

From: xxxxxxx@xxxxxx.xxx
To: xxxxxxx@xxxxxx.xxx
Subject: FW: Friendly Reminder for OPRA Seminar on April 16
Date: Tuesday, April 10, 2018 9:16:09 AM
Attachments: [image002.png](#)
[image004.png](#)
[ScheidlinLeague2018.pptx](#)

Here's a copy of Lew's presentation for next week's OPRA seminar. It's probably information you already know but I figured I'd forward it to you anyway ☺

*Danielle Holland-Htut, Program Specialist
New Jersey State League of Municipalities
222 West State Street Trenton, NJ 08608
Phone: 609-695-3481 ext 118
Fax: 609-695-0151
xxxxxxx@xxxxxx.xxx*

Follow us



Facebook: facebook.com/njleague Twitter: [@nj_league](https://twitter.com/nj_league)
LinkedIn: linkedin.com/company/new-jersey-league-of-municipalities YouTube: youtube.com/channel/UCbce9oVw?l=O6vxtNz_8?mZw

*****Please be advised that the New Jersey State League of Municipalities is subject to the New Jersey Open Public Records Act. As such, any email sent or received by the League may be subject to a records request.*

From: Lewis Scheindlin [mailto:xxxxxxxxxxxx@xxxxx.xxx]
Sent: Monday, April 09, 2018 4:53 PM
To: Danielle Holland
Cc: Carl Woodward
Subject: Re: Friendly Reminder for OPRA Seminar on April 16

Danielle, attached is my powerpoint presentation on OPRA and Privacy, that I'll be using at the program. I don't have any handouts, although of course you can make copies of the powerpoint to hand out. Please let me know if you have any questions. See you next Monday.
Lew

On Mon, Apr 9, 2018 at 1:25 PM, Danielle Holland <xxxxxxx@xxxxxx.xxx> wrote:



Dear Lew and Carl,

This is friendly reminder regarding the *OPRA In Depth: Privacy and Law Enforcement Issues* at the Doubletree Hotel in Tinton Falls on April 16, 2018. Our current count for this program is 100 attendees.

In terms of A/V equipment, we will have a laptop, podium, and microphone as well as a projector and screen if you wish to make a PowerPoint presentation. If you do have a handout you want me to distribute please have it to me by Thursday.

In case of emergency my cell number is 908-227-1142.

Have a wonderful rest of your week and if you have any questions please let me know.

*Danielle Holland-Hut, Program Specialist
New Jersey State League of Municipalities
222 West State Street Trenton, NJ 08608
Phone: 609-695-3481 ext 118
Fax: 609-695-0151
xxxxxxx@xxxxxx.xxx*

Follow us



Facebook: facebook.com/nileague Twitter: [@nj_league](https://twitter.com/nj_league)
LinkedIn: linkedin.com/company/new-jersey-league-of-municipalities YouTube: youtube.com/channel/UCbce9oVw9LvO6vxNz_89mZw

*****Please be advised that the New Jersey State League of Municipalities is subject to the New Jersey Open Public Records Act. As such, any email sent or received by the League may be subject to a records request.*

From: [Clerk's Dept.](#)
To: [xxxxxxxx@xxxxxx.xxx](#)
Subject: FW: OPRA Question regarding tax records
Date: Friday, April 20, 2018 2:23:00 PM
Attachments: [Tax Collector's letter - OPRA.pdf](#)

April 20, 2018

Laurie,

I believe this issue is the reason you called. The GRC response appears below. I'll be happy to talk to you about this any time.

Edie

Edith L. Merkel, RMC
Township Clerk
Township of Clark
430 Westfield Ave.
Clark, NJ 07066
(732) 388-3669 ph.
(732) 388-1241 fx.

From: Clerk's Dept.
Sent: Friday, April 20, 2018 1:39 PM
To: 'Joseph Delorio' <xxxxxxxxxxxxxx@xxxxxxxxxxxxx.xxx>
Subject: FW: OPRA Question regarding tax records

From: Clerk's Dept.
Sent: Friday, April 20, 2018 11:32 AM
To: 'AJ Plainfield' <xxxxxxxx.xxxxx@xxxxxxxxxxxxx.xxx>; 'Ana Minkoff - Berkeley Heights' <xxxxxxxx@xxxxx.xxx>; 'Andrew Casais' <xxxxxxxx@xxxxxxxxxxxxx.xxx>; 'Bonnie Lacina - Scotch Plains' <xxxxxxxx@xxxxxxxxxxxxx.xxx>; 'Christina Ariemma - Garwood' <xxxxxxxx@xxxxxxxx.xxx>; 'Eileen Birch - Union Twp.' <xxxxxx@xxxxxxxxxxxxx.xxx>; 'Eleanor McGovern - Fanwood' <xxxxxxxx@xxxxxxxx.xxx>; 'Joseph Bodek - Linden' <xxxxxx@xxxxxxxx.xxx>; 'June Planas - Winfield' <xxxxxx@xxxxxxxxxxxxx.xxx>; 'Laura Reinertsen - Kenilworth' <xxxxx@xxxxxxxxxxxxx.xxx>; 'Linda Donnelly' <xxxxx.xxxxxxx@xxxxxxxxxxxxx.xxx>; 'Martha Lopez - Mountainside' <xxxxxx@xxxxxxxxxxxxx.xxx>; 'Rayna Harris' <xxxxxx@xxxxxxxxxxxxx.xxx>; 'Rosemary Licatese-Summit' <xxxxxxxx@xxxxxxxxxxxxx.xxx>; 'Wendi B. Barry - New Providence' <xxxxxx@xxxxxx.xxx>; 'Yolanda M. Roberts - Elizabeth' <xxxxxxxx@xxxxxxxxxxxxx.xxx>; Tara Rowley <xxxxxxxx@xxxxxxxxxxxxx.xxx>; 'xxxxxxxx@xxxxxxxxxxxxx.xxx' < [xxxxxxxx@xxxxxxxxxxxxx.xxx](#) >
Subject: FW: OPRA Question regarding tax records

GRC response below

From: Clerk's Dept.
Sent: Friday, April 20, 2018 10:58 AM
To: 'Government Records Council' <xxxxxxxxxx.xxxxxxx@xxx.xx.xxx>
Cc: Tax Collector <xxxxxxxxxx@xxxxxxxx.xx>
Subject: RE: OPRA Question regarding tax records

Mr. Caruso:

Thank you for replying to this very important inquiry. I will forward your response to the township Tax Collector. I believe this topic is worth pursuing with the Legislature. It is the obligation and responsibility of State and Local Government to protect the privacy, safety and welfare of our citizens, especially the most vulnerable.

Edith L. Merkel, RMC
Township Clerk
Township of Clark
430 Westfield Ave.
Clark, NJ 07066
(732) 388-3669 ph.
(732) 388-1241 fx.

From: Government Records Council <xxxxxxxxxx.xxxxxxx@xxx.xx.xxx>
Sent: Thursday, April 19, 2018 6:30 PM
To: Clerk's Dept. <xxxxx@xxxxxxxx.xx>
Subject: RE: OPRA Question regarding tax records

Good evening Ms. Merkel,

Thank you for contacting the NJ Government Records Council ("GRC"). The information provided by the GRC is guidance and does not constitute legal advice or a final decision of the GRC regarding whether a particular record is exempt from disclosure or not since the provisions of the Open Public Records Act ("OPRA") are applied to the specific facts of the request and/or complaint. The GRC cannot tell you exactly how to respond to an official OPRA records request because your response must depend on the specific facts of the records request.

Generally, OPRA provides that ". . . government records shall be readily accessible for inspection, copying, or examination . . . with certain exceptions . . ." N.J.S.A. 47:1A-1. There are 25 specific exemptions from disclosure included in OPRA.

Additionally, OPRA defines a government record as a record "made, maintained or kept on file . . . or that has been received in the course of . . . official business . . ." N.J.S.A. 47:1A-1.1. Also, OPRA requires a custodian to grant or deny access as soon as possible but no later than seven (7) business days from receipt of the request. N.J.S.A. 47:1A-5(i). OPRA further requires that custodians inform requestors of the lawful basis for any denial of government records. N.J.S.A. 47:1A-6.

Regarding your inquiry, the GRC first notes that it was unable to locate any prior cases addressing

the exact records to which you refer in your letter. Further, the GRC may not be aware of any variables that impact the issue. Thus, guidance on this issue is difficult to provide.

Notwithstanding, the questions you raise are similar to those raised about the disclosure of accident reports without redactions per N.J.S.A. 39:4-131. In fact, the accident report issue could be analogous to your situation. Specifically, the Council has previously ruled on whether redactions are warranted on auto accident reports. Specifically, in Truland v. Borough of Madison, GRC Complaint No. 2006-88 (September 2007), the Council held that “no redactions to the requested auto accident reports are warranted pursuant to N.J.S.A. 39:4-131.” The New Jersey statute cited specifically states that “information contained [in the report] shall not be privileged or held confidential.” See <http://www.nj.gov/grc/decisions/pdf/2006-88.pdf>. The Council’s holding in Truland, has been applied to another complaint in which accident reports were at issue. See <http://www.state.nj.us/grc/decisions/pdf/2011-154.pdf>. This is a departure from the normal OPRA procedures since driver’s license numbers, social security numbers and unlisted telephone numbers are specifically exempt under OPRA and are routinely redacted from records.

Now, as you can probably tell, this has caused citizens to become unsettled (and other various forms of reaction) if they are contacted by attorneys, insurance companies, *etc.*, after being in accident. The GRC also receives phone calls from concerned custodians and citizens regarding the non-confidential nature of accident reports. In each instance, the GRC is obligated to reply that it understands that N.J.S.A. 39:4-131 and prevailing case law provides a stark conflict with the personal information exemptions present in OPRA, which has led to some confusion across the State. However, unless and until either the Legislature amends the statute and/or the courts/GRC decide otherwise, accident reports are required to be disclosed without redactions per N.J.S.A. 39:4-131.

The GRC’s role in OPRA is to adjudicate complaints based on the plain reading of the OPRA, which can sometimes lead to these types of decisions. Unfortunately, if it is the case that an agency is required by law to disclose this information in its entirety, the appropriate avenue for change would likely be the Legislature. This is, of course, in the absence of any statutes, regulations, or executive orders making this information exempt in part or whole.

Additionally, if the disclosure issue comes down to a question of privacy interest as opposed to a statutory requirement to disclose the information, the following may apply:

The GRC’s earliest decisions regarding privacy interest was in Bernstein v. Borough of Allendale, GRC Complaint No. 2004-195 (July 2005). There, the requestor sought access to the names and addresses of dog license owners. The Council dismissed the case on the basis that pursuant to N.J.S.A. 47:1A-1 and Executive Order 21 the records should not be disclosed because of the unsolicited contact, intrusion or potential harm that may result. You may view this decision on our website at <http://www.nj.gov/grc/decisions/2004-195.html>.

However, in an Appellate Division decision the Court held differently. In Atl. Cnty. SPCA v. City of Absecon, 2009 N.J. Super. Unpub. LEXIS 1370 (Jun 5, 2009), the Court held that the requested dog license lists should be disclosed to the requestor, the ASPCA. It is important to note that both the GRC and the Court conducted a balancing test to determine whether the records should be

disclosed. Thus, the answer is extremely fact specific. It is important to note that the Court discussed the ASPCA's need for this information because of its mission to investigate alleged animal abuse. See also Renna v. Cnty. of Union, 2012 N.J. Super. Unpub. LEXIS 342 (February 17, 2012).

Additionally, in another court case, Bolkin v. Kwasniewski, 2012 N.J. Super. Unpub. LEXIS 2641, (Law Div. December 5, 2012), plaintiff sought the names and addresses of dog and cat license owners in Fair Lawn for the purpose of sending political literature regarding candidates who support animal friendly legislation. The Custodian denied access citing to privacy concerns pursuant to N.J.S.A. 47:1A-1, Governor McGreevey's Executive Order No. 26, Doe v. Poritz, and the Council's Bernstein decisions regarding similar records. Using the balancing factors from Doe, the trial Judge found that the release of just the names and addresses of the dog owners with all other information contained on the license applications redacted is appropriate. Specifically, the Judge relied on the Supreme Court's decision in Burnett v. Cnty. of Bergen, 198 N.J. 408 (2009), holding that names and addresses alone, without any other identifiers, does not sufficiently implicate privacy concerns to warrant nondisclosure under OPRA. I have attached this decision for your convenience. This decision was affirmed on appeal. Please see attached the Appellate Division's unpublished decision in Bolkin v. Kwasniewski, 2014 N.J. Super. Unpub. LEXIS 1409, (App. Div. 2014).

All the decisions are made on a case by case basis. More recently, the Council decided on two (2) complaints with various outcomes regarding names, home addresses, etc. that highlight the fact specific nature in which the GRC makes determinations on privacy interests. See Levitt v. Twp. of Monclair (Essex), GRC Complaint No. 2012-150 (August 2013)(<http://www.state.nj.us/grc/decisions/pdf/2012-150.pdf>); Bean v. Borough of Belmar (Monmouth), GRC Complaint No. 2013-39 (Interim Order dated December 20, 2013).

Please note, though, that in the following GRC decisions the Council upheld the redaction of home addresses and telephone numbers as well:

Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (July 2004). The Complainant sought access to "Copies of (1) all moving violations of Officer Michael Tuttle during career with Ho-Ho-Kus Police Department, (2) training records of Officer Tuttle; and (3) records of complaints or internal reprimands against Officer Tuttle." After conducting a balancing test, the Council found that the home addresses should be redacted from the records provided to the Complainant. You may view this decision on our website at <http://www.nj.gov/grc/decisions/2003-110.html#findings>.

Paff v. Warren Cnty. Office of the Prosecutor, GRC Complaint No. 2007-167 (February 2008). The Complainant requested various records pertaining to State v. Philip Gentile, Indictment/Accusation No. 07-02-00060-A. After conducting a balancing test, the Council held that the redacted portions of the requested records (name and address of victim) were properly redacted due to privacy concerns pursuant to N.J.S.A. 47:1A-1. You may view this decision on our website at <http://www.nj.gov/grc/decisions/pdf/2007-167.pdf>.

Faulkner v. Rutgers Univ., GRC Complaint No. 2007-149 (May 2008). The Complainant requested names and addresses for Rutgers University football and basketball season ticket

holders for 2006. After conducting a balancing test, the Council held that “the Custodian did not unlawfully deny the Complainant access to the requested season ticket holders’ lists pursuant to N.J.S.A. 47:1A-1, which states 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.” You may view this decision on our website at <http://www.nj.gov/grc/decisions/pdf/2007-149.pdf>.

Sincerely,

Frank F. Caruso

Government Records Council

Communications Specialist/Resource Manager

Tel: (609) 292-6830 | Fax: (609) 633-6337

<http://www.state.nj.us/grc/>

This correspondence contains advisory, consultative and deliberative material and is intended solely for the person(s) shown as recipient(s).

From: Clerk's Dept. [<mailto:xxxxx@xxxxxxxx.xxx>]

Sent: Wednesday, April 18, 2018 1:11 PM

To: Government Records Council <xxxxxxxxx.xxxxxxx@xxx.xx.xxx>

Subject: OPRA Question regarding tax records

April 18, 2018

Please provide guidance on the attached question.

Thank you in advance for any help you can offer.

Edith L. Merkel, RMC

Township Clerk

Township of Clark

430 Westfield Ave.

Clark, NJ 07066

(732) 388-3669 ph.

(732) 388-1241 fx.

From: xxxxxxxx@xxxxx.xxx
To: xxxxxx@xx.xxxxxxxxx.xx.xx
Subject: FW: OPRA Question regarding tax records
Date: Tuesday, April 24, 2018 4:16:41 PM
Attachments: [Tax Collector's letter - OPRA.pdf](#)

From: Clerk's Dept.
Sent: Friday, April 20, 2018 10:58 AM
To: 'Government Records Council' <xxxxxxxxxx.xxxxxxx@xxx.xx.xxx>
Cc: Tax Collector <xxxxxxxx@xxxxxxxx.xx>
Subject: RE: OPRA Question regarding tax records

Mr. Caruso:

Thank you for replying to this very important inquiry. I will forward your response to the township Tax Collector. I believe this topic is worth pursuing with the Legislature. It is the obligation and responsibility of State and Local Government to protect the privacy, safety and welfare of our citizens, especially the most vulnerable.

Edith L. Merkel, RMC
Township Clerk
Township of Clark
430 Westfield Ave.
Clark, NJ 07066
(732) 388-3669 ph.
(732) 388-1241 fx.

From: Government Records Council <xxxxxxxxxx.xxxxxxx@xxx.xx.xxx>
Sent: Thursday, April 19, 2018 6:30 PM
To: Clerk's Dept. <xxxxx@xxxxxxxx.xxx>
Subject: RE: OPRA Question regarding tax records

Good evening Ms. Merkel,

Thank you for contacting the NJ Government Records Council ("GRC"). The information provided by the GRC is guidance and does not constitute legal advice or a final decision of the GRC regarding whether a particular record is exempt from disclosure or not since the provisions of the Open Public Records Act ("OPRA") are applied to the specific facts of the request and/or complaint. The GRC cannot tell you exactly how to respond to an official OPRA records request because your response must depend on the specific facts of the records request.

Generally, OPRA provides that ". . . government records shall be readily accessible for inspection, copying, or examination . . . with certain exceptions . . ." [N.J.S.A. 47:1A-1](#). There are 25 specific exemptions from disclosure included in OPRA.

Additionally, OPRA defines a government record as a record "made, maintained or kept on file . . . or

that has been received in the course of . . . official business . . ." N.J.S.A. 47:1A-1.1. Also, OPRA requires a custodian to grant or deny access as soon as possible but no later than seven (7) business days from receipt of the request. N.J.S.A. 47:1A-5(i). OPRA further requires that custodians inform requestors of the lawful basis for any denial of government records. N.J.S.A. 47:1A-6.

Regarding your inquiry, the GRC first notes that it was unable to locate any prior cases addressing the exact records to which you refer in your letter. Further, the GRC may not be aware of any variables that impact the issue. Thus, guidance on this issue is difficult to provide.

Notwithstanding, the questions you raise are similar to those raised about the disclosure of accident reports without redactions per N.J.S.A. 39:4-131. In fact, the accident report issue could be analogous to your situation. Specifically, the Council has previously ruled on whether redactions are warranted on auto accident reports. Specifically, in Truland v. Borough of Madison, GRC Complaint No. 2006-88 (September 2007), the Council held that "no redactions to the requested auto accident reports are warranted pursuant to N.J.S.A. 39:4-131." The New Jersey statute cited specifically states that "information contained [in the report] shall not be privileged or held confidential." See <http://www.nj.gov/grc/decisions/pdf/2006-88.pdf>. The Council's holding in Truland, has been applied to another complaint in which accident reports were at issue. See <http://www.state.nj.us/grc/decisions/pdf/2011-154.pdf>. This is a departure from the normal OPRA procedures since driver's license numbers, social security numbers and unlisted telephone numbers are specifically exempt under OPRA and are routinely redacted from records.

Now, as you can probably tell, this has caused citizens to become unsettled (and other various forms of reaction) if they are contacted by attorneys, insurance companies, *etc.*, after being in accident. The GRC also receives phone calls from concerned custodians and citizens regarding the non-confidential nature of accident reports. In each instance, the GRC is obligated to reply that it understands that N.J.S.A. 39:4-131 and prevailing case law provides a stark conflict with the personal information exemptions present in OPRA, which has led to some confusion across the State. However, unless and until either the Legislature amends the statute and/or the courts/GRC decide otherwise, accident reports are required to be disclosed without redactions per N.J.S.A. 39:4-131.

The GRC's role in OPRA is to adjudicate complaints based on the plain reading of the OPRA, which can sometimes lead to these types of decisions. Unfortunately, if it is the case that an agency is required by law to disclose this information in its entirety, the appropriate avenue for change would likely be the Legislature. This is, of course, in the absence of any statutes, regulations, or executive orders making this information exempt in part or whole.

Additionally, if the disclosure issue comes down to a question of privacy interest as opposed to a statutory requirement to disclose the information, the following may apply:

The GRC's earliest decisions regarding privacy interest was in Bernstein v. Borough of Allendale, GRC Complaint No. 2004-195 (July 2005). There, the requestor sought access to the names and addresses of dog license owners. The Council dismissed the case on the basis that pursuant to N.J.S.A. 47:1A-1 and Executive Order 21 the records should not be disclosed because of the unsolicited contact, intrusion or potential harm that may result. You may view this decision on our website at

<http://www.nj.gov/grc/decisions/2004-195.html>.

However, in an Appellate Division decision the Court held differently. In Atl. Cnty. SPCA v. City of Absecon, 2009 N.J. Super. Unpub. LEXIS 1370 (Jun 5, 2009), the Court held that the requested dog license lists should be disclosed to the requestor, the ASPCA. It is important to note that both the GRC and the Court conducted a balancing test to determine whether the records should be disclosed. Thus, the answer is extremely fact specific. It is important to note that the Court discussed the ASPCA's need for this information because of its mission to investigate alleged animal abuse. See also Renna v. Cnty. of Union, 2012 N.J. Super. Unpub. LEXIS 342 (February 17, 2012).

Additionally, in another court case, Bolkin v. Kwasniewski, 2012 N.J. Super. Unpub. LEXIS 2641, (Law Div. December 5, 2012), plaintiff sought the names and addresses of dog and cat license owners in Fair Lawn for the purpose of sending political literature regarding candidates who support animal friendly legislation. The Custodian denied access citing to privacy concerns pursuant to N.J.S.A. 47:1A-1, Governor McGreevey's Executive Order No. 26, Doe v. Poritz, and the Council's Bernstein decisions regarding similar records. Using the balancing factors from Doe, the trial Judge found that the release of just the names and addresses of the dog owners with all other information contained on the license applications redacted is appropriate. Specifically, the Judge relied on the Supreme Court's decision in Burnett v. Cnty. of Bergen, 198 N.J. 408 (2009), holding that names and addresses alone, without any other identifiers, does not sufficiently implicate privacy concerns to warrant nondisclosure under OPRA. I have attached this decision for your convenience. This decision was affirmed on appeal. Please see attached the Appellate Division's unpublished decision in Bolkin v. Kwasniewski, 2014 N.J. Super. Unpub. LEXIS 1409, (App. Div. 2014).

All the decisions are made on a case by case basis. More recently, the Council decided on two (2) complaints with various outcomes regarding names, home addresses, etc. that highlight the fact specific nature in which the GRC makes determinations on privacy interests. See Levitt v. Twp. of Monclair (Essex), GRC Complaint No. 2012-150 (August 2013)(<http://www.state.nj.us/grc/decisions/pdf/2012-150.pdf>); Bean v. Borough of Belmar (Monmouth), GRC Complaint No. 2013-39 (Interim Order dated December 20, 2013).

Please note, though, that in the following GRC decisions the Council upheld the redaction of home addresses and telephone numbers as well:

Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (July 2004). The Complainant sought access to "Copies of (1) all moving violations of Officer Michael Tuttle during career with Ho-Ho-Kus Police Department, (2) training records of Officer Tuttle; and (3) records of complaints or internal reprimands against Officer Tuttle." After conducting a balancing test, the Council found that the home addresses should be redacted from the records provided to the Complainant. You may view this decision on our website at <http://www.nj.gov/grc/decisions/2003-110.html#findings>.

Paff v. Warren Cnty. Office of the Prosecutor, GRC Complaint No. 2007-167 (February 2008). The Complainant requested various records pertaining to State v. Philip Gentile, Indictment/Accusation No. 07-02-00060-A. After conducting a balancing test, the Council

held that the redacted portions of the requested records (name and address of victim) were properly redacted due to privacy concerns pursuant to N.J.S.A. 47:1A-1. You may view this decision on our website at <http://www.nj.gov/grc/decisions/pdf/2007-167.pdf>.

Faulkner v. Rutgers Univ., GRC Complaint No. 2007-149 (May 2008). The Complainant requested names and addresses for Rutgers University football and basketball season ticket holders for 2006. After conducting a balancing test, the Council held that “the Custodian did not unlawfully deny the Complainant access to the requested season ticket holders’ lists pursuant to N.J.S.A. 47:1A-1, which states 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.” You may view this decision on our website at <http://www.nj.gov/grc/decisions/pdf/2007-149.pdf>.

Sincerely,

Frank F. Caruso

Government Records Council

Communications Specialist/Resource Manager

Tel: (609) 292-6830 | Fax: (609) 633-6337

<http://www.state.nj.us/grc/>

This correspondence contains advisory, consultative and deliberative material and is intended solely for the person(s) shown as recipient(s).

From: Clerk's Dept. [<mailto:xxxxx@xxxxxxxxxxx>]

Sent: Wednesday, April 18, 2018 1:11 PM

To: Government Records Council <xxxxxxxxx.xxxxxxx@xxx.xx.xxx>

Subject: OPRA Question regarding tax records

April 18, 2018

Please provide guidance on the attached question.

Thank you in advance for any help you can offer.

Edith L. Merkel, RMC

Township Clerk

Township of Clark

430 Westfield Ave.

Clark, NJ 07066

(732) 388-3669 ph.

(732) 388-1241 fx.

From: xxxxxxxx@xxxxxx.xxx
To: xxxxxxxx@xxxxxx.xxx
Subject: FW: OPRA Question regarding tax records
Date: Friday, April 20, 2018 2:08:01 PM
Attachments: [Tax Collector's letter - OPRA.pdf](#)

FYI...

From: Clerk's Dept.
Sent: Friday, April 20, 2018 11:32 AM
To: 'AJ Plainfield' <xxxxxxx.xxxxx@xxxxxxxxxxxxxxx>; 'Ana Minkoff - Berkeley Heights' <xxxxxxxx@xxxxxx.xxx>; 'Andrew Casais' <xxxxxxxx@xxxxxxxxxxxxxxx>; 'Bonnie Lacina - Scotch Plains' <xxxxxxxx@xxxxxxxxxxxxxxx>; 'Christina Ariemma - Garwood' <c-ariemma@garwood.org>; 'Eileen Birch - Union Twp.' <xxxxxx@xxxxxxxxxxxxxxx>; 'Eleanor McGovern - Fanwood' <xxxxxxxx@xxxxxxxxxxx>; 'Joseph Bodek - Linden' <xxxxxx@xxxxxxxxxxx>; 'June Planas - Winfield' <xxxxxxx@xxxxxxxxxxxxxxx>; 'Laura Reinertsen - Kenilworth' <Laxxx@xxxxxxxxxxxxxxx>; 'Linda Donnelly' <xxxxxx.xxxxxxxx@xxxxxxxxxxxxxxx>; 'Martha Lopez - Mountainside' <xxxxxxx@xxxxxxxxxxxxxxx>; 'Rayna Harris' <xxxxxxx@xxxxxxxxxxxxxxx>; 'Rosemary Licatese-Summit' <xxxxxxxx@xxxxxxxxxxxxxxx>; 'Wendi B. Barry - New Providence' <xxxxxxx@xxxxxxx.xxx>; 'Yolanda M. Roberts - Elizabeth' <yroberts@elizabethnj.org>; Tara Rowley <xxxxxxxx@xxxxxxxxxxxxxxx>; 'xxxxxxxx@xxxxxxxxxxx' <p-donahue@cranfordnj.org>
Subject: FW: OPRA Question regarding tax records

GRC response below

From: Clerk's Dept.
Sent: Friday, April 20, 2018 10:58 AM
To: 'Government Records Council' <xxxxxxxxxxxxxxx@xxx.xx.xxx>
Cc: Tax Collector <xxxxxxxx@xxxxxxxx.xx>
Subject: RE: OPRA Question regarding tax records

Mr. Caruso:

Thank you for replying to this very important inquiry. I will forward your response to the township Tax Collector. I believe this topic is worth pursuing with the Legislature. It is the obligation and responsibility of State and Local Government to protect the privacy, safety and welfare of our citizens, especially the most vulnerable.

Edith L. Merkel, RMC
Township Clerk
Township of Clark
430 Westfield Ave.
Clark, NJ 07066
(732) 388-3669 ph.
(732) 388-1241 fx.

From: Government Records Council <xxxxxxxxxx.xxxxxxx@xxx.xx.xxx>
Sent: Thursday, April 19, 2018 6:30 PM
To: Clerk's Dept. <xxxxx@xxxxxxxxx.xxx>
Subject: RE: OPRA Question regarding tax records

Good evening Ms. Merkel,

Thank you for contacting the NJ Government Records Council ("GRC"). The information provided by the GRC is guidance and does not constitute legal advice or a final decision of the GRC regarding whether a particular record is exempt from disclosure or not since the provisions of the Open Public Records Act ("OPRA") are applied to the specific facts of the request and/or complaint. The GRC cannot tell you exactly how to respond to an official OPRA records request because your response must depend on the specific facts of the records request.

Generally, OPRA provides that "... government records shall be readily accessible for inspection, copying, or examination ... with certain exceptions ... " N.J.S.A. 47:1A-1. There are 25 specific exemptions from disclosure included in OPRA.

Additionally, OPRA defines a government record as a record "made, maintained or kept on file ... or that has been received in the course of ... official business ... " N.J.S.A. 47:1A-1.1. Also, OPRA requires a custodian to grant or deny access as soon as possible but no later than seven (7) business days from receipt of the request. N.J.S.A. 47:1A-5(i). OPRA further requires that custodians inform requestors of the lawful basis for any denial of government records. N.J.S.A. 47:1A-6.

Regarding your inquiry, the GRC first notes that it was unable to locate any prior cases addressing the exact records to which you refer in your letter. Further, the GRC may not be aware of any variables that impact the issue. Thus, guidance on this issue is difficult to provide.

Notwithstanding, the questions you raise are similar to those raised about the disclosure of accident reports without redactions per N.J.S.A. 39:4-131. In fact, the accident report issue could be analogous to your situation. Specifically, the Council has previously ruled on whether redactions are warranted on auto accident reports. Specifically, in Truland v. Borough of Madison, GRC Complaint No. 2006-88 (September 2007), the Council held that "no redactions to the requested auto accident reports are warranted pursuant to N.J.S.A. 39:4-131." The New Jersey statute cited specifically states that "information contained [in the report] shall not be privileged or held confidential." See <http://www.nj.gov/grc/decisions/pdf/2006-88.pdf>. The Council's holding in Truland, has been applied to another complaint in which accident reports were at issue. See <http://www.state.nj.us/grc/decisions/pdf/2011-154.pdf>. This is a departure from the normal OPRA procedures since driver's license numbers, social security numbers and unlisted telephone numbers are specifically exempt under OPRA and are routinely redacted from records.

Now, as you can probably tell, this has caused citizens to become unsettled (and other various forms of reaction) if they are contacted by attorneys, insurance companies, *etc.*, after being in accident.

The GRC also receives phone calls from concerned custodians and citizens regarding the non-confidential nature of accident reports. In each instance, the GRC is obligated to reply that it understands that N.J.S.A. 39:4-131 and prevailing case law provides a stark conflict with the personal information exemptions present in OPRA, which has led to some confusion across the State. However, unless and until either the Legislature amends the statute and/or the courts/GRC decide otherwise, accident reports are required to be disclosed without redactions per N.J.S.A. 39:4-131.

The GRC's role in OPRA is to adjudicate complaints based on the plain reading of the OPRA, which can sometimes lead to these types of decisions. Unfortunately, if it is the case that an agency is required by law to disclose this information in its entirety, the appropriate avenue for change would likely be the Legislature. This is, of course, in the absence of any statutes, regulations, or executive orders making this information exempt in part or whole.

Additionally, if the disclosure issue comes down to a question of privacy interest as opposed to a statutory requirement to disclose the information, the following may apply:

The GRC's earliest decisions regarding privacy interest was in Bernstein v. Borough of Allendale, GRC Complaint No. 2004-195 (July 2005). There, the requestor sought access to the names and addresses of dog license owners. The Council dismissed the case on the basis that pursuant to N.J.S.A. 47:1A-1 and Executive Order 21 the records should not be disclosed because of the unsolicited contact, intrusion or potential harm that may result. You may view this decision on our website at <http://www.nj.gov/grc/decisions/2004-195.html>.

However, in an Appellate Division decision the Court held differently. In Atl. Cnty. SPCA v. City of Absecon, 2009 N.J. Super. Unpub. LEXIS 1370 (Jun 5, 2009), the Court held that the requested dog license lists should be disclosed to the requestor, the ASPCA. It is important to note that both the GRC and the Court conducted a balancing test to determine whether the records should be disclosed. Thus, the answer is extremely fact specific. It is important to note that the Court discussed the ASPCA's need for this information because of its mission to investigate alleged animal abuse. See also Renna v. Cnty. of Union, 2012 N.J. Super. Unpub. LEXIS 342 (February 17, 2012).

Additionally, in another court case, Bolkin v. Kwasniewski, 2012 N.J. Super. Unpub. LEXIS 2641, (Law Div. December 5, 2012), plaintiff sought the names and addresses of dog and cat license owners in Fair Lawn for the purpose of sending political literature regarding candidates who support animal friendly legislation. The Custodian denied access citing to privacy concerns pursuant to N.J.S.A. 47:1A-1, Governor McGreevey's Executive Order No. 26, Doe v. Poritz, and the Council's Bernstein decisions regarding similar records. Using the balancing factors from Doe, the trial Judge found that the release of just the names and addresses of the dog owners with all other information contained on the license applications redacted is appropriate. Specifically, the Judge relied on the Supreme Court's decision in Burnett v. Cnty. of Bergen, 198 N.J. 408 (2009), holding that names and addresses alone, without any other identifiers, does not sufficiently implicate privacy concerns to warrant nondisclosure under OPRA. I have attached this decision for your convenience. This decision was affirmed on appeal. Please see attached the Appellate Division's unpublished decision in Bolkin v. Kwasniewski, 2014 N.J. Super. Unpub. LEXIS 1409, (App. Div. 2014).

All the decisions are made on a case by case basis. More recently, the Council decided on two (2) complaints with various outcomes regarding names, home addresses, etc. that highlight the fact specific nature in which the GRC makes determinations on privacy interests. See Levitt v. Twp. of Monclair (Essex), GRC Complaint No. 2012-150 (August 2013)(<http://www.state.nj.us/grc/decisions/pdf/2012-150.pdf>); Bean v. Borough of Belmar (Monmouth), GRC Complaint No. 2013-39 (Interim Order dated December 20, 2013).

Please note, though, that in the following GRC decisions the Council upheld the redaction of home addresses and telephone numbers as well:

Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (July 2004). The Complainant sought access to “Copies of (1) all moving violations of Officer Michael Tuttle during career with Ho-Ho-Kus Police Department, (2) training records of Officer Tuttle; and (3) records of complaints or internal reprimands against Officer Tuttle.” After conducting a balancing test, the Council found that the home addresses should be redacted from the records provided to the Complainant. You may view this decision on our website at <http://www.nj.gov/grc/decisions/2003-110.html#findings>.

Paff v. Warren Cnty. Office of the Prosecutor, GRC Complaint No. 2007-167 (February 2008). The Complainant requested various records pertaining to State v. Philip Gentile, Indictment/Accusation No. 07-02-00060-A. After conducting a balancing test, the Council held that the redacted portions of the requested records (name and address of victim) were properly redacted due to privacy concerns pursuant to N.J.S.A. 47:1A-1. You may view this decision on our website at <http://www.nj.gov/grc/decisions/pdf/2007-167.pdf>.

Faulkner v. Rutgers Univ., GRC Complaint No. 2007-149 (May 2008). The Complainant requested names and addresses for Rutgers University football and basketball season ticket holders for 2006. After conducting a balancing test, the Council held that “the Custodian did not unlawfully deny the Complainant access to the requested season ticket holders’ lists pursuant to N.J.S.A. 47:1A-1, which states 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.” You may view this decision on our website at <http://www.nj.gov/grc/decisions/pdf/2007-149.pdf>.

Sincerely,

Frank F. Caruso

Government Records Council

Communications Specialist/Resource Manager

Tel: (609) 292-6830 | Fax: (609) 633-6337

<http://www.state.nj.us/grc/>

material and is intended solely for the person(s) shown as recipient(s).

From: Clerk's Dept. [<mailto:xxxxx@xxxxxxxx.xxx>]

Sent: Wednesday, April 18, 2018 1:11 PM

To: Government Records Council <xxxxxxxxx.xxxxxxx@xxx.xx.xxx>

Subject: OPRA Question regarding tax records

April 18, 2018

Please provide guidance on the attached question.

Thank you in advance for any help you can offer.

Edith L. Merkel, RMC

Township Clerk

Township of Clark

430 Westfield Ave.

Clark, NJ 07066

(732) 388-3669 ph.

(732) 388-1241 fx.

From: [Joseph DeIorio](#)
To: ["xxxxxxxx@xxxxx.xxx"](#)
Subject: FW: OPRA Question regarding tax records
Date: Friday, April 20, 2018 1:54:45 PM
Attachments: [Tax Collector's letter - OPRA.pdf](#)

From: Clerk's Dept. [mailto:xxxxx@xxxxxxxxxxx]
Sent: Friday, April 20, 2018 1:39 PM
To: Joseph DeIorio
Subject: FW: OPRA Question regarding tax records

From: Clerk's Dept.
Sent: Friday, April 20, 2018 11:32 AM
To: 'AJ Plainfield' <xxxxxx@xxxxxxxxxxxxxxx>; 'Ana Minkoff - Berkeley Heights' <xxxxxx@xxxxx.xxx>; 'Andrew Casais' <xxxxxx@xxxxxxxxxxxxxxx>; 'Bonnie Lacina - Scotch Plains' <xxxxxx@xxxxxxxxxxxxxxx>; 'Christina Ariemma - Garwood' <c-ariemma@garwood.org>; 'Eileen Birch - Union Twp.' <xxxxxx@xxxxxxxxxxxxxxx>; 'Eleanor McGovern - Fanwood' <xxxxxx@xxxxxxxxxxx>; 'Joseph Bodek - Linden' <xxxxxx@xxxxxxxxxxx>; 'June Planas - Winfield' <xxxxxx@xxxxxxxxxxxxxxx>; 'Laura Reinertsen - Kenilworth' <Laxxx@xxxxxxxxxxxxxxx>; 'Linda Donnelly' <xxxxx.xxxxxxx@xxxxxxxxxxxxxxx>; 'Martha Lopez - Mountainside' <xxxxxx@xxxxxxxxxxxxxxx>; 'Rayna Harris' <xxxxxx@xxxxxxxxxxxxxxx>; 'Rosemary Licatese-Summit' <xxxxxx@xxxxxxxxxxxxxxx>; 'Wendi B. Barry - New Providence' <xxxxxx@xxxxxxx.xxx>; 'Yolanda M. Roberts - Elizabeth' <yroberts@elizabethnj.org>; Tara Rowley <xxxxxxxx@xxxxxxxxxxx>; 'xxxxxxxx@xxxxxxxxxxx' <p-donahue@cranfordnj.org>
Subject: FW: OPRA Question regarding tax records

GRC response below

From: Clerk's Dept.
Sent: Friday, April 20, 2018 10:58 AM
To: 'Government Records Council' <[xxxxxxxxx.xxxxxxx@xxx.xx.xxx](#)>
Cc: Tax Collector <[xxxxxxxxx@xxxxxxxx.xx](#)>
Subject: RE: OPRA Question regarding tax records

Mr. Caruso:

Thank you for replying to this very important inquiry. I will forward your response to the township Tax Collector. I believe this topic is worth pursuing with the Legislature. It is the obligation and responsibility of State and Local Government to protect the privacy, safety and welfare of our citizens, especially the most vulnerable.

Edith L. Merkel, RMC
Township Clerk

Township of Clark
430 Westfield Ave.
Clark, NJ 07066
(732) 388-3669 ph.
(732) 388-1241 fx.

From: Government Records Council <xxxxxxxxxx.xxxxxxx@xxx.xx.xxx>
Sent: Thursday, April 19, 2018 6:30 PM
To: Clerk's Dept. <xxxxx@xxxxxxxxx.xxx>
Subject: RE: OPRA Question regarding tax records

Good evening Ms. Merkel,

Thank you for contacting the NJ Government Records Council ("GRC"). The information provided by the GRC is guidance and does not constitute legal advice or a final decision of the GRC regarding whether a particular record is exempt from disclosure or not since the provisions of the Open Public Records Act ("OPRA") are applied to the specific facts of the request and/or complaint. The GRC cannot tell you exactly how to respond to an official OPRA records request because your response must depend on the specific facts of the records request.

Generally, OPRA provides that ". . . government records shall be readily accessible for inspection, copying, or examination . . . with certain exceptions . . ." N.J.S.A. 47:1A-1. There are 25 specific exemptions from disclosure included in OPRA.

Additionally, OPRA defines a government record as a record "made, maintained or kept on file . . . or that has been received in the course of . . . official business . . ." N.J.S.A. 47:1A-1.1. Also, OPRA requires a custodian to grant or deny access as soon as possible but no later than seven (7) business days from receipt of the request. N.J.S.A. 47:1A-5(i). OPRA further requires that custodians inform requestors of the lawful basis for any denial of government records. N.J.S.A. 47:1A-6.

Regarding your inquiry, the GRC first notes that it was unable to locate any prior cases addressing the exact records to which you refer in your letter. Further, the GRC may not be aware of any variables that impact the issue. Thus, guidance on this issue is difficult to provide.

Notwithstanding, the questions you raise are similar to those raised about the disclosure of accident reports without redactions per N.J.S.A. 39:4-131. In fact, the accident report issue could be analogous to your situation. Specifically, the Council has previously ruled on whether redactions are warranted on auto accident reports. Specifically, in Truland v. Borough of Madison, GRC Complaint No. 2006-88 (September 2007), the Council held that "no redactions to the requested auto accident reports are warranted pursuant to N.J.S.A. 39:4-131." The New Jersey statute cited specifically states that "information contained [in the report] shall not be privileged or held confidential." See <http://www.nj.gov/grc/decisions/pdf/2006-88.pdf>. The Council's holding in Truland, has been applied to another complaint in which accident reports were at issue. See <http://www.state.nj.us/grc/decisions/pdf/2011-154.pdf>. This is a departure from the normal OPRA procedures since driver's license numbers, social security numbers and unlisted telephone numbers

are specifically exempt under OPRA and are routinely redacted from records.

Now, as you can probably tell, this has caused citizens to become unsettled (and other various forms of reaction) if they are contacted by attorneys, insurance companies, *etc.*, after being in accident. The GRC also receives phone calls from concerned custodians and citizens regarding the non-confidential nature of accident reports. In each instance, the GRC is obligated to reply that it understands that N.J.S.A. 39:4-131 and prevailing case law provides a stark conflict with the personal information exemptions present in OPRA, which has led to some confusion across the State. However, unless and until either the Legislature amends the statute and/or the courts/GRC decide otherwise, accident reports are required to be disclosed without redactions per N.J.S.A. 39:4-131.

The GRC's role in OPRA is to adjudicate complaints based on the plain reading of the OPRA, which can sometimes lead to these types of decisions. Unfortunately, if it is the case that an agency is required by law to disclose this information in its entirety, the appropriate avenue for change would likely be the Legislature. This is, of course, in the absence of any statutes, regulations, or executive orders making this information exempt in part or whole.

Additionally, if the disclosure issue comes down to a question of privacy interest as opposed to a statutory requirement to disclose the information, the following may apply:

The GRC's earliest decisions regarding privacy interest was in Bernstein v. Borough of Allendale, GRC Complaint No. 2004-195 (July 2005). There, the requestor sought access to the names and addresses of dog license owners. The Council dismissed the case on the basis that pursuant to N.J.S.A. 47:1A-1 and Executive Order 21 the records should not be disclosed because of the unsolicited contact, intrusion or potential harm that may result. You may view this decision on our website at <http://www.nj.gov/grc/decisions/2004-195.html>.

However, in an Appellate Division decision the Court held differently. In Atl. Cnty. SPCA v. City of Absecon, 2009 N.J. Super. Unpub. LEXIS 1370 (Jun 5, 2009), the Court held that the requested dog license lists should be disclosed to the requestor, the ASPCA. It is important to note that both the GRC and the Court conducted a balancing test to determine whether the records should be disclosed. Thus, the answer is extremely fact specific. It is important to note that the Court discussed the ASPCA's need for this information because of its mission to investigate alleged animal abuse. See also Renna v. Cnty. of Union, 2012 N.J. Super. Unpub. LEXIS 342 (February 17, 2012).

Additionally, in another court case, Bolkin v. Kwasniewski, 2012 N.J. Super. Unpub. LEXIS 2641, (Law Div. December 5, 2012), plaintiff sought the names and addresses of dog and cat license owners in Fair Lawn for the purpose of sending political literature regarding candidates who support animal friendly legislation. The Custodian denied access citing to privacy concerns pursuant to N.J.S.A. 47:1A-1, Governor McGreevey's Executive Order No. 26, Doe v. Poritz, and the Council's Bernstein decisions regarding similar records. Using the balancing factors from Doe, the trial Judge found that the release of just the names and addresses of the dog owners with all other information contained on the license applications redacted is appropriate. Specifically, the Judge relied on the Supreme Court's decision in Burnett v. Cnty. of Bergen, 198 N.J. 408 (2009), holding that names and addresses alone, without any other identifiers, does not sufficiently implicate privacy concerns to warrant

nondisclosure under OPRA. I have attached this decision for your convenience. This decision was affirmed on appeal. Please see attached the Appellate Division's unpublished decision in Bolkin v. Kwasniewski, 2014 N.J. Super. Unpub. LEXIS 1409, (App. Div. 2014).

All the decisions are made on a case by case basis. More recently, the Council decided on two (2) complaints with various outcomes regarding names, home addresses, etc. that highlight the fact specific nature in which the GRC makes determinations on privacy interests. See Levitt v. Twp. of Monclair (Essex), GRC Complaint No. 2012-150 (August 2013)(<http://www.state.nj.us/grc/decisions/pdf/2012-150.pdf>); Bean v. Borough of Belmar (Monmouth), GRC Complaint No. 2013-39 (Interim Order dated December 20, 2013).

Please note, though, that in the following GRC decisions the Council upheld the redaction of home addresses and telephone numbers as well:

Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (July 2004). The Complainant sought access to "Copies of (1) all moving violations of Officer Michael Tuttle during career with Ho-Ho-Kus Police Department, (2) training records of Officer Tuttle; and (3) records of complaints or internal reprimands against Officer Tuttle." After conducting a balancing test, the Council found that the home addresses should be redacted from the records provided to the Complainant. You may view this decision on our website at <http://www.nj.gov/grc/decisions/2003-110.html#findings>.

Paff v. Warren Cnty. Office of the Prosecutor, GRC Complaint No. 2007-167 (February 2008). The Complainant requested various records pertaining to State v. Philip Gentile, Indictment/Accusation No. 07-02-00060-A. After conducting a balancing test, the Council held that the redacted portions of the requested records (name and address of victim) were properly redacted due to privacy concerns pursuant to N.J.S.A. 47:1A-1. You may view this decision on our website at <http://www.nj.gov/grc/decisions/pdf/2007-167.pdf>.

Faulkner v. Rutgers Univ., GRC Complaint No. 2007-149 (May 2008). The Complainant requested names and addresses for Rutgers University football and basketball season ticket holders for 2006. After conducting a balancing test, the Council held that "the Custodian did not unlawfully deny the Complainant access to the requested season ticket holders' lists pursuant to N.J.S.A. 47:1A-1, which states 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." You may view this decision on our website at <http://www.nj.gov/grc/decisions/pdf/2007-149.pdf>.

Sincerely,

Frank F. Caruso

Government Records Council

Communications Specialist/Resource Manager

Tel: (609) 292-6830 | Fax: (609) 633-6337

<http://www.state.nj.us/grc/>

This correspondence contains advisory, consultative and deliberative material and is intended solely for the person(s) shown as recipient(s).

From: Clerk's Dept. [<mailto:xxxxx@xxxxxxxx.xxx>]

Sent: Wednesday, April 18, 2018 1:11 PM

To: Government Records Council <xxxxxxxxx.xxxxxxx@xxx.xx.xxx>

Subject: OPRA Question regarding tax records

April 18, 2018

Please provide guidance on the attached question.

Thank you in advance for any help you can offer.

Edith L. Merkel, RMC

Township Clerk
Township of Clark
430 Westfield Ave.
Clark, NJ 07066
(732) 388-3669 ph.
(732) 388-1241 fx.

From: @x
To: @x
Subject: FW: OPRA Seminar April 16, 2018
Date: Friday, April 13, 2018 9:01:20 AM
Attachments: [image001.png](#)
[image003.png](#)
[DOCSLIB-#651139-v1-OPRA Presentation April 2018.DOC](#)

Fyi ☺

*Danielle Holland-Htut, Program Specialist
New Jersey State League of Municipalities
222 West State Street Trenton, NJ 08608
Phone: 609-695-3481 ext 118
Fax: 609-695-0151
[xxxxxxxx@xxxxxx.xxx](#)*

Follow us



Facebook: facebook.com/njleague Twitter: [@nj_league](https://twitter.com/nj_league)
LinkedIn: linkedin.com/company/new-jersey-league-of-municipalities YouTube: youtube.com/channel/UCbce9oVw9LvO6vxNz_89m7w

*****Please be advised that the New Jersey State League of Municipalities is subject to the New Jersey Open Public Records Act. As such, any email sent or received by the League may be subject to a records request.*

From: Carl Woodward [mailto:@x]
Sent: Thursday, April 12, 2018 12:16 PM
To: Danielle Holland; Lewis Scheindlin (@x)
Subject: OPRA Seminar April 16, 2018

Danielle,

Attached please find my update on OPRA cases for 2017 and the first quarter of 2018. It should be available for distribution to the attendees, either in hard copy or on-line, or both. I will not be using a Powerpoint, but will refer to various decisions summarized therein.

Please contact me with any questions. Looking forward to seeing you on Monday.

Kindest regards,

Carl R. Woodward, III
Carella, Byrne, Cecchi, Olstein,
Brody & Agnello, P.A.
5 Becker Farm Road
Roseland, New Jersey 07068
Phone: (973) 994-1700
Fax: (973) 994-1744

Email: xxxxxxx@xxxxxxxxxx.xxx

The contents of this e-mail message are from the law firm of Carella, Byrne and any attachments are intended solely for the addressee(s) named in this message. This communication is intended to be and to remain confidential and may be subject to applicable attorney/client and/or work product privileges. If you are not the intended recipient of this message, or if this message has been addressed to you in error, please immediately alert the sender by reply e-mail and then delete this message and its attachments. Do not deliver, distribute or copy this message and/or any attachments and if you are not the intended recipient, do not disclose the contents or take any action in reliance upon the information contained in this communication or any attachments.

IRS Circular 230 disclosure:

To ensure compliance with requirements imposed by the IRS, we inform you that, unless expressly stated otherwise, any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

Disclaimer

The information contained in this communication from the sender is confidential. It is intended solely for use by the recipient and others authorized to receive it. If you are not the recipient, you are hereby notified that any disclosure, copying, distribution or taking action in relation of the contents of this information is strictly prohibited and may be unlawful.

This email has been scanned for viruses and malware, and may have been automatically archived by **Mimecast Ltd**, an innovator in Software as a Service (SaaS) for business. Providing a **safer** and **more useful** place for your human generated data. Specializing in; Security, archiving and compliance. To find out more [Click Here](#).

From: [Paul Tomasko](#)
To: [@x](#); [@x](#)
Subject: Fwd: Memorandum on proposed OPRA and OPMA legislation
Date: Tuesday, February 6, 2018 4:02:15 PM
Attachments: [\[16178061 Comments to S1045-217.pdf](#)
[Comments to S1046-217.pdf](#)

Mike and Lori,
FYI.
Are the OPMA and OPRA bills still being pushed?
Thanks,
Paul

-----Original Message-----

From: Stephanie Wehmann <[@x](#)>
To: Paul Tomasko <[@x](#)>
Cc: Nancy Wehmann <[@x](#)>
Sent: Tue, Feb 6, 2018 3:14 pm
Subject: FW: Memorandum on proposed OPRA and OPMA legislation

From: John L. Shahdanian II [<mailto:@x>]
Sent: Tuesday, February 06, 2018 2:35 PM
To: Stephanie Wehmann <[@x](#)>; Boro Clerk <[@x](#)>
Subject: Memorandum on proposed OPRA and OPMA legislation

Mayor Tomasko:

Attached please find the memoranda regarding the pending bills on OPRA/OPMA.

Regards,

John Shahdanian



JOHN L. SHAHDANIAN II
CHASAN LAMPARELLO MALLON & CAPPUZZO, PC
300 LIGHTING WAY, SUITE 200
SECAUCUS, NEW JERSEY 07094

201-809-6038

201-348-6633

[@x](#)

[DOWNLOAD VCARD](#)

www.chasanlaw.com

Celebrating our 60th anniversary 1957-2017

THE INFORMATION CONTAINED IN THIS E-MAIL MESSAGE IS FOR THE SOLE USE OF THE INTENDED RECIPIENT AND MAY CONTAIN ATTORNEY CONFIDENTIAL AND PRIVILEGED INFORMATION. ANY UNAUTHORIZED REVIEW, USE, DISCLOSURE OR DISTRIBUTION IS PROHIBITED. IF YOU ARE NOT THE INTENDED RECIPIENT, PLEASE CONTACT THE SENDER BY REPLY EMAIL AND DESTROY ALL COPIES OF THE ORIGINAL MESSAGE. THANK YOU.

From: @x
To: @x; @x; @x; @x;
@x; @x; @x; @x
Subject: NJ Supreme Court OPRA Decision Diminishes Privacy Rights
Date: Thursday, May 24, 2018 4:30:00 PM

FYI, recent League blog post on the Brennan NJ Supreme Court case on OPRA.

From: The Town Crier [mailto:@x]
Sent: Thursday, May 24, 2018 4:04 PM
Subject: [New post] NJ Supreme Court OPRA Decision Diminishes Privacy Rights

njlmblog posted: "On Wednesday, the NJ Supreme Court issued its decision in William J. Brennan v. Bergen County Prosecutor's Office, a case that examined the Open Public Records Act's competing interests of government transparency and individual privacy. In this case, the "

New post on The Town Crier



[NJ Supreme Court OPRA Decision Diminishes Privacy Rights](#)

by [njlmblog](#)

On Wednesday, the NJ Supreme Court issued its decision in [William J. Brennan v. Bergen County Prosecutor's Office](#), a case that examined the Open Public Records Act's competing interests of government transparency and individual privacy. In this case, the Court was asked to determine whether OPRA compels disclosure of documents containing the names and addresses of persons who successfully bid at an auction of public property?

Unfortunately, as is often the case, transparency interests prevailed to the detriment of privacy concerns. The Court found that those who participate in a public auction for public property are aware that their names, addresses and other information which they have provided will be available to the public. Therefore, there is no reasonable expectation of privacy which must be protected and the unredacted records should be disclosed.

Also, in this case, the Court created what appears to be a new rule for whenever courts are tasked with examining the release of records and balancing transparency with privacy. Typically, when privacy considerations are presented as reason for withholding disclosure under an OPRA request, courts would use what is known as Doe factors to analyze whether privacy would trump the need for disclosure. The Doe factors examine, among other things; the type of record requested, the information contained in those records, the potential harm of disclosure, and the degree of need for access to the

records.

In the case at hand, the Court determined that “courts are not required to analyze Doe factors each time a party asserts that a privacy interest exists. A party must first present a colorable claim that public access to records would invade a person’s reasonable expectation of privacy.” Based on this, it would appear that courts must now first examine the threshold questions of whether or not a reasonable expectation of privacy exists prior to examining the Doe factors. Where a colorable claim of a reasonable expectation of privacy has not been made, the courts will not need to examine the Doe factors. While on many occasions lower courts have seemingly made this threshold determination, the Court’s ruling in Brennan sets out a more bright-line requirement for courts to do so.

You should review this decision with your municipal attorney and your records custodian for more information on this ruling and the impact on your municipality.

Contact: Frank Marshall, Esq., League Staff Attorney, xxxxxxxxx@xxxxxxx.xxx or 609-695-3481 x137.

[njlmblog](#) | May 24, 2018 at 8:03 pm | Tags: [OPRA](#) | Categories: [Uncategorized](#) | URL: <https://wp.me/p7xPny-lx>

From: xxxxxxxx@xxxxx.xxx
To: xxxxxxxx@xxxxx.xxx
Subject: OPRA Question regarding tax records
Date: Monday, April 23, 2018 4:06:56 PM
Attachments: [Tax Collector's letter - OPRA.pdf](#)

Shane,

As we discussed.

Lori

From: Clerk's Dept.
Sent: Friday, April 20, 2018 10:58 AM
To: 'Government Records Council' <xxxxxxxxxxxxxxx@xxx.xx.xxx>
Cc: Tax Collector <xxxxxxxxxxxx@xxxxxxxx.xx>
Subject: RE: OPRA Question regarding tax records

Mr. Caruso:

Thank you for replying to this very important inquiry. I will forward your response to the township Tax Collector. I believe this topic is worth pursuing with the Legislature. It is the obligation and responsibility of State and Local Government to protect the privacy, safety and welfare of our citizens, especially the most vulnerable.

Edith L. Merkel, RMC
Township Clerk
Township of Clark
430 Westfield Ave.
Clark, NJ 07066
(732) 388-3669 ph.
(732) 388-1241 fx.

From: Government Records Council <xxxxxxxxxxxxxxx@xxx.xx.xxx>
Sent: Thursday, April 19, 2018 6:30 PM
To: Clerk's Dept. <xxxxx@xxxxxxxx.xxx>
Subject: RE: OPRA Question regarding tax records

Good evening Ms. Merkel,

Thank you for contacting the NJ Government Records Council ("GRC"). The information provided by the GRC is guidance and does not constitute legal advice or a final decision of the GRC regarding whether a particular record is exempt from disclosure or not since the provisions of the Open Public Records Act ("OPRA") are applied to the specific facts of the request and/or complaint. The GRC cannot tell you exactly how to respond to an official OPRA records request because your response must depend on the specific facts of the records request.

Generally, OPRA provides that "... government records shall be readily accessible for inspection, copying, or examination ... with certain exceptions ..." N.J.S.A. 47:1A-1. There are 25 specific exemptions from disclosure included in OPRA.

Additionally, OPRA defines a government record as a record "made, maintained or kept on file ... or that has been received in the course of ... official business ..." N.J.S.A. 47:1A-1.1. Also, OPRA requires a custodian to grant or deny access as soon as possible but no later than seven (7) business days from receipt of the request. N.J.S.A. 47:1A-5(i). OPRA further requires that custodians inform requestors of the lawful basis for any denial of government records. N.J.S.A. 47:1A-6.

Regarding your inquiry, the GRC first notes that it was unable to locate any prior cases addressing the exact records to which you refer in your letter. Further, the GRC may not be aware of any variables that impact the issue. Thus, guidance on this issue is difficult to provide.

Notwithstanding, the questions you raise are similar to those raised about the disclosure of accident reports without redactions per N.J.S.A. 39:4-131. In fact, the accident report issue could be analogous to your situation. Specifically, the Council has previously ruled on whether redactions are warranted on auto accident reports. Specifically, in Truland v. Borough of Madison, GRC Complaint No. 2006-88 (September 2007), the Council held that "no redactions to the requested auto accident reports are warranted pursuant to N.J.S.A. 39:4-131." The New Jersey statute cited specifically states that "information contained [in the report] shall not be privileged or held confidential." See <http://www.nj.gov/grc/decisions/pdf/2006-88.pdf>. The Council's holding in Truland, has been applied to another complaint in which accident reports were at issue. See <http://www.state.nj.us/grc/decisions/pdf/2011-154.pdf>. This is a departure from the normal OPRA procedures since driver's license numbers, social security numbers and unlisted telephone numbers are specifically exempt under OPRA and are routinely redacted from records.

Now, as you can probably tell, this has caused citizens to become unsettled (and other various forms of reaction) if they are contacted by attorneys, insurance companies, *etc.*, after being in accident. The GRC also receives phone calls from concerned custodians and citizens regarding the non-confidential nature of accident reports. In each instance, the GRC is obligated to reply that it understands that N.J.S.A. 39:4-131 and prevailing case law provides a stark conflict with the personal information exemptions present in OPRA, which has led to some confusion across the State. However, unless and until either the Legislature amends the statute and/or the courts/GRC decide otherwise, accident reports are required to be disclosed without redactions per N.J.S.A. 39:4-131.

The GRC's role in OPRA is to adjudicate complaints based on the plain reading of the OPRA, which can sometimes lead to these types of decisions. Unfortunately, if it is the case that an agency is required by law to disclose this information in its entirety, the appropriate avenue for change would likely be the Legislature. This is, of course, in the absence of any statutes, regulations, or executive orders making this information exempt in part or whole.

Additionally, if the disclosure issue comes down to a question of privacy interest as opposed to a statutory requirement to disclose the information, the following may apply:

The GRC's earliest decisions regarding privacy interest was in Bernstein v. Borough of Allendale, GRC Complaint No. 2004-195 (July 2005). There, the requestor sought access to the names and addresses of dog license owners. The Council dismissed the case on the basis that pursuant to N.J.S.A. 47:1A-1 and Executive Order 21 the records should not be disclosed because of the unsolicited contact, intrusion or potential harm that may result. You may view this decision on our website at <http://www.nj.gov/grc/decisions/2004-195.html>.

However, in an Appellate Division decision the Court held differently. In Atl. Cnty. SPCA v. City of Absecon, 2009 N.J. Super. Unpub. LEXIS 1370 (Jun 5, 2009), the Court held that the requested dog license lists should be disclosed to the requestor, the ASPCA. It is important to note that both the GRC and the Court conducted a balancing test to determine whether the records should be disclosed. Thus, the answer is extremely fact specific. It is important to note that the Court discussed the ASPCA's need for this information because of its mission to investigate alleged animal abuse. See also Renna v. Cnty. of Union, 2012 N.J. Super. Unpub. LEXIS 342 (February 17, 2012).

Additionally, in another court case, Bolkin v. Kwasniewski, 2012 N.J. Super. Unpub. LEXIS 2641, (Law Div. December 5, 2012), plaintiff sought the names and addresses of dog and cat license owners in Fair Lawn for the purpose of sending political literature regarding candidates who support animal friendly legislation. The Custodian denied access citing to privacy concerns pursuant to N.J.S.A. 47:1A-1, Governor McGreevey's Executive Order No. 26, Doe v. Poritz, and the Council's Bernstein decisions regarding similar records. Using the balancing factors from Doe, the trial Judge found that the release of just the names and addresses of the dog owners with all other information contained on the license applications redacted is appropriate. Specifically, the Judge relied on the Supreme Court's decision in Burnett v. Cnty. of Bergen, 198 N.J. 408 (2009), holding that names and addresses alone, without any other identifiers, does not sufficiently implicate privacy concerns to warrant nondisclosure under OPRA. I have attached this decision for your convenience. This decision was affirmed on appeal. Please see attached the Appellate Division's unpublished decision in Bolkin v. Kwasniewski, 2014 N.J. Super. Unpub. LEXIS 1409, (App. Div. 2014).

All the decisions are made on a case by case basis. More recently, the Council decided on two (2) complaints with various outcomes regarding names, home addresses, etc. that highlight the fact specific nature in which the GRC makes determinations on privacy interests. See Levitt v. Twp. of Monclair (Essex), GRC Complaint No. 2012-150 (August 2013)(<http://www.state.nj.us/grc/decisions/pdf/2012-150.pdf>); Bean v. Borough of Belmar (Monmouth), GRC Complaint No. 2013-39 (Interim Order dated December 20, 2013).

Please note, though, that in the following GRC decisions the Council upheld the redaction of home addresses and telephone numbers as well:

Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (July 2004). The Complainant sought access to "Copies of (1) all moving violations of Officer Michael Tuttle during career with Ho-Ho-Kus Police Department, (2) training records of Officer Tuttle; and (3) records of complaints or internal reprimands against Officer Tuttle." After conducting a balancing test, the Council found that the home addresses should be redacted from the records provided to

the Complainant. You may view this decision on our website at <http://www.nj.gov/grc/decisions/2003-110.html#findings>.

Paff v. Warren Cnty. Office of the Prosecutor, GRC Complaint No. 2007-167 (February 2008). The Complainant requested various records pertaining to State v. Philip Gentile, Indictment/Accusation No. 07-02-00060-A. After conducting a balancing test, the Council held that the redacted portions of the requested records (name and address of victim) were properly redacted due to privacy concerns pursuant to N.J.S.A. 47:1A-1. You may view this decision on our website at <http://www.nj.gov/grc/decisions/pdf/2007-167.pdf>.

Faulkner v. Rutgers Univ., GRC Complaint No. 2007-149 (May 2008). The Complainant requested names and addresses for Rutgers University football and basketball season ticket holders for 2006. After conducting a balancing test, the Council held that “the Custodian did not unlawfully deny the Complainant access to the requested season ticket holders’ lists pursuant to N.J.S.A. 47:1A-1, which states 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.” You may view this decision on our website at <http://www.nj.gov/grc/decisions/pdf/2007-149.pdf>.

Sincerely,

Frank F. Caruso

Government Records Council

Communications Specialist/Resource Manager

Tel: (609) 292-6830 | Fax: (609) 633-6337

<http://www.state.nj.us/grc/>

This correspondence contains advisory, consultative and deliberative material and is intended solely for the person(s) shown as recipient(s).

From: Clerk's Dept. [<mailto:xxxxx@xxxxxxxx.xxx>]

Sent: Wednesday, April 18, 2018 1:11 PM

To: Government Records Council <xxxxxxxxx@xxx.xx.xxx>

Subject: OPRA Question regarding tax records

April 18, 2018

Please provide guidance on the attached question.

Thank you in advance for any help you can offer.

Edith L. Merkel, RMC

Township Clerk
Township of Clark
430 Westfield Ave.
Clark, NJ 07066
(732) 388-3669 ph.
(732) 388-1241 fx.

From: [Carl Woodward](#)
To: [Danielle Holland \(x\)](#); [LewisScheindlin \(x\)](#)
Subject: OPRA Seminar April 16, 2018
Date: Thursday, April 12, 2018 12:15:55 PM
Attachments: [DOCSLIB-#651139-v1-OPRA Presentation April 2018.DOC](#)

Danielle,

Attached please find my update on OPRA cases for 2017 and the first quarter of 2018. It should be available for distribution to the attendees, either in hard copy or on-line, or both. I will not be using a Powerpoint, but will refer to various decisions summarized therein.

Please contact me with any questions. Looking forward to seeing you on Monday.

Kindest regards,

Carl R. Woodward, III
Carella, Byrne, Cecchi, Olstein,
Brody & Agnello, P.A.
5 Becker Farm Road
Roseland, New Jersey 07068
Phone: (973) 994-1700
Fax: (973) 994-1744
Email: [xxxxxxx@xxxxxxxxxx.xxx](#)

The contents of this e-mail message are from the law firm of Carella, Byrne and any attachments are intended solely for the addressee(s) named in this message. This communication is intended to be and to remain confidential and may be subject to applicable attorney/client and/or work product privileges. If you are not the intended recipient of this message, or if this message has been addressed to you in error, please immediately alert the sender by reply e-mail and then delete this message and its attachments. Do not deliver, distribute or copy this message and/or any attachments and if you are not the intended recipient, do not disclose the contents or take any action in reliance upon the information contained in this communication or any attachments.

IRS Circular 230 disclosure:

To ensure compliance with requirements imposed by the IRS, we inform you that, unless expressly stated otherwise, any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

Disclaimer

The information contained in this communication from the sender is confidential. It is intended solely for use

by the recipient and others authorized to receive it. If you are not the recipient, you are hereby notified that any disclosure, copying, distribution or taking action in relation of the contents of this information is strictly prohibited and may be unlawful.

This email has been scanned for viruses and malware, and may have been automatically archived by **Mimecast Ltd**, an innovator in Software as a Service (SaaS) for business. Providing a **safer** and **more useful** place for your human generated data. Specializing in; Security, archiving and compliance. To find out more [Click Here](#).

From: @x
To: @x; @x; @x
Subject: OPRA-OPMA Bills - Sen Weinberg Memo
Date: Thursday, June 14, 2018 9:37:25 AM
Attachments: [OPRA-OPMA Weinberg Memo June 2018.pdf](#)

All,

Sorry for the delay in sending the attached and notice that Senator Weinberg's OPRA and OPMA bills are before the Senate State Government Committee today. I have been out sick since Monday.

The attached is a memo from Senator Weinberg outlining the proposed changes she will be making to the bills. The Senator has committed to meeting over the summer again to address the outstanding issues.

Under a separate email I will forward you a copy of the proposed amendments for your review and comments.

Thanks,
Lori

From: [@x](#)
To: [@x](#); [@x](#); [@x](#)
Subject: OPRA-OPMA Weinberg Memo June 2018.pdf
Date: Monday, June 11, 2018 7:57:31 PM
Attachments: [OPRA-OPMA Weinberg Memo June 2018.pdf](#)

I haven't read the document yet...in a congested/medicated haze. But I figure I would share as soon as I received it.

Senator Weinberg is also agreeing to meet with the stakeholders over the summer.

Sent from my T-Mobile 4G LTE Device

From: @x
To: @x
Subject: Personal Email under OPRA
Date: Thursday, April 12, 2018 9:56:19 AM
Attachments: [Gettler v Wantage - OPRA Email Accounts.pdf](#)
[DAndrea v NJ Civil Service - GRC Decision.pdf](#)

Paul,

Attached to this email please find two pdf documents. The first is [William Gettler v. Twp. of Wantage](#), a decision from the GRC. This case reviews the issue of redacting personal emails from an OPRA request. The GRC analyzes disclosure using the Burnett factors and likens personal email addresses to unlisted phone numbers, thus making it proper to redact such information.

The second pdf attached is the GRC's final decision in [James D'Andrea v. NJ Civil Service Commission](#). This case upheld the Gettler ruling and reiterated that personal email addresses should be redacted from OPRA requests.

If you have any questions or if there is anything else I can assist with, please let me know.

Regards,
Frank

Frank Marshall, Esq., Staff Attorney
New Jersey State League of Municipalities
609-695-3481 extn 137
222 West State St.
Trenton, NJ 08608

This email is not confidential communication and is read by others.

Visit NJ Municipalities' digital bookshelf at njmmagazine.org.

Follow us

Like us on Facebook at [facebook.com/njleague](https://www.facebook.com/njleague)

Follow us on Twitter [@nj_league](https://twitter.com/nj_league)

LinkedIn: [linkedin.com/company/new-jersey-league-of-municipalities](https://www.linkedin.com/company/new-jersey-league-of-municipalities)

YouTube: <http://bit.ly/1P7GsVR>

The NJLM is subject to Open Public Records Act. Any email sent or received by the League may be subject to a records request.

From: [Lewis Scheindlin](#)
To: [Danielle Holland](#)
Cc: [Carl Woodward](#)
Subject: Re: Friendly Reminder for OPRA Seminar on April 16
Date: Monday, April 9, 2018 4:53:03 PM
Attachments: [image002.png](#)
[image004.png](#)
[ScheindlinLeague2018.pptx](#)

Danielle, attached is my powerpoint presentation on OPRA and Privacy, that I'll be using at the program. I don't have any handouts, although of course you can make copies of the powerpoint to hand out. Please let me know if you have any questions. See you next Monday.
Lew

On Mon, Apr 9, 2018 at 1:25 PM, Danielle Holland <[xxxxxxxx@xxxxxx.xxx](#)> wrote:

Dear Lew and Carl,

This is friendly reminder regarding the *OPRA In Depth: Privacy and Law Enforcement Issues* at the Doubletree Hotel in Tinton Falls on April 16, 2018. Our current count for this program is 100 attendees.

In terms of A/V equipment, we will have a laptop, podium, and microphone as well as a projector and screen if you wish to make a PowerPoint presentation. If you do have a handout you want me to distribute please have it to me by Thursday.

In case of emergency my cell number is 908-227-1142.

Have a wonderful rest of your week and if you have any questions please let me know.

Danielle Holland-Htut, Program Specialist

New Jersey State League of Municipalities

222 West State Street Trenton, NJ 08608

Phone: 609-695-3481 ext 118

Fax: 609-695-0151

XXXXXXXX@XXXXXX.XXX

Follow us



Facebook: facebook.com/njleague Twitter: [@nj_league](https://twitter.com/nj_league)

LinkedIn: linkedin.com/company/new-jersey-league-of-municipalities
[UCbce9oVw9LvO6vxNz_89mZw](https://linkedin.com/company/new-jersey-league-of-municipalities)

YouTube: youtube.com/channel/

*****Please be advised that the New Jersey State League of Municipalities is subject to the New Jersey Open Public Records Act. As such, any email sent or received by the League may be subject to a records request.*

From: [Kim White](#)
To: [Lori Buckelew](#)
Subject: Re: NJ Supreme Court OPRA Decision Diminishes Privacy Rights
Date: Thursday, May 24, 2018 5:56:51 PM

Thanks! This just keeps getting worse.

Get [Outlook for iOS](#)

On Thu, May 24, 2018 at 4:30 PM -0400, "Lori Buckelew" <[xux](#)>

> wrote:

FYI, recent League blog post on the Brennan NJ Supreme Court case on OPRA.

From: The Town Crier [mailto:[xux](#)]
Sent: Thursday, May 24, 2018 4:04 PM
Subject: [New post] NJ Supreme Court OPRA Decision Diminishes Privacy Rights
njlmblog posted: "On Wednesday, the NJ Supreme Court issued its decision in William J. Brennan v. Bergen County Prosecutor's Office, a case that examined the Open Public Records Act's competing interests of government transparency and individual privacy. In this case, the "

New post on The Town Crier



[NJ Supreme Court OPRA Decision Diminishes Privacy Rights](#)

by [njlmblog](#)

On Wednesday, the NJ Supreme Court issued its decision in [William J. Brennan v. Bergen County Prosecutor's Office](#), a case that examined the Open Public Records Act's competing interests of government transparency and individual privacy. In this case, the Court was asked to determine whether OPRA compels disclosure of documents containing the names and addresses of persons who successfully bid at an auction of public property?

Unfortunately, as is often the case, transparency interests prevailed to the detriment of privacy concerns. The Court found that those who participate in a public auction for public property are aware that their names, addresses and other information which they have provided will be available to the public. Therefore, there is no reasonable expectation of privacy which must be protected and the unredacted records should be disclosed.

Also, in this case, the Court created what appears to be a new rule for whenever courts

are tasked with examining the release of records and balancing transparency with privacy. Typically, when privacy considerations are presented as reason for withholding disclosure under an OPRA request, courts would use what is known as Doe factors to analyze whether privacy would trump the need for disclosure. The Doe factors examine, among other things; the type of record requested, the information contained in those records, the potential harm of disclosure, and the degree of need for access to the records.

In the case at hand, the Court determined that “courts are not required to analyze Doe factors each time a party asserts that a privacy interest exists. A party must first present a colorable claim that public access to records would invade a person’s reasonable expectation of privacy.” Based on this, it would appear that courts must now first examine the threshold questions of whether or not a reasonable expectation of privacy exists prior to examining the Doe factors. Where a colorable claim of a reasonable expectation of privacy has not been made, the courts will not need to examine the Doe factors. While on many occasions lower courts have seemingly made this threshold determination, the Court’s ruling in Brennan sets out a more bright-line requirement for courts to do so.

You should review this decision with your municipal attorney and your records custodian for more information on this ruling and the impact on your municipality.

Contact: Frank Marshall, Esq., League Staff Attorney, xxxxxxxxx@xxxxxx.xxx or 609-695-3481 x137.

[njlmblog](#) | May 24, 2018 at 8:03 pm | Tags: [OPRA](#) | Categories: [Uncategorized](#) | URL: <https://wp.me/p7xPny-lx>

From: xxxxxxx@xxxxxx.xxx
To: xxxxx@xxxxxxxx.xxx
Subject: RE: OPRA In Depth: Privacy and Law Enforcement Issues
Date: Wednesday, April 18, 2018 3:16:14 PM
Attachments: [ScheindlinLeague2018.pptx](#)
[DOCSLIB-#651139-v1-OPRA Presentation April 2018.DOC](#)

Good Afternoon Edith,

For this particular seminar I am not able to offer a refund. I can send you the information from the seminar(see attached) and I will absolutely forward your questions onto the speakers so they can answer you directly.

Danielle Holland-Htut, Program Specialist
New Jersey State League of Municipalities
222 West State Street Trenton, NJ 08608
Phone: 609-695-3481 ext 118
Fax: 609-695-0151
xxxxxxx@xxxxxx.xxx

Follow us

Facebook: facebook.com/njleague Twitter: [@nj_league](https://twitter.com/nj_league)
LinkedIn: linkedin.com/company/new-jersey-league-of-municipalities YouTube:
youtube.com/channel/UCbce9oVw9LvO6vxNz_89mZw

****Please be advised that the New Jersey State League of Municipalities is subject to the New Jersey Open Public Records Act. As such, any email sent or received by the League may be subject to a records request.

-----Original Message-----

From: Clerk's Dept. [<mailto:xxxxxx@xxxxxxxxxx.x>]
Sent: Tuesday, April 17, 2018 4:40 PM
To: Danielle Holland
Subject: FW: OPRA In Depth: Privacy and Law Enforcement Issues
Importance: High

To: D. Holland, NJLM
From: Edith Merkel, Township Clerk, Township of Clark
Re: OPRA questions
Date: April 17, 2018

The Tax Collector and I were registered for yesterday's class. Flooding and poor visibility made it too dangerous for us to make the trip. The PO is sitting on my desk, ready to be paid. Is the township obligated to pay even though we could not get there? If so, can we have a credit to attend a class at a later date?

Please ask the presenters: Carl Woodward, Esq. and Lew Scheindlin, Esq. to address the following concerns:

1. Within the Tax Office I have received Oprah requests for all delinquent balances on properties, overpayments on properties, tax sale properties and list of open Tax Liens.

I am aware, according to State Statute that we are required to provide this information.

My concerns:

1. After filing such OPRA requests as listed above, I have received numerous calls from residents:

- a. Senior Citizens that had delinquent balances for taxes were receiving calls or letters from someone claiming to be representing the tax office of Clark - and advising them that they were at risk of losing their property for this delinquency.
- b. A resident, that had an open lien on his property, came to the office very irate- saying that someone knocked on their door saying that they were going to have their house taken away for an open lien. The resident was extremely upset because his teenage daughter was home alone when this person came and really made her nervous.
- c. Residents are receiving soliciting calls offering their services - to help them obtain a refund for an overpayment on their taxes.

These are only a few of the scenarios. It concerns me that this information is being used to take advantage of our citizens. Since our responsibility as Tax Collector's is to protect and serve the tax payer, I feel we need to address this concern. There has to be a way to fulfill the requests while protecting the homeowners.

Any input would be greatly appreciated.

Thank you
Laura Caliguire
Tax Collector
Township of Clark

-----Original Message-----

From: xxx@xxx.xxxxx.xx.xx <xxx@xxx.xxxxx.xx.xx>
Sent: Thursday, March 01, 2018 2:31 PM
To: Clerk's Dept. <xxxxx@xxxxxxxxx.xxx>
Subject: OPRA In Depth: Privacy and Law Enforcement Issues

Dear Municipal Clerk:

On April 16, 2018 at the DoubleTree Hotel in Tinton Falls from 8:30a.m. to 12:30p.m. the NJ League of Municipalities will have a seminar titled "OPRA In Depth: Privacy and Law Enforcement Issues." This seminar will discuss two critical areas of OPRA: the statute's privacy provision, and OPRA's requirements governing law enforcement records. Topics to be discussed with regard to privacy issues include: the application of OPRA's privacy exemption to various government records and information contained in government records; recent case law developments concerning OPRA and privacy interests; and the procedures that public bodies should follow when in receipt of an OPRA request that presents a privacy issue. The seminar will also provide an in depth review of OPRA and law enforcement records. This includes an overview of the statute's provisions concerning investigatory and security records, and also a discussion of recent court cases on the public's access to law enforcement records, such as police reports and videos from dashcams, bodycams and surveillance cameras. In addition, there will be a discussion of other recent notable OPRA opinions issued by the courts.

Presenters:

- Carl Woodward, Esq, League Associate Counsel, Carella, Byrne, Cecchi, Olstein, Brody & Agnello, P.C.
- Lew Scheindlin, Esq, Former Assistant Attorney General for OPRA, New Jersey Division of Law, Office of Attorney General, Firm of Lewis A. Scheindlin, Esq.

Member Rate: \$70.00* / Non-Member: \$90.00 *Member rate applies to: Municipalities, State, County, and Municipal Utilities & Authorities.

CEU's - CMFO/CCFO-4.0 Off Mgmt/Anc; CTC-4.0 Gen/Sec; CPWM-4.0 Govt;RMC-4.0 Rec; QPA- 4.0 Off Admin/Gen Duties; RPPO/RPPS-4.0 M/S; CRP-3.0 Classroom;CPA-4.0PD;NJCLE-4.0;PACLE-3.5*

Registration: www.njslom.org/seminars/

More Information: 609-695-3481 ext 118 or xxxxxxxx@xxxxxx.xxx

DISTRIBUTION: Municipal Clerk, Chief Financial Officer, Tax Collector / County Freeholder Board Clerk, Chief Financial Officer / Authority Officials / Fire District Officials / Procurement Officials