SYLLABUS

This syllabus is not part of the Court's opinion. It has been prepared by the Office of the Clerk for the convenience of the reader. It has been neither reviewed nor approved by the Court and may not summarize all portions of the opinion.

Association for Governmental Responsibility, Ethics and Transparency v. Borough of Mantoloking (A-71-24) (089508)

Argued January 5, 2026 -- Decided October 29, 2026

JUSTICE FASCIALE, writing for the Court.

In this appeal, the Court considers whether, under the unique circumstances of this case, the identity of the sender of an email is subject to disclosure under the New Jersey Open Public Records Act (OPRA) or the common law right of access.

In a municipal court case arising out of a civilian complaint filed by a former State Trooper charging Donald F. Burke, Sr., with traffic violations, Burke Sr. filed a pretrial motion to compel production of the Trooper's criminal record and disciplinary history. The municipal court judge denied that motion, and Burke Sr. appealed. Elizabeth J. Leahey was appointed to prosecute the charges for the Borough of Mantoloking due to a conflict of interest on the part of the municipal prosecutor, and she represented the Borough on appeal.

Prior to oral argument, in response to a request for legal advice about the admissibility of expunged records, Leahey received an email in her private email account that quotes two statutes and indicates that revealing information related to expunged charges could be a disorderly persons offense and an ethics violation. During oral argument on the motion, Leahey informed the judge that the former Trooper had stated his records were expunged and thus not admissible at trial. Leahey also relied on the email to address the potential legal consequences of revealing expunged records. Leahey shared printed copies of the email with the judge and defense counsel. The sender's name and email address had been redacted. The Special Civil Part judge upheld the denial of the motion to compel production. The Appellate Division granted leave to appeal and reversed, finding that Burke Sr. had demonstrated good cause and a compelling need to inspect the expunged records. The State dismissed the municipal court charges against him.

While the municipal court case was pending, the Association for Governmental Responsibility, Ethics, and Transparency (AGREAT), represented by Burke Sr., served a request seeking the unredacted email between Leahey and her colleague. The Borough denied the request, and the Law Division upheld the denial

on appeal, finding that the email was not a government record under OPRA because it was a private communication maintained on a private email server.

The Appellate Division affirmed in a divided opinion. 478 N.J. Super. 470 (App. Div. 2024). The majority concluded that the email is not a government record under OPRA or a public record under the common law. Id. at 492-93. In dicta, the majority added that the sender's identity was protected by the work product doctrine and that a balancing of the factors under Doe v. Poritz, 142 N.J. 1, 88 (1995), and Loigman v. Kimmelman, 102 N.J. 98, 113 (1986), did not warrant disclosure of the disputed information. Id. at 492-96. The dissent balanced the Doe factors and determined that "OPRA compel[led] disclosure of the sender's name and email address." Id. at 504 (Smith, J.A.D., dissenting).

AGREAT appealed as of right based on the dissent, and the Court granted its petition for certification to challenge the majority's Loigman determination of its common law claim. 260 N.J. 597 (2025). The Court directed the trial judge to conduct an in camera inspection of the redacted part of the email and to provide, under seal, additional information about the person who sent the email. The Court learned that the sender was an attorney not connected to the municipal court case and was someone Leahey had contacted confidentially for litigation assistance on complex municipal court matters many times over the course of her career.

HELD: Under the facts of this case, the information sought is a government record subject to disclosure under OPRA, and it is not shielded by the work product doctrine. It is the sender's reasonable expectation of privacy, which outweighs any interest in disclosure here, that protects the sender's identity.

1. Here, Leahey was an "officer of the State" while acting as the conflict prosecutor for the Borough, and she received and maintained the email at issue in her official business. See N.J.S.A. 47:1A-1.1. "Emails, whether created on a government official's government or personal account, can certainly fall within OPRA's definition of a government record." Rosetti v. Ramapo-Indian Hills Regional High School Bd. of Educ., 264 N.J. 166, 180 (2026). Accordingly, notwithstanding the fact that Leahey received the email on her private account, the email is a government record subject to disclosure under OPRA. The Court therefore considers (1) whether the sender has a reasonable expectation of privacy in their identity and, if so, (2) whether that privacy interest outweighs the interest in disclosure. (pp. 14-17)

2. As to the first step, the sender has a sufficient privacy interest here: emailing the confidential legal advice here -- to a professional colleague -- does not indicate any expectation that the information would be shared broadly; Leahey's redaction confirms that Leahey did not believe the contact information would be revealed publicly; and the sender had in the past indicated an intent to maintain the

confidentiality of any communications about advice sought. As to the second step -- the Doe balancing test, see 142 N.J. at 88, the first two factors -- "the type of record requested" and "the information it . . . contain[s]" -- do not weigh in either direction. The third through sixth factors -- which focus on the harm disclosure might cause, "the adequacy of safeguards to prevent unauthorized disclosure," and "the degree of need for access" -- favor non-disclosure given the potential chilling effect upon sharing advice among attorneys, a practice that is in the public's interest; the absence of any way to prevent the information from being disclosed in a harmful manner if released; and the fact that the email sender's identity is inconsequential on the new record, particularly because the expungement issue addressed in the email is no longer at issue. And, as to factor seven, there is no specific "express statutory mandate, articulated public policy, or other recognized public interest militating toward access" in this case. The balance of the Doe factors thus falls against disclosure under OPRA. (pp. 18-22)

3. Turning to the common law right of access, both AGREAT's "private need" and the public's interest in the information sought is minimal. And as for the third prong of the common-law test -- in which courts balance the requestor's interest in disclosure against the government's interest in confidentiality -- the balance of the Loigman factors weighs against disclosure under the common law just like the balance of Doe factors under OPRA. (pp. 22-27)

4. The inquiry for the work product doctrine, like the balancing inquiries under OPRA and the common law, must focus on the precise information sought: the sender's identity. On this expanded record, the sender's "identity" is not work product entitled to standalone protection under the work product doctrine. (pp. 27-28)

AFFIRMED AS MODIFIED.

JUSTICE NORIEGA, dissenting, agrees that the email is a government record and that the sender's identity and email address is not protected work-product. In Justice Noriega's view, however, respondents did not establish a reasonable expectation of privacy in the sender's name and email address after Leahey chose to reveal and use the email in open court. Justice Noriega explains that once the government voluntarily discloses a government record in that manner, it cannot continue to maintain that the record's source-identifying information is protected by a reasonable expectation of privacy absent some separate basis for confidentiality, which is not present here. Noting that OPRA's purpose is to maximize transparency and public access to government records, Justice Noriega would require disclosure.

JUSTICES PATTERSON, PIERRE-LOUIS, WAINER APTER, and HOFFMAN join in JUSTICE FASCIALE's opinion. JUSTICE NORIEGA filed a dissent, in which CHIEF JUSTICE RABNER joins.

SUPREME COURT OF NEW JERSEY

A-71 September Term 2024

089508

Association for
Governmental
Responsibility, Ethics
and Transparency,

Plaintiff-Appellant,

v.

Borough of Mantoloking,
Municipal Clerk of the
Borough of Mantoloking,
and Custodian of Records,

Defendants-Respondents.

On certification to the Superior Court,
Appellate Division, whose opinion is reported at
478 N.J. Super. 470 (App. Div. 2024).

Argued	Decided
January 5, 2026	October 29, 2026

Donald F. Burke argued the cause for appellant (Law Office of Donald F. Burke, attorneys; Donald F. Burke and Donald F. Burke, Jr., on the briefs).

Robin La Bue argued the cause for respondents (Rothstein, Mandell, Strohm, Halm & Cipriani, attorneys; Robin La Bue, on the briefs).

Ezra D. Rosenberg argued the cause for amici curiae American Civil Liberties Union of New Jersey and

Libertarians for Transparent Government (American Civil Liberties Union of New Jersey Foundation, and Pashman Stein Walder Hayden, attorneys; Ezra D. Rosenberg, Jeanne LoCicero, and CJ Griffin, on the brief).

JUSTICE FASCIALE delivered the opinion of the Court.

This appeal arises from unique circumstances: during oral argument in a municipal court case, the prosecutor handed defense counsel a copy of an email that she had received on her private email account. The email was sent by an attorney with whom the prosecutor had a longstanding professional relationship, and it was written at her request for confidential litigation advice about how to respond to defense counsel's demand for the release of expunged records of a witness. The sender of the email was not connected to the municipal court case and was someone the prosecutor had contacted confidentially for litigation assistance on complex municipal court matters many times over the course of her career. To protect the sender's privacy, the prosecutor redacted the sender's name and email address, before handing a printed version of the email, which included the text of relevant statutes, to defense counsel. The charges in the municipal court case were ultimately dismissed.

The defendant in the municipal court case represents plaintiff Association for Governmental Responsibility, Ethics, and Transparency (AGREAT). To obtain the identity of the sender, AGREAT requested the unredacted email under the New Jersey Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 to -13, and the common law right of access. That request was denied. AGREAT filed this action seeking disclosure of the redacted information under OPRA and the common law. Without conducting an in camera inspection of the redacted part of the email, the trial judge determined that the email was not a government record, dismissed AGREAT's complaint, and denied AGREAT's OPRA request. The Appellate Division affirmed the order denying AGREAT's OPRA request in a divided opinion.

The appeal presents three legal questions: (1) whether the email is a government record under OPRA; if so, (2) whether the Borough of Mantoloking has a lawful basis for not disclosing the name and email address of the person who sent the email; and (3) whether the sender's identity is disclosable under the common law right of access.

We hold that the email received by the municipal prosecutor on her private email account is a government record under OPRA because it was received and maintained in the course of her official business. While this appeal was pending, we directed the trial judge to conduct an in camera

inspection of the redacted part of the email and to provide to the Court, under seal, additional information about the person who sent the email. Having now reviewed that information, we hold further that, under OPRA, a balancing of the factors from Doe v. Poritz, 142 N.J. 1, 88 (1995), does not favor disclosure of the sender's identity. Likewise, under the common law, a balancing of the factors from Loigman v. Kimmelman, 102 N.J. 98, 113 (1986), does not favor disclosure. We therefore affirm as modified the judgment of the Appellate Division.

I.

A.

In 2020, Jakob Weingroff, a former New Jersey State Trooper, filed a civilian complaint in Mantoloking Municipal Court against Donald F. Burke, Sr.[1] Suspecting that Weingroff had previously falsified records in the course of his employment as a State Trooper, Burke Sr. filed a pretrial motion in municipal court to compel production of Weingroff's criminal record and disciplinary history. The municipal court judge denied that motion, and Burke Sr. moved for leave to appeal from the order denying his motion. A judge in the Special Civil Part (SCP) of the Law Division conducted oral argument on

[1] The civilian complaint charged Burke Sr. with four motor vehicle and traffic violations: (1) improper turn; (2) failure to maintain travel on a marked lane; (3) improper use of a cellphone while driving; and (4) careless driving.

the motion for leave to appeal. During that oral argument, the email at issue in this matter surfaced.

Donald F. Burke, Jr. served as defense counsel for his father at the hearing in the SCP. Elizabeth J. Leahey, who had been appointed to prosecute the charges for the Borough due to a conflict of interest on the part of the Borough's municipal prosecutor, also appeared before the SCP judge. Leahey was not a full-time prosecutor. In addition to municipal court work, her private practice concentrated on real estate transactions, family law, and estate law.

Prior to the oral argument, Leahey contacted the sender of the email to request legal advice about the admissibility of expunged records. From the limited remand proceedings that we ordered during the pendency of this appeal, we learned that the sender was not an employee, attorney, or contractor for the Borough, and that the sender had no connection whatsoever to the municipal court case. That individual was simply someone whom Leahey had contacted previously in other matters for litigation assistance. In response to Leahey's request for professional guidance, the sender sent the email to her private email account. The subject line of the email states, "Lizzy - please review this." The body of the email reads:

> Lizzy - Two things:

First, [t]he information related to the expunged arrest and PTI is not admissible at trial: Here is the statute:

2C:52-27. Effect of expungement

Unless otherwise provided by law, if an order of expungement is granted, the arrest, conviction and any proceedings related thereto shall be deemed not to have occurred, and the petitioner may answer any questions relating to their occurrence accordingly, except as follows:

a. The fact of an expungement, sealing or similar relief shall be disclosed as provided in section 2C:52-8b.

b. The fact of an expungement of prior charges which were dismissed because of the person's acceptance into and successful completion of a supervisory treatment or other diversion program shall be disclosed by said person to any court that is determining the propriety of accepting said person into a supervisory treatment or other diversion program for subsequent criminal charges;

Second, if your adversary knowingly reveals this in open court he himself is guilty of a d/p offense as well as an ethics violation RPC 8.4(b)[.]

Remind him of this statute in open court on Thursday!!!

N.J.S.A. 2C:52-30 - Except as otherwise provided in this chapter, any person who reveals to another the existence of an arrest, conviction or related legal proceeding with knowledge that the records and information pertaining thereto have been expunged or sealed is a disorderly person. Notwithstanding the provisions of section 2C:43-3, the maximum fine which can be imposed for violation of this section is $200.00.

During the oral argument before the SCP judge, defense counsel mentioned Weingroff's previous criminal record. A long colloquy between defense counsel and the SCP judge followed, in which they discussed admissibility, evidentiary concerns, and prematurely revealing expunged records without a court order. Defense counsel informed the SCP judge that he would need to pull up the relevant evidentiary rules. Leahey then stated, "I think I can clear this all up without [defense counsel] having to do anything further." She informed the SCP judge that Weingroff had revealed to her that his records were expunged. Relying on the legal advice in the email, Leahey cited N.J.S.A. 2C:52-27 and argued to the SCP judge that "information relating to an expunged . . . record . . . [is] not admissible at trial."

Leahey also relied on the email to address the potential legal consequences of revealing expunged records. Along those lines, Leahey expressly added, "I'm not saying now. . . . I just want to make him aware of this, because I don't want him to have a problem with that later." Defense counsel responded that "it would have been nice to have this so we could brief the issue of expungement" and suggested that, when records are expunged, "the facts don't go away," just the legal consequences. The following discussion then took place, which led to Leahey sharing the email with the SCP judge and defense counsel:

> THE COURT: But see, . . . that's the problem. When you take a look at that statute when it references --
>
> LEAHEY: I have the statute for [defense counsel], Your Honor, if he wants to see it. I thought it would be helpful.
>
> THE COURT: Well, sure. . . .
>
> DEFENSE COUNSEL: [N]ow I have to address on the fly this issue . . .
>
> THE COURT: This is not the statute that I was referring to.
>
> LEAHEY: Oh, okay. Well, do you want me to show it to him, anyway?
>
> THE COURT: Sure, why not? . . .
>
> DEFENSE COUNSEL: I don't know if you want me to respond to it, Judge. I don't see anything in here that says that I can't utilize this information for purposes of cross examination. Can I get copies of these?
>
> LEAHEY: Okay. If you want to keep that . . . I have copies.
>
> DEFENSE COUNSEL: Yeah, that would be great. Thanks.

During that exchange, Leahey provided a printed copy of the email to defense counsel, in which the sender's identifying address in the "From" field had been redacted.

At that point, the SCP judge upheld the order entered by the municipal court judge denying the motion to compel production of Weingroff's criminal

record and disciplinary history, and advised defense counsel that the procedure for seeking expunged records was to make a motion under N.J.S.A. 2C:52-19, which permits the inspection of expunged records under certain circumstances. Rather than returning to municipal court and making that motion, as the SCP judge had indicated, Burke Sr. instead filed a motion for leave to appeal from the SCP court's order denying his discovery motion.

The Appellate Division granted leave to appeal and reversed the order entered by the SCP judge. It reached two conclusions: First, Weingroff's criminal records were relevant as impeachment evidence in the municipal court case; second, under N.J.S.A. 2C:52-19, Burke Sr. had demonstrated good cause and a compelling need to inspect the expunged records. In other words, the appellate court concluded that Burke Sr. had the right to use the expunged records to cross-examine Weingroff in the municipal court case. The Appellate Division then remanded the matter to municipal court for further proceedings.

Once the discovery dispute regarding Burke Sr.'s right to inspect Weingroff's expunged records was resolved, the State dismissed the municipal court charges against Burke Sr.

B.

While the municipal court case was pending, AGREAT served the OPRA request seeking the unredacted email between Leahey and her colleague. The Borough denied the request, responding that the requested email was not a government record under OPRA. AGREAT -- represented by Burke Sr. -- then filed an order to show cause and a verified complaint against the Borough, the Municipal Clerk, and the Custodian of Records, alleging violations of OPRA and the common law. Because Leahey had turned over the body of the email in open court to defense counsel, AGREAT's OPRA and common law allegations in this matter relate solely to the redacted information: the name and email address of the email sender.

A Law Division judge found that the email was not a government record under OPRA because it was a private communication maintained on a private email server. The judge therefore did not consider whether the Borough could establish a lawful basis to exempt the redacted information from disclosure under OPRA. Nor did the trial judge reach AGREAT's common law claims. At that point, the trial judge had not inspected the name and address of the sender in camera.

AGREAT appealed, and the Appellate Division affirmed in a divided opinion. Ass'n for Governmental Resp., Ethics & Transparency v. Borough of

Mantoloking, 478 N.J. Super. 470 (App. Div. 2024). The majority concluded that the email is not a government record under OPRA or a public record under the common law. Id. at 492-93. In dicta, the majority added that even if the email itself is a government record under OPRA or a public record under the common law, the sender's identity was protected by N.J.S.A. 47:1A-9(b), the work product doctrine, and that a balancing of the factors under Doe v. Poritz and Loigman v. Kimmelman did not warrant disclosure of the disputed information. Id. at 492-96. The majority found that if the appellate court compelled disclosure of the email sender's identity, the potential for harm would be high due to the potential chilling effect on the collegial relationship among attorneys. Id. at 492.

The dissent agreed that the sender has a reasonable expectation of privacy. Id. at 496, 501 (Smith, J.A.D., dissenting). But after it concluded that the email was a government record under OPRA, the dissent balanced the Doe factors and determined that "OPRA compel[led] disclosure of the sender's name and email address." Id. at 504. The dissent did not reach AGREAT's request for disclosure under the common law. Id. at 496.

AGREAT appealed as of right from the Appellate Division's judgment. See R. 2:2-1(a)(2). AGREAT additionally petitioned for certification to challenge the majority's dicta Loigman determination of its common law

claim, and we granted that petition. 260 N.J. 597 (2025). We also granted the motions of the American Civil Liberties Union of New Jersey and the Libertarians for Transparent Government (collectively, ACLU) to appear as amici curiae. In July 2026, we entered an order directing the trial judge to conduct an in camera inspection of the sender's identity and to provide this Court with additional facts under seal regarding the factual context in which the email was sent.[2]

II.

AGREAT argues that the entire email from Leahey's colleague, including the redacted information, is subject to disclosure under OPRA and the common law. AGREAT asserts that the majority erroneously interpreted the common law because divulging the name of the person who prepared the email -- which in AGREAT's view directed Leahey to "threaten . . . defense [counsel] in open court" -- outweighs the Borough's interest in preventing disclosure.

The Borough contends that the email is not a government record under OPRA because it was a private communication maintained on Leahey's private email account. The Borough further argues that, even if the email constitutes a

[2] We acknowledge that the appellate court did not have the benefit of an amplified record.

government record, the redacted information is protected work product under Rule 4:10-2(c). As for the balancing of applicable interests, the Borough asserts that AGREAT does not have a compelling interest in the identity of the sender. The Borough argues that, as Leahey's remarks before the SCP judge confirm, she handed the email to defense counsel, not as a threat, but rather to protect against the possible consequences of prematurely disclosing expunged records. Moreover, the Borough maintains, there could be no prejudice to Burke Sr. or AGREAT from denying disclosure of the sender's identity because the appellate court granted Burke Sr. permission to inspect the expunged records, AGREAT has the full text of the email, and the charges have been dismissed.

The ACLU argues that OPRA provides a right of access to the identity of the person who prepared the email. Pointing to Rule 7:7-7(d) (addressing discovery disputes on work product grounds in municipal court) and N.J.R.E. 530(c)(1)(C) (addressing work product waiver limitations on an "undisclosed communication"), the ACLU contends that production of the email in open court waived any work product protection to the redacted portion of the email. As to privacy interests, the ACLU argued that attorneys generally do not have a reasonable expectation of privacy in their identities and that, regardless of any applicable privacy expectations, the sender's identity is of particular

importance here, given the originally appointed municipal prosecutor's conflict of interest.[3]

III.

We first consider whether the email is a "government record" and is subject to public disclosure under OPRA.

"[D]eterminations about the applicability of OPRA and its exemptions are legal conclusions and are therefore subject to de novo review." Simmons v. Mercado, 247 N.J. 24, 38 (2021) (alteration in original) (quoting In re N.J. Firemen's Ass'n Obligation, 230 N.J. 258, 273-74 (2017)). Thus, the inquiry whether the email is a government record is a legal question, and "we owe no deference to the interpretive conclusions reached by either the trial court or the Appellate Division." Ibid. (quoting Paff v. Galloway Township, 229 N.J. 340, 351 (2017)).

A.

"OPRA was 'designed to promote transparency in the operation of government,'" ACLU of N.J. v. Cnty. Prosecutors Ass'n of N.J., 257 N.J. 87, 101 (2024) (quoting Firemen's Ass'n, 230 N.J. at 276), and "to minimize the evils inherent in a secluded process," Mason v. City of Hoboken, 196 N.J. 51,

[3] We now know from the limited remand that the sender of the email was not the prosecutor who had a conflict of interest in the matter.

64 (2008) (quoting Asbury Park Press v. Ocean Cnty. Prosecutor's Off., 374 N.J. Super. 312, 329 (Law Div. 2004)). In enacting OPRA, the Legislature "declare[d] it to be the public policy of this State that[] government records shall be readily accessible." N.J.S.A. 47:1A-1. OPRA provides that "any limitations on the right of access . . . shall be construed in favor of the public's right of access." Ibid. The statute broadly defines a "government record" in relevant part as "any . . . document . . . [or] information stored or maintained electronically . . . that has been made, maintained[,] kept on file[,] . . . [or] received in the course of . . . official business by any . . . officer . . . of the State." N.J.S.A. 47:1A-1.1.

Here, Leahey was an "officer of the State" while acting as the conflict prosecutor for the Borough. She received and maintained the email at issue in the course of her official business as the prosecutor.[4] Indeed, she requested the email in preparing for the municipal court case and to respond in the SCP hearing directly to defense counsel's request to reveal Weingroff's expungement records. The substance of the email dealt with expungement, an issue in the case that Leahey prosecuted in municipal court against Burke Sr. Accordingly, because the email was received in the course of Leahey's official

[4] We note that OPRA's "government record" definition excludes "inter-agency or intra-agency advisory, consultative, or deliberative material." N.J.S.A. 47:1A-1.1.

prosecutorial business for the Borough, the email is a government record under OPRA.

The trial judge concluded otherwise, agreeing with the Borough's argument that the email cannot be a government record because it was received on Leahey's personal email account and was thus "maintained on her private server" as a "private communication." As we recently explained in Rosetti v. Ramapo-Indian Hills Regional High School Board of Education however, that overly limited view is inaccurate:

> OPRA makes clear that a "government record" includes any "information stored or maintained electronically" that "has been made, maintained or kept on file in the course of [a government official's] official business." N.J.S.A. 47:1A-1.1. Emails, whether created on a government official's government or personal account, can certainly fall within OPRA's definition of a government record.
>
> [264 N.J. 166, 180 (2026) (alternation in original).]

Indeed, as we cautioned in that case, "emails related to government business, whether stored on government or private servers, are within OPRA's reach, so using a private email account will not shield those government records from production under OPRA." Id. at 183. A contrary holding could subvert OPRA's purpose by potentially inviting public officials to exploit the use of third-party email accounts for official business in efforts to circumvent public oversight.

Accordingly, notwithstanding the fact that Leahey received the email on her private account, the email is a government record subject to disclosure under OPRA because it was received and maintained in the course of Leahey's official prosecutorial business.

B.

Government-record status alone does not end the disclosure inquiry, however. Under OPRA, government records are presumptively "subject to public access unless exempt from such access." N.J.S.A. 47:1A-1 (listing sources of exemptions). At the same time, 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." Ibid.

Before finding a record subject to disclosure under OPRA, therefore, we must first determine (1) whether the email sender -- Leahey's longstanding professional contact without any connection to the Borough who provided confidential legal guidance from one attorney to another about expunged records -- has a reasonable expectation of privacy in their identity and, if so, (2) whether that privacy interest outweighs the interest in disclosure.

1.

In Doe, we recognized that "home addresses often are publicly available" but that "[a]n individual's interest in controlling the dissemination of information regarding personal matters does not dissolve simply because that information may be available to the public in some form." Doe, 142 N.J. at 83 (quoting U.S. Dep't of Def. v. Fed. Lab. Rels. Auth., 510 U.S. 487, 500 (1994)). We recognized further that "privacy interests may be implicated where disclosure of a person's address results in unsolicited contact," as by "expos[ure] to uninvited harassment." Id. at 83-84. Thus, despite frequently being publicly available, addresses are treated with more concern than "[m]atters exposed to public view [that] may be disclosed without implicating privacy interests." Id. at 82. Under the very unusual facts of this case, we conclude that those same concerns apply to the sender's identifying information.

Emailing the confidential legal advice here -- to a professional colleague -- is not an inherently public activity. The fact that the sender necessarily shared their name and email address with Leahey does not indicate any expectation that the information would be shared broadly. See id. at 85 ("[T]he fact that 'an event is not wholly "private" does not mean that an individual has no interest in limiting disclosure or dissemination of the

information.'" (quoting U.S. Dep't of Just. v. Reps. Comm. for Freedom of Press, 489 U.S. 749, 770 (1989))). Leahey redacted the sender's name and email address, confirming that Leahey did not believe -- or intend -- that the contact information would be revealed publicly. Moreover, we learned from the remand proceedings that the sender had provided legal advice to Leahey in the past and had indicated an intent to maintain the confidentiality of any communications about issues discussed and advice sought.

Based on the entirety of the expanded record, we also conclude that the email sender has a sufficient privacy interest to move on to the next step: the Doe balancing test.

2.

We look to the factors laid out in Doe "[t]o balance OPRA's interests in privacy and access." Burnett v. County of Bergen, 198 N.J. 408, 427 (2009). Those factors are:

> (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.
>
> [Doe, 142 N.J. at 88 (quoting Faison v. Parker, 823 F. Supp. 1198, 1201 (E.D. Pa. 1993)).]

Balancing those factors on this unique trial record leads to the conclusion that the redacted information should not be disclosed under OPRA.

Factors one and two do not weigh one way or the other; they simply frame what information is being sought -- the email sender's name and email address.

Factors three and four weigh in favor of non-disclosure. We share the Appellate Division's very important concern that "compelling disclosure of the name and email address of attorneys who render advice to one another has the potential for a chilling effect on the [collegial] relationship among attorneys and their private communications concerning their shared legal advice." Ass'n for Governmental Resp., Ethics & Transparency, 478 N.J. Super. at 492. The practice of seeking advice from colleagues, especially those with greater expertise in a particular subject matter, like here, is certainly in the public's interest and should be encouraged, not disincentivized. Requiring disclosure of the sender's contact information in this case could deter attorneys from responding to requests for legal guidance and limit the exchange of critical information. Here, for example, the sender's email content not only assisted Leahey, who requested it, but also helped defense counsel properly seek the expunged records, which ultimately resulted in the dismissed charges.

Factors five and six also favor non-disclosure. Factor five examines whether mechanisms exist to ensure the sender's contact information remains confidential once disclosed, or whether disclosure would allow the information to spread freely without restriction. Were that information to be disclosed, there is no guarantee it would remain contained. We see no way to implement adequate protections that would prevent the sender's contact information from being disclosed in a harmful manner if released.

As for factor six, our review of the amplified record reveals that the sender is a longstanding professional colleague who is completely unrelated to the municipal court prosecution. Thus, the email sender's identity is inconsequential on this new record, particularly because AGREAT's need for the redacted information at this point is minimal: the municipal court proceeding was dismissed years ago, so the expungement issue addressed in the email is no longer at issue.

Under factor seven, while OPRA itself aims to promote transparency in government affairs, there is no specific "express statutory mandate, articulated public policy, or other recognized public interest militating toward access" of the name and email address of Leahey's professional colleague in this case.

In sum, we find that the balance of the Doe factors falls against disclosing the sender's identity under OPRA. We therefore turn to the common law.

IV.

Like determinations about disclosure under OPRA, "[o]ur review of [a] determination regarding the common law right of access is de novo." N. Jersey Media Grp., Inc. v. Bergen Cnty. Prosecutor's Off., 447 N.J. Super. 182, 194 (App. Div. 2016). Here, we find under the expanded record that the email sender's name and email address likewise should not be disclosed under the common law.

In addition to the access created under OPRA, "[t]he common law right of access remains a distinct basis upon which to access public records." Firemen's Ass'n, 230 N.J. at 280. A request to obtain records under the common law must meet the following "requirements: (1) the records must be common-law public documents; (2) the person seeking access must 'establish an interest in the subject matter of the material'; and (3) the citizen's right to access 'must be balanced against the State's interest in preventing disclosure.'" Keddie v. Rutgers, 148 N.J. 36, 50 (1997) (citations omitted).

A.

The first prong requires the record to be a common-law public document:

> [A] public record is
>
> > one required by law to be kept, or necessary to be kept in the discharge of a duty imposed by law, or directed by law to serve as a memorial and evidence of something written, said, or done, or a written memorial made by a public officer authorized to perform that function, or a writing filed in a public office. The elements essential to constitute a public record are that it be a written memorial, that it be made by a public officer, and that the officer be authorized by law to make it.
>
> [Firemen's Ass'n, 230 N.J. at 281 (emphasis added) (quoting Nero v. Hyland, 76 N.J. 213, 222 (1978)).]

Before appearing in court, Leahey personally redacted the sender's name and email address of the email and then printed the redacted document. For purposes of the first prong, we will assume this printed format is a public record because it constitutes a "written memorial made by a public officer." Ibid.

B.

To satisfy the second prong, a requesting party must demonstrate an interest in access to the requested information that may be either a "private need" or one that "further[s] a public good." Loigman, 102 N.J. at 104.

Here, AGREAT's "private need" at this point is minimal. As discussed above, on this new amplified record supplemented by the remand findings by the trial judge under seal, the email sender's identity is inconsequential to the now-resolved municipal court proceedings. The contents of the email provided relevant statutory provisions and advice about expungement requests for use in that municipal proceeding. Burke Sr. was able to legally inspect the expunged records, and his counsel, Burke Jr., could not be exposed to an ethics violation or a disorderly persons charge for prematurely revealing the records. The email sender's identity is not an essential fact, is not necessary for impeachment, and could not be used in any way to prove or disprove any claim in dispute. Preventing disclosure of content that bears no significance to an already terminated proceeding cannot be said to be unfair.

Finally, AGREAT's argument -- in fairness, made before we directed the judge to conduct an in camera inspection and provide context for the email in question -- that the email "directed" Leahey to "threaten defense [counsel] in open court" -- is seriously misplaced. Looking at the entire expanded record in context, Leahey did not disclose the email's contents to gain a litigation advantage. Rather, Leahey relied on the body of the email to inform defense counsel about the law governing expunged records, an area with which neither of them was extensively familiar in the moment. She did so following a

lengthy colloquy between defense counsel and the SCP judge about the procedure for inspecting expunged records. Leahey utilized her colleague's legal advice to inform defense counsel about potential consequences of improperly revealing those records prematurely because, as she expressly stated in the SCP hearing, she did not "want him to have a problem with that later." Under these unusual circumstances, Leahey's decision to share the body of the email with defense counsel while withholding the sender's information reflects a good-faith intention to facilitate resolution of the expungement issue. Although perhaps less than perfectly executed, we discern no misconduct in Leahey's utilization of the email and its advice.

The public interest is similarly minimal. Had the email sender been the prosecutor who was conflicted out of the municipal court proceedings, the public interest in knowing who influences prosecutorial decisions would be substantial. But we now know that that is not the case here.

For all the reasons discussed above, the purported interest is minimal on this record where Leahey received advice from a longstanding professional colleague.

C.

As for the third prong, "[l]ike OPRA, when confidentiality concerns are raised under the common law right of access, courts balance the requestor's

interest in disclosure against the government's interest in confidentiality." Firemen's Ass'n, 230 N.J. at 281. We look to the factors laid out in Loigman to strike that balance. Those non-exclusive factors are:

> (1) the extent to which disclosure will impede agency functions by discouraging citizens from providing information to the government; (2) the effect disclosure may have upon persons who have given such information, and whether they did so in reliance that their identities would not be disclosed; (3) the extent to which agency self-evaluation, program improvement, or other decisionmaking will be chilled by disclosure; (4) the degree to which the information sought includes factual data as opposed to evaluative reports of policymakers; (5) whether any findings of public misconduct have been insufficiently corrected by remedial measures instituted by the investigative agency; and (6) whether any agency disciplinary or investigatory proceedings have arisen that may circumscribe the individual's asserted need for the materials.
>
> [Loigman, 102 N.J. at 113.]

Balancing those factors on the expanded record before us leads to the conclusion that the redacted information should not be disclosed under the common law.

Factors one and three weigh in favor of non-disclosure. Attorneys might be discouraged from reaching out to their colleagues to discuss legal issues -- and their colleagues may be reluctant to respond -- if they believe personal identifying information might be released as a result. As discussed above, this

is especially concerning to the extent it chills constructive attorney communications such as those here.

Factor two similarly weighs in favor of non-disclosure. Considering that Leahey redacted the sender's information and, as we learned from the remand proceedings, the sender informed Leahey that the sender would not betray the confidentiality of their discussions, it is more than reasonable to believe Leahey and the sender thought the sender's contact information would remain private -- and intended for it to remain so.

Factor four arguably weighs in favor of disclosure. Generally, a name and email address are more akin to factual data than an evaluative report. Under the facts as expounded in this case, however, this one factor does not tip the balance in favor of disclosure.

Factors five and six are not applicable to this case.

In short, just as we concluded above in the Doe balancing section for OPRA, we conclude that the Loigman factors weigh against disclosure under the common law.

V.

Finally, we disagree with the appellate court's dicta that the redacted information is protected from disclosure under the work product doctrine. The Borough argued that the email itself was protected under the doctrine but did

not claim that the sender's name and email address, specifically, were "prepared in anticipation of litigation or for trial" or that the identifying information of the sender bears on the "mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation." R. 4:10-2(c). Indeed, the Borough did not redact the name and email address in this OPRA/common law case relying on the work product doctrine. Rather, Leahey herself redacted that information in the municipal court matter, not because it was protected by the work product doctrine but rather to honor the sender's reasonable expectation of privacy. We reiterate that the body of the email message itself is not at issue here -- it was voluntarily disclosed by Leahey. The inquiry for the work product doctrine, as for the balancing inquiries under both OPRA and the common law, must focus on the precise information sought: the sender's identity. On this expanded record, we conclude that the sender's "identity" is not work product entitled to standalone protection under the work product doctrine.

VI.

We reach the same result as the Appellate Division but for entirely different reasons. Under the facts of this case, the information sought is a government record subject to disclosure under OPRA, and it is not shielded by the work product doctrine. It is the sender's reasonable expectation of privacy,

which outweighs any interest in disclosure here, that protects the sender's identity.

The judgment of the Appellate Division is affirmed as modified.

JUSTICES PATTERSON, PIERRE-LOUIS, WAINER APTER, and HOFFMAN join in JUSTICE FASCIALE's opinion. JUSTICE NORIEGA filed a dissent, in which CHIEF JUSTICE RABNER joins.

Association for
Governmental
Responsibility, Ethics
and Transparency,

Plaintiff-Appellant,

v.

Borough of Mantoloking,
Municipal Clerk of the
Borough of Mantoloking,
and Custodian of Records,

Defendants-Respondents.

JUSTICE NORIEGA, dissenting.

I respectfully dissent from the majority's opinion. The central issue in this case is whether a sender's name and email address, contained in a government record received by a municipal prosecutor in the course of her official duties, may be withheld from disclosure under OPRA after the prosecutor voluntarily disclosed the email's contents. I agree with the majority that the email is a government record and that the sender's identity and email address are not protected work-product. I part company with the majority, however, because respondents did not establish a reasonable expectation of privacy in the sender's name and email address after Leahey

chose to reveal and use the email in open court. Because OPRA's purpose is to maximize transparency and public access to government records, and because no cognizable privacy interest justifies withholding the sender's identity and email address on this record, I would require disclosure.

I.

To begin, I agree with the majority that the email address at issue is contained in a government record subject to OPRA. The email was received by the municipal prosecutor, Leahey, in the course of her official duties, and directly concerned the prosecution of a municipal court case. Ante at ___ (slip op. at 5-7). That conclusion does not end the inquiry, however, because government-record status alone does not resolve whether particular information may be withheld from disclosure under OPRA. The remaining question is whether respondents established a lawful basis to redact the sender's email address.

I agree with the majority that the sender's email address is not work-product and that the work-product doctrine therefore provides no basis for the redaction. Rule 4:10-2(c) protects materials prepared in anticipation of litigation and mental impressions, conclusions, opinions, or legal theories of counsel. An email address is none of those things. It is merely identifying information. To the extent the Appellate Division suggested otherwise, I

would reject that view as inconsistent with the Rule's text and purpose. Thus, an email address cannot be work-product.

Although the majority does not expressly characterize the disclosure as waiver under N.J.R.E. 530, it acknowledges that Leahey voluntarily disclosed the body of the email and treats only the sender's identifying information as remaining in dispute. I likewise recognize that Leahey could have withheld the entire email by asserting the work-product privilege under Rule 4:10-2(c). But once she voluntarily disclosed in open court the email's substantive contents -- the "mental impressions, conclusions, opinions, or legal theories" that Rule 4:10-2(c) protects -- she waived any work-product protections as to those contents, see N.J.R.E. 530, and the email address alone carried no such protections.

II.

Because the sender's name and email address are not work-product, the dispositive question is whether respondents established another basis to withhold that information. The majority credits Leahey's claimed reasonable expectation of privacy. I respectfully disagree. In my view, respondents did not raise a colorable claim of a reasonable expectation of privacy in the sender's identity and email address after Leahey voluntarily introduced the email in open court, and no extended Doe analysis is needed.

OPRA does not compel disclosures that "would invade a person's reasonable expectation of privacy." Brennan v. Bergen Cnty. Prosecutor's Off., 233 N.J. 330, 333 (2018). When an expectation of privacy is established, the court considers the Doe factors to balance the interest in broad public access to government records against reasonable expectations of privacy in the information. See Doe v. Poritz, 142 N.J. 1, 88 (1995) (finding that "the state interest in public disclosure [in that case] substantially outweigh[ed the] plaintiff's interest in privacy"). However, when the public entity seeking to avoid disclosure fails to establish a colorable claim of a reasonable expectation of privacy, the court need not conduct a detailed Doe analysis. Bozzi v. City of Jersey City, 248 N.J. 274, 287 (2021) ("Because [the city] has not established a colorable claim that public access to the [information] would violate a reasonable expectation of privacy, we need not conduct an extended Doe analysis.").

Here, no analysis of the Doe factors is required because Leahey waived any claim of privacy she might have had when she voluntarily introduced the email in open court. Leahey could have summarized the advice she received in her own words. Instead, she elected to reveal the document itself. By doing so, she waived any colorable privacy claim in the document, and she has offered no other reasonable basis to conclude that, despite that disclosure, she

retained a reasonable expectation of privacy in the sender's identity or email address. Similarly, in Asbury Park Press v. County of Monmouth, the Appellate Division declined to find a colorable claim of privacy regarding a confidential settlement agreement between the County and its former employee after resolving a sexual harassment case because "litigation is done in a public forum and is subject to public knowledge." 406 N.J. Super. 1, 9-10 (App. Div. 2009), aff'd, 201 N.J. 5 (2010). The court found that the Legislature did not assure privacy as to publicly litigated disputes and that a term of confidentiality in the parties' agreement could not "override the public's right of access under OPRA." Id. at 9.

Much like Asbury Park Press, this case does not implicate the type of privacy concerns underpinning Burnett v. County of Bergen, 198 N.J. 408 (2009). The OPRA request in Burnett encompassed "eight million pages of land title records of all types, extending over a period of twenty-two years, which contain[ed] names, addresses, social security numbers, and signatures of countless citizens" -- information highly susceptible to identity fraud. Id. at 414, 418. The Court determined that "OPRA's privacy provision [was] directly implicated . . . because the requested documents contain SSNs along with the names, addresses, signatures, and marital status of a substantial number of New Jersey residents." Id. at 428. Only after finding such

vulnerability did we apply the Doe balancing test. Ibid. Here, no such sensitive information is at issue.

Today's ruling turns accepted practice regarding reasonable expectations of privacy on its head. An email address and the identity of a document's author are generally not the sort of information withheld from disclosure. If anything, it is the content of the communication, not the identity of its author or sender, that is ordinarily protected. For instance, we see this regularly with privilege logs in federal as well as state practice, which depend upon disclosure of basic identifying information precisely so that courts and requesting parties may assess the claimed basis for withholding a document. See Torres v. Kuzniasz, 936 F. Supp. 1201, 1208 (D.N.J. 1996) ("A proper privilege log must include, for each withheld document, the date of the document, the name of its author, the name of its recipient, the names of all people given copies of the document, the subject of the document, and the privilege or privileges asserted." (emphasis added)); Allendale Mut. Ins. Co. v. Bull Data Sys., 145 F.R.D. 84, 88 (N.D. Ill. 1992) ("For each document, the [privilege] log should identify the date, the author and all recipients, along with their capacities. The log should also describe the document's subject matter, purpose for its production, and a specific explanation of why the document is privileged or immune from discovery." (original emphases

removed; new emphasis added)); see also Paff v. Dep't of Labor, 392 N.J. Super. 334, 341 (App. Div. 2007) (reviewing the Department of Labor's denial of a claimant's OPRA request and requiring that the agency include "[a]n accurate [privilege log,]" which "is necessary for substantive review by the requesting party as well as the reviewing court," along with a sworn statement that the agency provided claimant with all responsive, non-confidential information still intact). Among other concerns, the majority's privacy-based conclusion today risks impairing the efficacy of privilege logs.

And, in addition to such generalized concerns, respondents' assertion that there is a colorable privacy claim does not withstand scrutiny on this record. First, Leahey introduced the email, read its contents into the record, and provided a copy to defense counsel. Second, her choice to do so was entirely voluntary and intentional. A government actor cannot voluntarily disclose the substance of a government record in a public court proceeding and then continue to claim a reasonable expectation of privacy in the record's sender. See Asbury Park Press, 201 N.J. at 8. Subsequent regret in turning over the document instead of simply reading its contents aloud does not convert Leahey's choice -- to turn over the email with the redacted address -- into a colorable claim of privacy.

The majority relies on the notion that Leahey "utilized her colleague's legal advice to inform defense counsel about potential consequences of improperly revealing those records prematurely" and that withholding the sender's information reflected "a good-faith intention to facilitate resolution of the expungement issue." Ante at ___ (slip op. at 25). However, in concluding that the email sender has a sufficient privacy interest, the majority overlooks the initial question of whether Leahey waived that interest.

I see the email as conveying something different. As the majority notes, the subject line of the email states "Lizzy - please review this," followed by "Lizzy - Two things. . . ." The first sentence explains that records of an expunged arrest and Pretrial Intervention are not admissible at trial and quotes the relevant statute. The second provides the prosecutor with the following directions:

> Second, if your adversary knowingly reveals this in open court he himself is guilty of a d/p offense as well as an ethics violation RPC 8.4(b)[.]
>
> Remind him of this statute in open court on Thursday!!!

The sender's insistence that this information be conveyed in "open court" is deliberate. "Open court" implies both the creation of a public record and that the recipient cannot claim ignorance of the information being relayed. At minimum, the sender's direction that the advice be raised "in open court"

undermines the claim that the communication was understood to remain wholly private in all respects. Indeed, Leahey chose to use the document itself, not just its substance. She did so in a public hearing. Once the government voluntarily relies on and discloses a government record in that manner, it cannot continue to maintain that the record's source-identifying information remains protected by a reasonable expectation of privacy absent some separate, concrete basis for confidentiality. No such separate basis appears on this record.

It is clear from Leahey's conduct in handling the email and its disclosure that she did not believe or expect it to remain confidential. Moreover, I disagree with the majority's conclusion that the sender necessarily expected the advice to remain confidential. The majority bases that conclusion on the sender's offer to maintain confidentiality as to Leahey's request for advice -- not upon any request that Leahey treat the sender's identity as confidential. See ante at ___ (slip op. at 27). And the remand proceeding did not establish that Leahey independently promised the sender confidentiality as to the sender's identity, nor did it overcome Leahey's later decision to reveal the email in open court. Whatever expectation of privacy may have once existed, Leahey's voluntary use of the email in open court defeats respondents' claim

that the sender's identity and email address remained subject to a reasonable expectation of privacy under OPRA.

In any event, following the requirements of OPRA, which favors transparency and disclosure of government records, would not chill collegial relationships among attorneys. As a general rule, their private communications and advice to one another would still be protected -- unless one of the attorneys chose to publicly disclose the advice given and conceal only the source. That is rare and unlikely. Indeed, the parties cite no other cases in which that has happened.

Nor does the majority's observation that the municipal proceeding has long since ended alter the OPRA analysis. A requestor's purpose, private interest, or present litigation need does not ordinarily govern the right to access under OPRA. See Burnett, 198 N.J. at 435 ("As a general rule, we do not consider the purpose behind OPRA requests."); K.L. v. Evesham Twp. Bd. of Educ., 423 N.J. Super. 337, 359-60 (App. Div. 2011) (noting that, in contrast to the common law, OPRA's disclosure requirements do not depend on the reason for the request). The question is whether the record is disclosable, not whether the requestor can show a continuing tactical use for requesting it. See MAG Ent., LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 545 (App. Div. 2005) ("A party's right to access public

records is not abridged because it may be involved in other litigation with the governmental agency required to respond to the OPRA request."); see, e.g., Bozzi, 248 N.J. at 286 ("[T]he commercial nature of plaintiff's request is immaterial to our analysis; he 'has the same right to [the records] as anyone else.'" (alteration in original) (quoting Burnett, 198 N.J. at 435)).

Because OPRA itself requires disclosure, I would not separately analyze the common law. To the extent that the majority does so, I disagree for the same reason: due to Leahey's voluntary public use of the email, respondents cannot establish a cognizable confidentiality interest in the sender's name and email address. And the results of the remand -- the discovery that the sender of the email is a benevolent colleague completely removed from the case as opposed to the "prosecutor who was conflicted out of the municipal court proceedings," see ante at ___ (slip op. at 26) -- should not be used to retroactively tilt the public interest - privacy balance.

III.

In sum, the majority's approach fails to advance the transparency required by OPRA. For that reason, I respectfully dissent from the opinion of the majority. I would reverse and remand the matter to the trial court and order that the email sender's name and email address be disclosed to the petitioner.