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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1024-15T4

JESSE WOLOSKY,

Plaintiff-Appellant,

v.

SOMERSET COUNTY and KATHYE
QUICK, in her capacity as
RECORDS CUSTODIAN FOR
SOMERSET COUNTY,

Defendants-Respondents.

Argued February 28, 2017 – Decided March 30, 2017

Before Judges Yannotti and Fasciale.

On appeal from Superior Court of New Jersey,
Law Division, Somerset County, Docket No. L-
0956-15.

CJ Griffin argued the cause for appellant
(Pashman Stein Walder Hayden, PC, attorneys;
Ms. Griffin, of counsel and on the briefs).

Carl A. Taylor III, Deputy County Counsel,
argued the cause for respondents (William T.
Cooper, III, County Counsel, attorney; Mr.
Taylor, of counsel and on the brief).

PER CURIAM

Plaintiff filed an action in the Law Division, alleging that defendants violated the Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 to -13, by redacting certain information from records provided to plaintiff. Plaintiff appeals from the order entered by the trial court on October 9, 2015, dismissing his complaint with prejudice. We affirm.

I.

This appeal arises from the following facts. On May 18, 2015, plaintiff submitted a request pursuant to OPRA for copies of Somerset County's (County) OPRA log for January 1, 2015, to the date of the request, and of each OPRA request received by the County from persons other than plaintiff from February 15, 2015, to the date of the request.

The County replied by letter dated May 26, 2015, stating that it did not maintain an OPRA log, and a response to the remaining request would be forthcoming. On June 5, 2015, the County provided plaintiff with copies of fifty-four OPRA requests.

The County provided the names of the OPRA requestors, but deleted their home addresses, email addresses, and telephone numbers. The County asserted that it was redacting this information pursuant to the privacy/confidentiality and personal-information exemption in OPRA. The County noted that under OPRA, it has the responsibility to safeguard from public access a citizen's

personal information when disclosure of the information would violate the citizen's reasonable expectation of privacy.

On June 11, 2015, plaintiff wrote to the County and objected to the redaction of the requestors' email and home addresses. On June 18, 2015, the County responded by stating that it stood by its decision to redact the information from the records provided. The County stated that if the requestors' personal information was disclosed, it would have a "chilling effect" since citizens might be "disinclined" to file requests under OPRA for government records.

The County asserted that citizens do not waive their privacy interests in their email and home addresses when they file OPRA requests. The County also stated that plaintiff had not provided a legitimate reason why he should be entitled to this information under the common law.

On July 15, 2015, plaintiff filed a verified complaint in the Law Division, naming the County and Kathye Quick, its Records Custodian, as defendants. Plaintiff sought a declaration that defendants violated OPRA by failing to provide "complete access" to the records he requested. Plaintiff also claimed he was entitled to production of the records under the common law. He sought a judgment compelling defendants to provide access to the records

without redaction, and an award of counsel fees pursuant to N.J.S.A. 47:1A-6.

The court entered an order requiring defendants to show cause as to why a judgment should not be entered granting plaintiff the relief sought in his complaint. Defendants filed a response to the court's order and argued that plaintiff was not entitled to access to the email and home addresses of citizens who submitted OPRA requests. The court heard oral argument in the matter on September 17, 2015.

The court filed a letter opinion on September 28, 2015, finding that defendants did not violate OPRA by redacting the email and home addresses from the copies of the OPRA requests it had provided to plaintiff. The court also found that plaintiff was not entitled under the common law to disclosure of the email and home addresses.

The court accordingly entered an order dated October 9, 2015, dismissing plaintiff's complaint with prejudice. This appeal followed.

II.

We turn first to plaintiff's contention that the trial court erred by finding defendants did not violate OPRA by redacting the email and home addresses of persons who submitted OPRA requests to the County. Plaintiff argues that he has a right under OPRA to

access this information, and the court erred by concluding otherwise. We disagree.

We note initially that we exercise de novo review of the trial court's interpretation and application of OPRA. Paff v. Ocean Cty. Prosecutor's Office, 446 N.J. Super. 163, 175 (App. Div.) (citing Drinker Biddle & Reath, LLP v. N.J. Dep't of Law and Pub. Safety, 421 N.J. Super. 489, 497 (App. Div. 2011)), certif. granted, ___ N.J. ___ (2016). In doing so, we give no special deference to the trial court's interpretation of the law or its view of the legal consequences that flow from established facts. Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

OPRA provides 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. A request for records submitted by a citizen pursuant to OPRA is a "government record" under N.J.S.A. 47:1A-1.1. Scheeler v. Office of the Governor, ___ N.J. Super. ___, ___ (App. Div. 2017) (slip op. at 13).

However, OPRA provides that "a public agency has a responsibility and an obligation to safeguard from public access

a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy[.]" N.J.S.A. 47:1A-1. When a citizen's "reasonable expectation of privacy" is at issue, the government agency must consider the following factors in determining whether access should be denied:

(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.

[Burnett v. County of Bergen, 198 N.J. 408, 427 (2009) (quoting Doe v. Poritz, 142 N.J. 1, 88 (1995)).]

In Scheeler, we noted that a citizen submitting an OPRA request ordinarily does not have a reasonable expectation that his or her request will not be disclosed to others because an OPRA request is a government record. Scheeler, supra, slip op. at 19. However, in Scheeler we did not address the issue of whether a citizen's personal information in the OPRA request can be redacted. Redaction of such personal information is permissible if

consideration of the Burnett factors weighs against public access to the information.

Here, the trial court considered the Burnett factors. The court found that factors one and two weigh in favor of nondisclosure because email and home addresses are essentially private information. The court found that factors three and four also weigh in favor of nondisclosure. The court stated that citizens who submit OPRA requests "face real harm of unsolicited, and harassing emails, letters, or other contact resulting from the sale, or transfer" of this information.

The court noted that the email and home addresses do not directly relate to the "core concern" of OPRA, which is to allow citizens access to records pertaining to the transaction of government business. In addition, the court pointed out that the County's OPRA request form did not place citizens on notice that personal information in the request would be disclosed to the public.

Regarding factor five, the court found that there were no safeguards to prevent the unauthorized disclosure of an OPRA requestor's email and home address. As to factor six, the court determined that plaintiff had not shown a need for access to this personal information. With regard to factor seven, the court noted that OPRA does not grant an absolute right of access to records

or the personal information contained in such records. The court found no articulated public policy in OPRA that militates in favor of granting plaintiff access to email and home addresses of persons who submit OPRA requests.

We are convinced that the trial court appropriately considered and weighed the Burnett factors. The court correctly found that plaintiff does not have a right under OPRA to access the email and home addresses of persons who submit OPRA requests.¹

Plaintiff argues, however, that persons who submit OPRA requests do not have a reasonable expectation of privacy in their email and home addresses because the County's OPRA request form stated that information in the OPRA request "may be subject to disclosure under OPRA." We disagree. The County's form only stated that information in the OPRA request may be subject to disclosure; it did not say that the information would be disclosed.

Moreover, the form stated that the information "may be subject to disclosure under OPRA." As we have explained, the Court in Burnett held that OPRA allows government agencies to refuse to disclose personal information in a governmental record if citizens have a reasonable expectation of privacy regarding such

¹ We note that the County did not redact the email addresses and street addresses of businesses who submitted OPRA requests. We express no view as to whether redaction of such information is permissible under OPRA.

information. Persons who submitted an OPRA request on the County's form could have reasonably assumed that personal information in the request would not be "subject to disclosure under OPRA."

In addition, the County's OPRA request form did not inform citizens that they could submit their OPRA requests anonymously. See N.J.S.A. 47:1A-5(f) and (i). Thus, the trial court correctly determined that citizens who submitted OPRA requests to the County did not waive their right to nondisclosure of personal information in the requests, such as email and home addresses.

Plaintiff further argues that the trial court erred by failing to give sufficient weight to his need for access to the email and home addresses of OPRA requestors. He asserts that he is a government activist who routinely files OPRA requests. He states that he is interested in identifying the government records other citizens have requested, and contacting those individuals "if he so desires" to determine the records the government agency has produced.

We find no merit in this argument. Here, the County provided plaintiff with redacted copies of the OPRA requests he sought. Therefore, plaintiff was able to ascertain the records that other citizens had requested. Plaintiff's interest in obtaining the email and home addresses of other OPRA requestors is outweighed

by the interest those persons have in not being contacted by plaintiff or others to whom he might disclose the information.

Plaintiff also argues that in OPRA, the Legislature has not carved out a general exemption for disclosure of email and home addresses in government records. Plaintiff notes that in N.J.S.A. 47:1A-1.1, the Legislature specifically precluded disclosure of email and home addresses in records of the Division of Fish and Wildlife pertaining to licenses to hunt with firearms.

However, under Burnett, governmental agencies may deny public access to any personal information in a government record if disclosure of the information would violate a citizen's reasonable expectation of privacy. Burnett, supra, 198 N.J. at 427. Thus, the specific exemption in OPRA for email and home addresses in the records pertaining to hunting licenses does not preclude the redaction of personal information in any government record when denial of access to that information is permitted under the Burnett analysis.

We therefore conclude that the trial court correctly determined that defendants did not violate OPRA by redacting email and home addresses from the OPRA request documents provided to plaintiff.

III.

Plaintiff also argues that he has a right under the common law to disclosure of the email and home addresses in the OPRA requests. Again, we disagree.

A common law right of access to public records exists parallel to and unrestricted by OPRA. Mason v. City of Hoboken, 196 N.J. 51, 67 (2008). Under the common law, a public record is "one that is made by a public official in the exercise of his or her public function, either because the record was required or directed by law to be made or kept, or because it was filed in public office." Keddie v. Rutgers, 148 N.J. 36, 49 (1997) (citing Higg-A-Rella, Inc. v. County of Essex, 141 N.J. 35, 46 (1995)).

However, the common law right of access to public records is not absolute. See Keddie, supra, 148 N.J. at 50. To obtain access to public records under the common law, three requirements must be met. Ibid. First, the records sought "must be common-law public documents." Ibid. Second, "the person seeking access must 'establish an interest in the subject matter of the material.'" Ibid. (quoting S. Jersey Publ'g Co. v. N.J. Expressway Auth., 124 N.J. 478, 487 (1991)). Third, a "citizen's right to access 'must be balanced against the State's interest in preventing disclosure.'" Ibid. (quoting Higg-A-Rella, supra, 141 N.J. at 46).


Here, the trial court correctly found that plaintiff is not entitled to disclosure of the email and home addresses in the OPRA requests. The court noted that plaintiff does not have a strong interest in obtaining this personal information. The court also noted that plaintiff is not a citizen of the County, and he had not articulated an interest in disclosure of the email and home addresses of other OPRA requestors beyond his interest as a concerned citizen and taxpayer.

The court further found that disclosure of the email and home addresses would be an invasion of the privacy of the citizens who submitted OPRA requests to the County. The court determined that "a balancing of the interests weighs in favor of keeping the requested [information] private."

We are convinced that the trial court applied the correct legal standard, and the record supports its determination that plaintiff does not have a right under the common law to access the email and home addresses of persons who submitted OPRA requests to the County.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION