable attorney's fee to a prevailing party in any proceeding, if the public agency has been determined to have unreasonably denied access, acted in bad faith, or knowingly and willfully violated P.L.1963, c.73 (C.47:1A-1 et seq.), then the court or Government Records Council shall award a reasonable attorney's fee.
>
> N.J.S.A. 47:1A-6.

Accordingly, under the amended law, attorney's fees are only mandated if the public agency "unreasonably denied access, acted in bad faith, or knowingly and willfully violated" OPRA. Attorney fees may be awarded at the discretion of the court.

Here, the Defendants unreasonably denied access to the information at issue. While they argue for the application of a GRC decision, that decision has no precedential value. N.J.S.A. 47:1A-7(e); see O'Shea v. West Milford, 410 N.J.

Super. 371, 381 (App. Div. 2009) (noting that a Superior Court is not bound by the GRC's interpretation of OPRA) (citing Mayflower Sec. Co. v. Bureau of Sec., 64 N.J. 85, 93 (1973)).

Given the clear mandates of OPRA, the information should have been routinely provided.

Plaintiff's counsel has twenty days to submit their certification of services and support in compliance with Rule 4:42-9 and R.P.C. 1.5.

CONCLUSION

Plaintiff's application is granted.

JOHN M. DEITCH, J.S.C.

Dated: January 29, 2026