



PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lieutenant Governor

State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO Box 819
TRENTON, NJ 08625-0819

JACQUELYN A. SUÁREZ
Commissioner

FINAL DECISION

January 28, 2025 Government Records Council Meeting

Edward J. Minall, Jr.
Complainant

Complaint No. 2022-539

v.

Township of Scotch Plains (Union)
Custodian of Record

At the January 28, 2025, public meeting, the Government Records Council (“Council”) considered the January 21, 2025, 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 requests seeking electronic copies of the construction drawings of the West Broad Street Sanitary Sewer Pump Station and the Equipment Pad. Specifically, the drawings comprised of information which, if disclosed, would likely jeopardize the safety and security of the water and sewer infrastructure and the citizens utilizing same. N.J.S.A. 47:1A-9(a); Executive Order No. 21 (Gov. McGreevy, 2002); Mincer v. Hamilton Twp. Mun. Util. Auth. (Atlantic), GRC Complaint No. 2021-43 (July 2022); 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 28th Day of January 2025

John A. Alexy, 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: January 30, 2025

New Jersey is an Equal Opportunity Employer • Printed on Recycled paper and Recyclable

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
January 28, 2025 Council Meeting**

**Edward J. Minall, Jr.¹
Complainant**

GRC Complaint No. 2022-539

v.

**Township of Scotch Plains (Union)²
Custodial Agency**

Records Relevant to Complaint:

OPRA Request No. 1, July 14, 2022: Electronic copies via email of construction drawings of the West Broad Street Sanitary Sewer Pump Station.

OPRA Request No. 2, July 21, 2022: Electronic copies via email of construction drawings of the Equipment Pad portion only for the West Broad Street Sanitary Sewer Pump Station.

Custodian of Record: Bozena Lacina

Request Received by Custodian: July 14, 2022; July 21, 2022

Response Made by Custodian: July 20, 2022; July 21, 2022

GRC Complaint Received: October 6, 2022

Background³

Request and Response:

On July 14, 2022, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On July 20, 2022, the Custodian responded in writing denying access to the records pursuant to:

1. 6 C.F.R. § 29.8(g) Disclosure of Protected Critical Infrastructure Information (“PCII”), which provides in relevant part “Responding to requests made under the Freedom of Information Act or State, local, and tribal information access laws. PCII shall be treated as exempt from disclosure under the Freedom of Information Act and any State or local law requiring disclosure of records or information;” and

¹ No legal representation listed on record.

² Represented by Brian P. Trelease, Esq., of Rainone, Coughlin, Minchello, LLC (Iselin, 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.

2. N.J.S.A. 47:1A-1.1, which exempts “OPRA request[s] seeking security measures and surveillance techniques which, if disclosed, would create a risk to the safety or persons, property, electronic data or software.”

On July 21, 2022, the Complainant submitted a second (2nd) OPRA request seeking the above-mentioned records. On July 21, 2022, the Custodian responded in writing denying access to the records on the same basis provided on July 20, 2022.

Denial of Access Complaint:

On October 6, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that he expressed his concerns with regard to the subject construction project with Township Officials and Department of Public Works employees beginning on July 10, 2022. The Complainant also stated that he expressed his concerns during a Town Council meeting.

The Complainant asserted that he submitted an initial OPRA request, which was denied by the Township as “critical infrastructure.” The Complainant asserted that because his initial request was denied, he submitted a second (2nd) OPRA request seeking “drawings pertaining to the [subject] equipment pad which is visible to the public . . .” Complainant stated that the Township again denied this OPRA request as “critical infrastructure.”

The Complainant disputed the denial arguing that because the project was not a potable water station it would not qualify as critical infrastructure. The Complainant also noted that the subject construction project was in public view. The Complainant thus contended that the requested records would not fall under OPRA’s security exemption.

Statement of Information:

On October 19, 2022, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA requests on July 14, 2022 and July 21, 2022, respectively. The Custodian certified that she responded to each request in writing on July 20, 2022 and July 21, 2022, respectively.

The Custodian asserted that she lawfully denied access to the Complainant’s OPRA requests as the responsive records sought were exempt from disclosure pursuant to 6 C.F.R. §29.8(g) and N.J.S.A. 47:1A-1.1. The Custodian contended that the responsive records consisted of four (4) pages of maps identifying the Township’s water and sewer lines that are utilized daily by the Township’s citizens and “are sensitive and pose safety and security concerns.”

The Custodian asserted that the facts of this matter are similar to those set forth in Mincer v. Hamilton Twp. Mun. Util. Auth. (Atlantic), GRC Complaint No. 2021-43 (July 2022), where the Council held that the custodian lawfully denied access to the township’s water and sewer maps. The Custodian stated that in that case, the Council concluded that the denial of access was lawful because (1) disclosure or inspection of such records under OPRA would: (1) likely jeopardize the safety and security of the water and sewer infrastructure and the citizens utilizing same pursuant

to N.J.S.A. 47:1A-1.1; and (2) materially increase the risk of sabotage and the ability of the State to defend those potential acts of terrorism pursuant to N.J.S.A. 47:1A-9(a); Executive Order No. 21 (Gov. McGreevy, 2002) (“EO 21”); Russomano v. Twp. of Edison (Middlesex), GRC Complaint No. 2012-307 (November 2013). The Custodian asserted that the subject denial of access was lawful based upon the Mincer precedent and in accordance with N.J.S.A. 47:1A-1.1, EO 21, and 6 C.F.R. §29.8(g).⁴

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.

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).]

Further, under 6 C.F.R. § 29.8(g), PCII is treated as exempt from disclosure under the Freedom of Information Act and any State or local law requiring disclosure of records or information.

Also, 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.

⁴ The Custodian asserted that the Complainant requested the subject records under the common law right of access. The GRC notes that it has no authority over the common law right of access. N.J.S.A. 47:1A-7(b); see also Rowan, Jr. v. Warren Hills Reg’l Sch. Dist. (Warren), GRC Complaint No. 2011-347 (January 2013). Thus, this issue is not properly before the GRC.

The GRC has previously addressed requests for municipal water and sewer maps. In Mincer, GRC 2021-43, the complainant sought through inspection and copies, maps of the township's water and sewer lines from HMUA. The Custodian denied access under EO 21 and OPRA's security exemption for "emergency or security information or procedures for any building or facility or persons therein. N.J.S.A. 47:1A-1.1." The Council agreed with the custodian, concluding that, although not a "building or facility," as indicated in the statutory exemption, a township map of water and sewer lines depicts key information on critical infrastructure used by citizens, which if disclosed, would likely jeopardize the safety and security of the water and sewer infrastructure and the citizens utilizing same. Additionally, the Council held that disclosure or inspection of said records 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; see also Russomano, GRC 2012-307. Accordingly, the Council found that the custodian lawfully denied access to the requested records.

In the instant matter, the Complainant sought access to construction drawings of the Equipment Pad portion only for the West Broad Street Sanitary Sewer Pump Station. The responsive records consist of four-pages (4) of maps identifying the Township's sewer lines. The Custodian denied access thereto under C.F.R. 29 and N.J.S.A. 47:1A-1.1. This complaint followed where the Complainant contended that the records did not show critical infrastructure. In the SOI, the Custodian contended her denial was lawful and cited Mincer in support. The GRC has previously concluded that township maps of water and sewer lines, such as the records being requested in the instant matter, qualify as critical infrastructure, and are exempt from disclosure and inspection. Mincer, GRC 2021-43.

Accordingly, the Custodian did not unlawfully deny access to the Complainant's OPRA requests seeking electronic copies of the construction drawings of the West Broad Street Sanitary Sewer Pump Station and the Equipment Pad. Specifically, the drawings comprised of information which, if disclosed, would likely jeopardize the safety and security of the water and sewer infrastructure and the citizens utilizing same. N.J.S.A. 47:1A-1.1; 6 C.F.R. § 29.8(g). Disclosure would also 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; Mincer, GRC 2021-43; 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 requests seeking electronic copies of the construction drawings of the West Broad Street Sanitary Sewer Pump Station and the Equipment Pad. Specifically, the drawings comprised of information which, if disclosed, would likely jeopardize the safety and security of the water and sewer infrastructure and the citizens utilizing same. N.J.S.A. 47:1A-9(a); Executive Order No. 21 (Gov. McGreevy, 2002); Mincer v. Hamilton Twp. Mun. Util. Auth. (Atlantic), GRC Complaint No. 2021-43 (July 2022); Russomano v. Twp. of Edison (Middlesex), GRC Complaint No. 2012-307 (November 2013).

Prepared By: Jennifer C. Howell
Staff Attorney

January 21, 2025