

**FILED**  
**JULY 15, 2022**  
**HON. MICHAEL A. TOTO, A.J.S.C.**

BY THE COURT :

<p>CHARLIE KRATOVIL,                   Plaintiff,                   v.                   BOROUGH OF CARTERET and                  CARMELA POGORZELSKI in her official                  capacity as Municipal Clerk and Records                  Custodian of the Borough of Carteret,                   Defendants.</p>	<p><b>SUPERIOR COURT OF NEW JERSEY                  LAW DIVISION: MIDDLESEX COUNTY</b>   <b>CIVIL ACTION</b>   <b>ORDER</b>   <b>DOCKET NO. MID-L-1428-22</b></p>
<p>MOHAMED RADWAN,                   Plaintiff,                   v.                   BOROUGH OF CARTERET and                  CARMELA POGORZELSKI in her official                  capacity as Municipal Clerk and Records                  Custodian of the Borough of Carteret,                   Defendants.</p>	<p><b>DOCKET NO. MID-L-1429-22</b></p>
<p>SCOTT MADLINGER,                   Plaintiff,                   v.                   BOROUGH OF CARTERET and                  CARMELA POGORZELSKI in her official                  capacity as Municipal Clerk and Records                  Custodian of the Borough of Carteret,                   Defendants.</p>	<p><b>DOCKET NO. MID-L-1430-22</b></p>

<p>STEVEN WRONKO,</p> <p>Plaintiff,</p> <p>v.</p> <p>BOROUGH OF CARTERET and CARMELA POGORZELSKI in her official capacity as Municipal Clerk and Records Custodian of the Borough of Carteret,</p> <p>Defendants.</p>	<p><b>DOCKET NO. MID-L-1431-22</b></p>
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**THIS MATTER** having been brought before the Court pursuant to R. 4:67-1 and R. 4:67-2(a) by Cohn Lifland Pearlman Herrmann & Knopf, LLP (Walter M. Luers, Esq., appearing), counsel for Plaintiff, by Verified Complaint and Order to Show Cause for an Order requiring Defendants Borough of Carteret and Carmela Pogorzelski in her official capacity as Municipal Clerk and Records Custodian of the Borough of Carteret to provide Plaintiff with copies of certain public records, and Robert J. Bergen, Esq. appearing for Defendants, and the Court having considered the papers submitted by the parties, and having heard oral argument on June 24, 2022; and for good cause shown,

**IT IS** on this 15<sup>th</sup> day of July, 2022

A. **ORDERED** that within 20 days after service of this Order upon them Defendants shall provide to Plaintiff copies of the following records: (1) copies of all video recordings from body-worn cameras and dash-cam cameras for all officers responding to the motor vehicle accident involving Mayor Daniel J. Reiman on December 27, 2021 through December 28, 2021 with faces of all bystanders unredacted, including the individual who was speaking to Mayor Daniel J. Reiman for several minutes, but not including the owner of the vehicles struck by Mayor Daniel J. Reiman's vehicle, and all license plates unredacted; (2) 911 call recording, dispatch recordings and radio recordings;

B. **ORDERED** that all audio recordings not include any redaction of recitation of license plate numbers or the name of the individual who made a statement to Mr. Reiman, marked as Sgt. Justin Terebetski Body Worn Camera #49, 23:30-23:34.

C. **ORDERED** that Plaintiffs' requests for unredacted recordings of statements to and from Emergency Medical Services personnel and footage of the Mobile Data Unit are **DENIED**.

D. **ORDERED** that Plaintiff is the prevailing party in this matter with respect to those records that the Court held were improperly withheld and that counsel for Plaintiff shall serve and file their motion and fee certification for reasonable attorneys' fees and costs within 20 days after service of this order upon Plaintiff; and it is further

E. **ORDERED** that Plaintiff shall serve a copy of this Order upon Defendants within seven days of service of this order upon Plaintiff.



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HON. MICHAEL A. TOTO, A.J.S.C.

This order was:

OPPOSED   X    
UNOPPOSED

## MEMORANDUM

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### I. BACKGROUND

Plaintiffs Charlie Kratovil, Mohamed Radwan, Scott Madlinger, and Steven Wronko (collectively “Plaintiffs”) have filed these Verified Complaints and Orders to Show Cause against Defendants, the Borough of Carteret (“the Borough”) and Carmela Pogorzelski, Municipal Clerk and Records Custodian of the Borough of Carteret (collectively “Defendants”) to compel production of records under the Open Public Records Act (OPRA) and the common law right of access. The Plaintiffs seek records of a motor vehicle accident involving the mayor of the Borough, Daniel J. Reiman (“Mr. Reiman”). Each Plaintiff in this action made slightly different OPRA requests to the Borough of Carteret (“the Borough”) for information from the police department. The requests included dash-cam recordings, body-worn camera recordings, CAD reports, accident reports, other police reports, radio and dispatch recordings, summonses, and 911 call recordings. Defendants denied access to the summonses, CAD reports, and radio and dispatch recordings. Defendants later provided the summonses, CAD reports, and accident reports. Defendants provided access to video recordings of the incident, but redacted the recordings to mute a small portion of the audio and blurred the faces of one of the involved individuals and all of the bystanders on the video. Plaintiffs then filed these summary actions seeking disclosure of the unredacted video and audio records.

The accident in question happened on December 28, 2021. The Borough states that Mr. Reiman was driving home after dark in the vicinity of his neighborhood when a dog ran in front of his car and he swerved to avoid hitting the dog. Mr. Reiman’s car then hit a parked vehicle on the side of the road, causing the parked vehicle to push forward and hit another parked vehicle. Mr. Reiman then turned his steering wheel in the opposite direction, causing the car to flip onto

the driver's side. Mr. Reiman then climbed out of the car through the sunroof. Police and paramedics responded to the scene. The owners of the cars struck were also at the scene. Before supplying the video recording of the responding officer to the requestors, Defendants blurred the face of the vehicle owner who appeared on camera, redacted a brief portion of audio in which an EMT spoke to Mr. Reiman, blurred visuals of a police Mobile Data Terminal, and blurred all license plate numbers and faces of bystanders in view.

In their responses to Plaintiffs' OPRA requests, Defendants cited several reasons for redacting information from the records. Defendants stated that the redactions were necessary under the Health Insurance Probability and Accountability Act (HIPAA), state law requiring nondisclosure of information relating to security, emergency information, or procedures for buildings and facilities, and investigatory records exceptions under state statute and Executive Order.

## **II. APPLICABLE LAW**

### ***A. Open Public Records Act***

OPRA applies to any organization that is a "public agency," which the statute defines as "any ... board, bureau, office, commission or other instrumentality within or created by a political subdivision of the State ... and any independent authority, commission, instrumentality or agency created by a political subdivision." N.J.S.A. 47:1A-1.1. OPRA generally requires that access be provided to "government records." N.J.S.A. 47:1A-1. "Government records" are broadly construed to include:

[A]ny paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been made, maintained or kept on file in the course of his or its official business by any officer, commission, agency or authority of the State or of any political

subdivision thereof, including subordinate boards thereof, or that has been received in the course of his or its official business[.]

[N.J.S.A. 47:1A-1.1.]

“Information stored or maintained electronically” has been construed to encompass the information stored on a municipality’s server. Id.; See also Paff v. Galloway Tp., 229 N.J. 340, 353 (2017). The custodian of a government record is required to grant access to a government record or deny a request for access within seven days, “provided that the record is currently available and not in storage or archived.” N.J.S.A. 47:1A-5(i)(1). Where a custodian fails to do so, that failure to respond is deemed a denial of the request. Further, a public entity may deny a request if the request falls into one of the specifically enumerated categories of government records excluded by the statute. N.J.S.A. 47:1A-1.1. OPRA places the burden on the public entity to prove the applicability of an exception that would permit the denial of access to a government record. N.J.S.A. 47:1A-6. To satisfy this burden, the records custodian must state the “specific basis” for withholding the government record. Gannett N.J. Partners, LP v. County of Middlesex, 379 N.J. Super. 205, 215 (App. Div. 2005) (citing N.J.S.A. 47:1A-5(g)). “Absent such a showing, a citizen's right of access is unfettered.” Courier News v. Hunterdon County Prosecutor’s Office, 358 N.J. Super. 373, 383 (App. Div. 2003).

*i. Attorney’s Fees*

When a requester is denied access to a government record and files an action in Superior Court to challenge the denial under N.J.S.A. 47:1A-6, and that requester subsequently “prevails in any proceeding[.] [he] shall be entitled to a reasonable attorney’s fee.” N.J.S.A. 47:1A-6. New Jersey follows the catalyst theory with regard to OPRA actions. Under this theory, “requesters are entitled to attorney's fees under OPRA, absent a judgment or an enforceable

consent decree, when they can demonstrate: (1) ‘a factual causal nexus between plaintiff’s litigation and the relief ultimately achieved’; and (2) ‘that the relief ultimately secured by plaintiffs had a basis in law.’” Mason v. City of Hoboken, 196 N.J. 51, 76 (2008) (quoting Singer v. State, 95 N.J. 487, 494 (1984)).

### ***B. Common Law Right of Access***

A plaintiff may seek access to records under the common law right of access. The common law right of access covers a broader class of records than that defined by OPRA. See Paff v. Ocean County Prosecutor’s Office, 235 N.J. 1, 28 (2018). A public record under the common law “must be a written memorial ... made by a public officer, and ... the officer [must] be authorized to make it.” Id. at 28-29 (quoting Mason v. City of Hoboken, 196 N.J. 51, 67 (2008)). The common law, however, requires the plaintiff to make a greater showing than under OPRA. The plaintiff “must establish an interest in the subject matter of the material” and “the citizen’s right to access must be balanced against the State’s interest in preventing disclosure.” Id. at 29 (quoting Lyndhurst, 229 N.J. at 578-79). A plaintiff need not assert a personal interest in the material sought. See Daily Journal v. Police Dep’t of City of Vineland, 351 N.J. Super. 110, 122 (App. Div. 2002). Rather, a demand should be “premised upon a purpose which tends to advance or further a wholesome public interest or a legitimate private interest.” Loigman v. Kimmelman, 102 N.J. 98, 113 (1986).

The Supreme Court has held that the catalyst theory applies to actions under the common law right of access. See Mason, 196 N.J. at 79.

## **III. RELIEF SOUGHT AND ARGUMENTS**

Plaintiffs ask the Court to compel Defendants to release all records in unredacted form under OPRA and the common law right of access. They argue that no exception to OPRA or the common law right of access applies to permit Defendants' redactions of the records here.

Plaintiffs first argue that the records are not criminal investigatory records because the December 28, 2021 incident involving Mr. Reiman was not related to a criminal investigation. Plaintiffs note that the Criminal Code defines a "crime" as any offense "for which a sentence of imprisonment in excess of 6 months is authorized." N.J.S.A. 2C:1-4(a). Since the December 28 incident was a motor vehicle accident, Plaintiffs argue that the police response to the accident was not a criminal investigation.

Plaintiffs then argue that Defendants have failed to show that disclosure would be "inimical" to the public interest under the ongoing investigation exception. Plaintiffs argue that Defendants failed to state a specific reason for redacting the information, citing to the Supreme Court's guidance that records custodians must be specific in their denials.

Plaintiffs further argue that the individuals involved in the December 28 incident have no reasonable expectation of privacy because the incident does not relate to a criminal investigation and no one is involved as a confidential informant or witness. Plaintiffs note that the incident took place on a public street and that no minors were involved.

Plaintiffs argue that license plates should not have been blurred in the provided videos because there is no reasonable expectation of privacy in license plates as they are publicly displayed on cars. Plaintiffs note that the Executive Order cited by defendants applies broadly to "plates," which refers to plates placed between fingerprint cards and photographs, not license plates.

Plaintiffs further argue that HIPAA does not apply here because only police and EMTs responded to the accident. Since police and EMTs are not health care providers or a public health authority, but rather are employees of the Borough, Plaintiffs argue that communications between the authorities and other individuals in the audio and video recordings are not protected by HIPAA.

Lastly, Plaintiffs argue that Defendants should have provided the summonses because CDR-1s and CDR-2s, including traffic tickets, are public records even if they must be retrieved from the judiciary.

Defendants, in defending their redaction of the video and audio recordings, contend that the blurring of the face of the vehicle owner was justified under the privacy exception. Defendants stress that this individual was only at the scene because his car was struck, not by his own volition. Defendants further argue that while the individual's face by itself might not raise exceptional privacy concerns, the video if unredacted would allow any viewer to associate his face with his car, his father's car, and his home, all of which are shown in the video. Defendants argue that this information is highly personal and should not be subject to disclosure in this case. Defendants note that under New Jersey Attorney General policy, individuals can request to have a body-worn camera deactivated in an encounter with police, further suggesting that this recording has a special privacy interest.

Defendants disagree with Plaintiffs' argument that HIPAA does not require redaction here. Defendants argue that the Borough Emergency Medical Services is a medical provider and the EMTs were at the scene to provide medical care to Mr. Reiman, who was involved in a serious motor vehicle accident. Defendants also note that the Borough bills for its provision of emergency medical services, further suggesting it is an entity covered by HIPAA.

Defendants argue that the footage of the police Mobile Data Terminal (“MDT”) should remain redacted because the information displayed on the terminal could be highly personal. Defendants note that the mandatory service agreement of the MDT and State Police regulatory policy require information from an MDT to remain confidential. Defendants argue that although no information could be seen on the MDT in this video, even if unblurred, it is possible that video enhancement technology could allow the information to be displayed more clearly if the video is released in an unredacted state.

Defendants argue that redaction of the license plates in the video is proper because there is a heightened privacy expectation here. Since the cars are shown parked in front of houses, Defendants argue that showing the license plates in the video would allow a viewer to access personal information about the vehicle owners.

Defendants argue that the faces of other individuals at the scene, such as towing employees and bystanders, was properly redacted because these individuals have a reasonable expectation of privacy. Defendants argue that the tow employees were only at the scene because their employment required them to tow the car, while bystanders were only there by chance. Defendants note that in the video, one bystander tries to move away from the camera when he realizes the police officer is wearing a body-worn camera.

In their replies, Plaintiffs raise several disputes with Defendants’ factual claims. Most importantly, Plaintiffs contend that the audio and video redactions in the recordings are much more substantial than Defendants claim. Plaintiffs point out that the video redacts the face of one individual who talked to Mr. Reiman for nearly 11 minutes. Plaintiffs argue that this person does not have a reasonable expectation of privacy because he voluntarily stayed at the scene for an extended period of time in view of police officers. Plaintiffs further reiterate that none of the

other individuals in the video have a reasonable expectation of privacy because they chose to be on a public street. Plaintiffs argue that anyone could record a video on a public street at any time and there would be no expectation that individuals' faces would need to be blurred or that audio would need to be redacted.

As to Defendants' HIPAA arguments, Plaintiffs argue that even if the Borough is covered by HIPAA, the interactions between EMTs and Mr. Reiman were in public and observable by bystanders. Plaintiffs also argue that because Mr. Reiman was not actually injured or treated by medical personnel, interactions between him and EMTs were not medical records subject to HIPAA. Plaintiffs also continue to argue that the Borough is not a health care provider.

Plaintiffs maintain that the license plate numbers should not have been redacted because the cars were on a public street viewable by anyone. Counsel for Plaintiffs concedes that the police Mobile Data Terminal was properly redacted in the video recordings. Defendants' counsel does not oppose the release of 9/11 call, police radio, and dispatch recordings.

At oral argument, counsel for the Borough agreed to provide a Vaughn Index of all audio redactions in the recordings. Counsel supplied such on July 1, 2022. See Letter from Robert J. Bergen, Jul. 1, 2022. The Vaughn Index indicates that several portions of the audio were redacted because a police officer was stating license plate numbers aloud. Another redaction was made to seven seconds of audio in which Sgt. Justin Terebetski speaks to Officer Matthew Failace about another officer's scheduled duty tour. Six seconds of audio were redacted in which Officer Failace asked a first responder if Mr. Reiman was seeking first aid and the first responder replied. Fifteen seconds of audio were redacted of Officer Failace and an EMT discussed Mr. Reiman's condition. Plaintiffs contend that this audio should not have been redacted because police are not covered by HIPAA. Four seconds of audio from Mr. Reiman were redacted in

which he repeated a statement made by his personal accountant and neighbor, whom Mr. Reiman identifies by name in the redacted audio. The Borough defends this redaction on the grounds that the statement was a joke that Mr. Reiman should have hit the dog rather than risk himself. The Borough argues that disclosure of the accountant's name may subject him to harassment due to the nature of the joke. Plaintiffs argue that there is nothing in the record to suggest the accountant would be subject to harassment.

#### **IV. DISCUSSION**

##### **A. Criminal Investigatory Records Exception**

Defendants cited the Criminal Investigatory Records exception to OPRA. Under this exception, a criminal investigatory record is one that is “not required by law to be made, maintained or kept on file that is held by a law enforcement agency which pertains to any criminal investigation or related civil enforcement.” N.J.S.A. 47:1A-1.1. Such records are exempt from OPRA disclosure.

Here, there was no criminal investigation. No authority exists to expand the exception to cover minor traffic offenses. Mr. Reiman was not charged with a crime. See N.J.S.A. 2C:1-4(a). Thus, the exception cannot apply.

##### **B. Reasonable Expectation of Privacy**

Records custodians should not disclose public records if doing so “would violate the citizen's reasonable expectation of privacy.” N.J.S.A. 47:1A-1. A records custodian invoking the privacy exception must present a “colorable claim that public access to the records requested would invade a person's objectively reasonable expectation of privacy.” Brennan v. Bergen County Prosecutor's Office, 223 N.J. 330, 342 (2018). If the custodian successfully presents a

colorable claim, the court must analyze the privacy interest according to the factors established in Doe v. Poritz, 142 N.J. 1 (1995). Doe requires the court to consider:

(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.

[Id. at 88.]

Plaintiffs primarily contest the redactions of the faces of bystanders and license plates. They do not specifically dispute Defendants' contention that redaction of the face of the vehicle owner was proper. Plaintiffs do, however, maintain that none of the individuals in the video should have had their faces blurred.

The Court finds that Defendants have made a colorable claim of privacy as to the vehicle owner. The owner stepped outside of his home to respond to an accident in which his car was damaged. The video shows his home and vehicle. He was not a mere bystander. He is a private citizen who was directly involved in this incident as the owner of one of the damaged vehicles. In addition, the incident was publicized and viewed online by thousands of people.<sup>1</sup> As such, he has an objectively reasonable expectation of privacy.

Assuming the Court finds Defendants have stated a colorable claim of a privacy interest, the Court must then analyze Defendants' redactions under the Doe factors. The record here contains video and audio of an individual's body and face, voice, car, and residence. It also shows him in an interaction with police. Furthermore, Plaintiffs would have the individual's license plate number unredacted. An unredacted version of the video would allow a viewer to

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<sup>1</sup> The YouTube upload of the police response to the incident has over 7,000 views. See "Was Mayor Dan Reiman Drunk Driving? Carteret Police Respond After Mayor Crashes into Parked Car" <https://www.youtube.com/watch?v=5bURIX7f1wY>, YouTube, Feb. 5, 2022.

associate the individual's face with his home address and license plate number. The New Jersey Supreme Court has extensively discussed the privacy interest in one's home address. See Doe, 142 N.J. at 82-84. To be sure, here it does not appear that the individual's home address is explicitly revealed in the video/audio. However, the intersection on which the accident occurred is publicly available through a simple Internet search. The individual's home is clearly identifiable in the video. The record thus does not actually contain the individual's home address, but anyone could use the video to easily determine the address. The individual's address is also obtainable in the publicly available traffic summons. Further, Plaintiffs have not demonstrated any need for the individual's face and license plate to be unredacted. Plaintiffs do not anywhere ask in their brief for this specific individual's face or license plate to be revealed. Thus, as to the redaction of footage of the vehicle owner's face and license plate, Defendants did not violate OPRA.

Defendants have not, however, satisfied their burden of proving a colorable claim of privacy as to the bystanders, tow truck employees, and other individuals in the video. Nor have they proven a colorable claim as to the other license plates. The bystanders appear to have made themselves present at the scene voluntarily. They reasonably should have expected that the police were recording the incident and that, if they were within view of the police, they were likely to appear on camera. The individual who was speaking with Mr. Reiman for approximately 11 minutes also does not have a colorable privacy interest for the same reasons. This individual voluntarily arrived on the scene and should have known that the police were using body-worn cameras. As for the license plates, the cars were parked on a public street and any passerby or passing car could have been recording them at any time and uploaded the video

on the Internet. For the same reason, all audio records of police reading license plate numbers aloud should not have been redacted.

Defendants also redacted four seconds of audio in which Mr. Reiman said the name of his neighbor and personal accountant when repeating a joke made by the accountant. The joke was that Mr. Reiman should have hit the dog that he swerved to avoid rather than risk himself. Defendants state that the accountant's name was redacted because disclosure of his name could subject him to harassment given the nature of the joke. Defendants do not cite to any provision of OPRA or any case law to support this redaction. As part of the body-worn camera recording, it is a public record under OPRA. The Court finds that there is no reasonable expectation of privacy in the individual's statement. When he made the statement to Mr. Reiman, he should have known that Mr. Reiman was with the police, and that anything Mr. Reiman said would be recorded. Thus, the name of the individual should not have been redacted under OPRA.

### **C. HIPAA**

At issue are the redactions of three very brief interactions with EMTs, Mr. Reiman, and the police. HIPAA regulations define a medical record as "any information . . . created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse [that] relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual." 45 C.F.R. § 160.103. If HIPAA does apply to the Borough EMTs, the regulatory language is broad enough to mean even the short interaction here is likely confidential. Plaintiffs assert that the Borough itself is not a health care provider, public health authority, or other covered entity under HIPAA. Defendants, however, note that the Borough bills for EMS, and

cite to a two-page handout titled “HIPAA BASICS FOR EMS PRACTITIONERS” circulated by NEMSIS and a law firm named Page Wolfberg & Wirth, which states that it is “The National EMS Industry Law Firm.” See Certification of Robert J Bergen, Exhibit A. The handout says “NOT FORMAL LEGAL ADVICE” at the bottom. The handout states, “If you work or volunteer for an agency that provides healthcare – including ambulance services and EMS agencies – and that agency bills for healthcare services, you are part of a HIPAA ‘covered entity.’” Ibid. Plaintiffs contend that this document has no evidentiary value.

From an Internet search, it appears that the handout is linked on [www.ems.gov](http://www.ems.gov). It also appears that Page Wolfberg & Wirth is a law firm that specializes in EMS law. NEMSIS (National Emergency Medical Services Information System) is an organization that provides data storage for EMS agencies throughout the United States. However, it is not a legal document of any kind. It is not an agency guideline, much less a regulation. Nevertheless, the Court finds sufficient evidence to deem the brief interaction between the EMT and Mr. Reiman protected under HIPAA. The Borough bills for its emergency medical services and it is reasonable to expect that conversations between a medical professional and an individual potentially injured in a serious car accident would be protected by HIPAA.

Defendants also indicated in the Vaughn index that two other brief portions of audio were redacted in which police officers were communicating with EMTs. Plaintiffs contend that these are not protected under HIPAA because police are not covered by HIPAA. Defendants indicate that six seconds of audio were redacted in which “PO Failace inquir[ed] if Mr. Reiman is seeking first aid/ First Responder respond[ed] and advise[d] EMS is right there.” HIPAA broadly applies to information “created or received” by a HIPAA-covered professional or entity. This communication was received by an EMT and it related to Mr. Reiman’s present condition

because the officer was asking if Mr. Reiman was seeking first aid. It is not relevant whether the police officer is covered by HIPAA. The same applies to the fifteen-second portion of audio in which “PO Failace and EMT discuss[ed] Mr. Reiman’s reported condition for purposes of EMS reporting.” An EMT either created or received this information and it related to Mr. Reiman’s condition. Thus, all three portions of audio were properly redacted.

#### **D. Executive Orders**

Defendants raised various Executive Orders in their request denials, but do not discuss their applicability in their Opposition to Plaintiffs’ complaints. Defendants in their initial denials did not explain any facts that supported denying the request under these orders. OPRA denials should be specific and the custodian has the burden of proving the request should have been denied. The Court finds that the Executive Orders cited do not apply.

#### **E. Other Redactions**

Defendants redacted seven seconds of audio in which Sgt. Terebetski spoke to Officer Failace about another officer’s scheduled duty tour. Plaintiffs do not specifically contend that this audio should not have been redacted. This audio may fall under the ongoing investigation exception to OPRA. See N.J.S.A. 47:1A-3(a). Given that Plaintiffs do not specifically challenge this redaction, and the possible application of an exemption, the Court finds that Defendants did not violate OPRA in redacting these seven seconds of audio.

#### **F. Common Law Right of Access**

Under the common law, a requestor must show an even greater need for the information than under OPRA. Plaintiffs have not shown why they need to know the exact identity of the individual whose vehicle was damaged. Counsel notes that Plaintiff Kratovil wrote to

Defendants on February 4, 2022 that there “is no doubt that this incident is a newsworthy event as the Mayor suffered injuries and was charged with a motor vehicle offense.” Certification of Walter Luers, Exhibit A, page 6. The mere fact that Mr. Kratovil is a journalist does not allow him to automatically overcome his burden of showing a need for the information. There has been no showing that Plaintiffs need the video unredacted with respect to the vehicle owner. Thus, the Court denies this request under both OPRA and the common law.

#### **G. Attorney’s Fees**

Plaintiffs are granted leave to petition for partial attorney’s fees for the parts of the complaints on which they prevailed.

#### **V. CONCLUSION**

Plaintiffs’ applications are **GRANTED IN PART** and **DENIED IN PART**. Pursuant to OPRA, Plaintiffs may file motions for reasonable attorney’s fees for those parts of the applications on which they prevailed.