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BULLETIN 03-3

Issued: July 2003 Revised: April 2013
Subject: Open Public Records Act - Public Access to Building Plans
Reference: N.J.S.A. 47:1A and N.J.A.C. 5:3

It has come to the Department's attention that there is some confusion about the Open Public Records Act (OPRA) as it pertains to construction documents.

Background: Generally speaking, documents created or held by a public entity are public records and are to be made available to a member of the general public upon request. There are specific exceptions to this general statement. In its definition of "government record," the OPRA statute (N.J.S.A. 47:1A et seq.) contains 24 exemptions from disclosure. One of those exemptions addresses building security, as follows: "emergency or security information or procedures which, if disclosed, would jeopardize security of the building or facility or persons therein."

Building Plans: Because this statutory reference is broad, the Department has sought to provide clarity in its rules for OPRA. Adopted on October 17, 2011, the Department's rules (N.J.A.C. 5:3) provide that "[b]uilding plans submitted in conjunction with any permit application" are exempt from disclosure under OPRA. The reason for this exemption is simple: OPRA requires that government records be provided to any citizen without requiring an explanation for why the records are wanted. That standard operates well for most of the records that we hold, but building plans are an exception to that general rule. Building plans contain details about building construction and also about security and safety systems that should not be available to just anyone upon request. This does not mean that no one should ever be able to view or obtain copies of building plans; it means that no one should be able to view or obtain copies of building plans *without a valid reason* for doing so.

Common Law Right of Access: Fortunately, OPRA states plainly that "nothing...shall be construed as limiting the common law right of access to a government record" (N.J.S.A. 47:1A-8). Under the common law right of access to a public record, the individual requesting the record submits a written request stating the reason for obtaining or viewing the record. If the explanation is reasonable, access to the public record is granted. For local code enforcement officials, when there is a question as to whether the explanation is reasonable, the municipal attorney should be consulted for advice. This path, the common law right of access, is the path to follow when a requestor wants to view or obtain copies of building plans. OPRA does not take into consideration the requestor's reason for requesting records; the common law right of access does consider the requestor's need for records.

Site Plans and Architectural Renderings: The Department's rule specifies that site plans are different from building plans and are public records that are subject to disclosure under OPRA. Members of the public should be given access to general information such as elevations, site layout, architectural renderings, etc. This is the type of information that is filed with the planning board or zoning board of adjustment and that the entire community has a right to know.

From the questions that we have received, the Department has concluded that a significant portion of the requests to "see plans" in a local code enforcement office are actually requests to view the site plans for a specific project. The person asking, for example, could be a neighbor who has a concern that a project undertaken on an adjacent property might have an impact on their property. Where the request to "see plans" is really a site concern, access to the site plan can be offered under OPRA and is likely to satisfy the requestor.

In sum,

- Building plans are protected from disclosure pursuant to OPRA;
- Building plans may be requested through the common law right of access with a clearly stated reason for viewing the building plans;
- Site plans and architectural renderings are subject to disclosure through OPRA.

The Government Records Council is the primary source of information about OPRA. A requestor who wants to appeal a decision, may do so with the Government Records Council. Questions about OPRA should be directed to the Government Records Council at (609) 292-6830. Questions about how the Division of Codes and Standards has responded to specific records requests may be directed to the Division of Codes and Standards at (609) 984-7609. Questions about OPRA requests submitted to municipalities should be directed to the municipal records custodian, who may contact the municipal attorney should legal advice be required.