



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

July 26, 2022 Government Records Council Meeting

Michael Mincer
Complainant

Complaint No. 2021-43

v.

Hamilton Township Municipal Utilities
Authority (Atlantic)
Custodian of Record

At the July 26, 2022 public meeting, the Government Records Council (“Council”) considered the July 19, 2022 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that the Custodian did not unlawfully deny access to the Complainant’s OPRA request seeking inspection, photographs, and copies of water and sewer maps from the Hamilton Township Municipal Utilities Authority. N.J.S.A. 47:1A-6. Disclosure or inspection of such records under OPRA is likely to jeopardize the safety and security of the water and sewer infrastructure and the citizens utilizing same. N.J.S.A. 47:1A-1.1; Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2011-330 (February 2013). Additionally, disclosure or inspection of these records under OPRA would materially increase the risk of sabotage and the ability of the State to defend against potential acts of terrorism. N.J.S.A. 47:1A-9(a); Executive Order No. 21 (Gov. McGreevy, 2002); Russomano v. Twp. of Edison (Middlesex), GRC Complaint No. 2012-307 (November 2013).

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk’s Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.

Final Decision Rendered by the
Government Records Council
On The 26th Day of July 2022

Robin Berg Tabakin, Esq., Chair
Government Records Council



I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: July 28, 2022

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
July 26, 2022 Council Meeting**

**Michael Mincer¹
Complainant**

GRC Complaint No. 2021-43

v.

**Hamilton Township Municipal Utilities Authority (Atlantic)²
Custodial Agency**

Records Relevant to Complaint: Hardcopies and inspection/photographs of the municipal water and sewer maps from the Hamilton Township Municipal Utilities Authority (“HMUA”).

Custodian of Record: Stephen R. Blankenship
Request Received by Custodian: February 4, 2021
Response Made by Custodian: February 12, 2021
GRC Complaint Received: February 16, 2021

Background³

Request and Response:

On February 4, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On February 12, 2021, the Custodian responded in writing denying access to the records on several grounds. The Custodian stated that:

1. The requested information was exempt under OPRA’s exemption for “emergency or security information or procedures for any buildings or facility which, if disclosed, would jeopardize security of the building or facility or persons therein.” N.J.S.A. 47:1A-1.1.
2. The information falls within the exemption under Executive Order No. 21 (Gov. McGreevy, 2002) (“EO 21”), which states: “Records where inspection, examination or copying would substantially interfere with the State’s ability to protect and defend the State and its citizens against acts of sabotage or terrorism, or which, if disclosed, would material increase the risk or consequences of potential acts of sabotage or terrorism.”

¹ No legal representation listed on record.

² Represented Randolph C. Lafferty, Esq., of Cooper Levenson (Atlantic City, NJ).

³ The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

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3. The importance of the confidentiality of the material substantially outweighs the policy of access to government records for the widespread health, safety, and welfare of the those who are served by the HMUA.

Denial of Access Complaint:

On February 16, 2021, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that since mid-January 2021, he has requested the right to view, photograph, or obtain copies of, HMUA’s water and sewer maps.

Regarding the Custodian’s reasons for denial, the Complainant initially asserted that the water and sewer maps were not buildings or facilities and therefore would not fall under OPRA’s security exemption. The Complainant asserted that previous GRC decisions exempted building and floor plans but not water or sewer maps under this exemption.

Regarding EO 21, the Complainant asserted that EO 21 only referenced records held by the Office of the Governor or the State, rather than municipalities. The Complainant asserted that there was no existing precedent which cited that disclosure of water or sewer maps would substantially interfere with the State’s ability to protect the State and its citizens against acts of sabotage or terrorism.

Regarding the last portion, the Complainant asserted that there were no existing exemptions under OPRA or related executive orders which exempt water and sewer maps from disclosure. The Complainant noted that several other municipal utility authorities provide online access to their sewer and water maps in detail.

Statement of Information:

On February 24, 2021, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on February 4, 2021. The Custodian certified that he responded in writing on February 12, 2021, denying access to the request on several grounds.

The Custodian maintained the basis of denial as stated in his February 12, 2021 response.

Analysis

Unlawful Denial of Access

OPRA provides that government records made, maintained, kept on file, or received by a public agency in the course of its official business are subject to public access unless otherwise exempt. N.J.S.A. 47:1A-1.1. A custodian must release all records responsive to an OPRA request “with certain exceptions.” N.J.S.A. 47:1A-1. Additionally, OPRA places the burden on a custodian to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6.

OPRA further provides that a “government record” shall not include “emergency or security information or procedures for any buildings or facility which, if disclosed, would jeopardize security of the building or facility or persons therein.” N.J.S.A. 47:1A-1.1.

The GRC has previously addressed requests for building plans. In Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2011-330 (February 2013), the complainant sought access to building plans for the municipal complex. The complainant subsequently filed a Denial of Access Complaint after not receiving a response. As part of the SOI, the custodian asserted that the requested plans were exempt under the safety and security exemption. The Council, looking to its prior decision in Cardillo v. City of Hudson (Zoning Office), GRC Complaint No. 2005-158 (December 2006) (holding that residential building plans were exempt from disclosure under OPRA), held that the custodian lawfully denied access to the requested building plans. Id. at 8. See also Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2007-319 (July 2008).

OPRA also provides that:

The provisions of this act . . . shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to [OPRA] . . . any other statute; resolution of either or both Houses of the Legislature; *regulation* promulgated under the authority of any statute or Executive Order of the Governor; *Executive Order of the Governor*; Rules of Court; any federal law; federal regulation; or federal order.

[N.J.S.A. 47:1A-9(a) (emphasis added).]

EO 21 provides that “any government record where the inspection, examination, or compilation of that record would substantially interfere with the State’s ability to defend the State and its citizens against acts of sabotage and terrorism, or which, if disclosed, would materially increase the risk or consequences of potential acts of sabotage and terrorism,” is exempt from disclosure.

In Russomano v. Twp. of Edison (Middlesex), GRC Complaint No. 2012-307 (November 2013), the complainant sought the Township of Edison’s Emergency Management Plan (“EMP”) for the years 2010, 2011, and 2012. The custodian denied access, asserting that disclosure of such records would significantly impact public safety and jeopardize management operations and personnel. The Council agreed with the custodian along with the State Police and State’s Office of Emergency Management, holding that disclosure of the EMP would interfere with the State’s ability to protect and defend the State and its citizens. See also Vasquez v. Burlington Cnty. GRC Complaint No. 2005-193 (February 2005).

In the instant matter, the Complainant sought access, through inspection and copies, to maps of water and sewer lines from HMUA. The Custodian denied access under EO 21 and OPRA’s security exemption. The Complainant argued that maps of water and sewer lines would not fall under OPRA’s security exemption as they are not a “building” or “facility.” Additionally, the Complainant argued that there is no existing precedent establishing that the State considers

municipal water and sewer records as that which, if disclosed, would substantially interfere with its ability to protect the public from sabotage or terrorism.

Although not a “building plan,” a map of water and sewer lines for the Township depicts key information on critical infrastructure used by citizens. If disclosed or inspected under OPRA, individuals with access to this information could increase the risk of harm or damage to the citizens utilizing it, like how access to building plans can substantially increase the security risk of the building or the persons therein. See Kohn, GRC 2011-330. Notwithstanding, disclosure or inspection of these maps under OPRA greatly increases the risk of sabotage. Not only would it affect citizens’ access to water, but public services such as fire departments would also be neutered in their ability to address the consequences of terrorism. See Russomano, GRC 2012-307.

Accordingly, the Custodian did not unlawfully deny access to the Complainant’s OPRA request seeking inspection, photographs, and copies of water and sewer maps from HMUA. N.J.S.A. 47:1A-6. Disclosure or inspection of such records under OPRA is likely to jeopardize the safety and security of the water and sewer infrastructure and the citizens utilizing same. N.J.S.A. 47:1A-1.1; Kohn, GRC 2011-330. Additionally, disclosure or inspection of these records under OPRA would materially increase the risk of sabotage and the ability of the State to defend against potential acts of terrorism. N.J.S.A. 47:1A-9(a); EO 21; Russomano, GRC 2012-307.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian did not unlawfully deny access to the Complainant’s OPRA request seeking inspection, photographs, and copies of water and sewer maps from the Hamilton Township Municipal Utilities Authority. N.J.S.A. 47:1A-6. Disclosure or inspection of such records under OPRA is likely to jeopardize the safety and security of the water and sewer infrastructure and the citizens utilizing same. N.J.S.A. 47:1A-1.1; Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2011-330 (February 2013). Additionally, disclosure or inspection of these records under OPRA would materially increase the risk of sabotage and the ability of the State to defend against potential acts of terrorism. N.J.S.A. 47:1A-9(a); Executive Order No. 21 (Gov. McGreevy, 2002); Russomano v. Twp. of Edison (Middlesex), GRC Complaint No. 2012-307 (November 2013).

Prepared By: Samuel A. Rosado
Staff Attorney

July 19, 2021