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State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
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JACQUELYN A. SUÁREZ
Commissioner

FINAL DECISION

July 29, 2025 Government Records Council Meeting

Luis Eduardo Vergara
Complainant

Complaint No. 2023-27

v.

Borough of New Providence (Union)
Custodian of Record

At the July 29, 2025, public meeting, the Government Records Council (“Council”) considered the July 22, 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 unlawfully denied access to the Complainant’s OPRA request for “home drawings and plans delineating foundation drain and any storm drainage.” N.J.S.A. 47:1A-6. Specifically, the instant request amounted to a request for site plans, which are not exempt pursuant to the security exemption. N.J.S.A. 47:1A-1.1. However, the GRC declines to order any further action because the Custodian disclosed the requested site plans to the Complainant on March 6, 2023.

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 29th Day of July 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: July 31, 2025



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
July 29, 2025 Council Meeting**

**Luis Eduardo Vergara¹
Complainant**

GRC Complaint No. 2023-27

v.

**Borough of New Providence (Union)²
Custodial Agency**

Records Relevant to Complaint: Copies of “home drawings and plans delineating foundation drain and any storm drainage on all the property [at a specific address in the Borough of New Providence (“Borough”)].”

Custodian of Record: Wendy B. Barry³

Request Received by Custodian: January 10, 2023

Response Made by Custodian: January 11, 2023

GRC Complaint Received: February 6, 2023

Background⁴

Request and Response:

On January 10, 2023, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On January 11, 2023, the Custodian responded in writing denying the request because plans are only released to the property owner.

Denial of Access Complaint:

On February 6, 2023, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that his OPRA request sought plans “delineating [f]oundation [d]rain and any [s]torm [d]rainage” at the identified property. The Complainant asserted he was unlawfully denied access to the records sought. The Complainant argued that government records should be readily accessible for inspection, copying, or examination by citizens and noted that prior to allowing access to the government record, the custodian shall redact certain private information.

¹ No legal representation listed on record.

² Represented by Paul Rizzo, Esq., of DiFrancesco Bateman, P.C. (Warren, NJ).

³ The current Custodian of Record is Denise Brinkofski.

⁴ 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.

Supplemental Response:

On March 6, 2023, Custodian's Counsel sent a letter to the GRC. Therein, Counsel acknowledged receipt of the complaint where the Complainant appeared to seek site plans depicting drainage at the identified property. Counsel stated that this is different from the Borough's interpretation of the OPRA request, which purportedly sought building plans. Counsel stated that while the Borough believed building plans remained exempt under OPRA, site plans do not fall within the same exemption. Counsel thus stated that the Borough has sent a copy of the site plans to the Complainant depicting the drainage system.

Statement of Information:

On March 15, 2023, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that she received the Complainant's OPRA request on January 10, 2023. The Custodian certified that she responded in writing on January 11, 2023, denying the request because the requested plans may only be released to the property owner.

The Custodian argued that the requested building plans were exempt pursuant to N.J.S.A. 47:1A-1.1, which exempts disclosure of records that would jeopardize the security of the building or facility of persons therein if disclosed. The Custodian maintained that the DCA Bulletin 03-3, July 2003 (revised April 2013), citing N.J.A.C. 5:3 clarified confusion regarding OPRA and construction documents by providing that building plans submitted in conjunction with any permit application are exempt from disclosure under OPRA.

The Custodian stated that the plans sought by the Complainant were submitted in conjunction with a permit application for the property at the address identified in the subject OPRA request. Further, the Custodian noted that the Complainant requested "home drawings and plans" and did not request site plans. The Custodian stated that the Construction Office interpreted this request as being for building plans that are exempt from disclosure. The Custodian maintained that neither she nor Counsel were aware that the Complainant actually sought site plans, and the Complainant made no effort to clarify his request or otherwise resolve the issue. The Custodian certified that she and her Counsel reviewed the instant Denial of Access Complaint and provided the Complainant with the records he sought but did not provide documents demonstrating disclosure.

Additional Submissions:

On July 10, 2025, the GRC requested additional information from the Custodian. Specifically, the GRC inquired as to whether the Custodian provided the Complainant with "drawings and plans delineating drain and storm drainage" for the requested property and if so, the date on which the records were disclosed. On July 14, 2025, Custodian's Counsel responded to the GRC in writing on behalf of the current Custodian, providing a certification. Therein, the current Custodian certified that on March 6, 2023, the Custodian e-mailed the Complainant the responsive records and provided a copy of that e-mail 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.

In Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2007-319 (July 2008), the complainant sought access to floor plans for a new municipal complex. The Council held that “[t]he requested floor plans are exempt from disclosure for containing security information or procedures for any building facility which, if disclosed, would jeopardize security of the building or facility or persons therein pursuant to N.J.S.A. 47:1A-1.1.” Id. at 9. Additionally, in Nase v. Twp. of Middle (Cape May), GRC Complaint No. 2016-273 (July 2018), the complainant sought access to building plans for a home in the Township to which the custodian denied access under the security exemption. N.J.S.A. 47:1A-1.1. The Council agreed, holding that the building plans were exempt from disclosure for the reasons cited by the custodian (citing Cardillo v. City of Hoboken Zoning Office, GRC Complaint No. 2005-158 (December 2006)). However, site plans have historically been treated as separate from building plans and are generally disclosable. Cotrell v. Borough of Glassboro, GRC Complaint No. 2005-247 (April 2006) (custodian disclosed unredacted copies of a site plan for a parking lot). This would include façade plans, which show the aesthetic of a building only, the disclosure of which would not typically jeopardize the safety or security of the structure.

In the instant matter, the Complainant sought “home drawings and plans delineating foundation drain and any storm drainage on all the property” at a specific address in the Borough of New Providence. On January 11, 2023, the Custodian responded in writing denying the request stating that “building plans” can only be released to the property owner and are otherwise exempt under N.J.S.A. 47:1A-1.1. This complaint followed, wherein the Complainant argued that he was unlawfully denied access to plans showing drainage and noted the Custodian’s ability to redact any personal information. In the SOI, the Custodian certified that the Borough’s Construction Office interpreted the instant OPRA request as one for building plans only, which are exempt from disclosure under OPRA unless the requestor is the property owner. The Custodian certified that the misinterpretation was not caught until the instant Denial of Access Complaint was received. The Custodian certified that she and Counsel reviewed the instant complaint and disclosed the requested site plans to the Complainant.

However, on the face of the OPRA request, the Complainant’s request amounts to one for site plans in the least because he requested “drawings and plans” delineating storm drainage “on all the property.” The Custodian’s contention that the Denial of Access Complaint provided clarity on the OPRA request is misplaced: the Complainant did not change his verbiage from one to the other. A closer reading of the OPRA request from the outset would have yielded the same conclusion reached by the Custodian prior to the instant complaint. On July 10, 2025, the GRC inquired whether the Custodian subsequently disclosed “drawings and plans delineating drain and

storm drainage” to the Complainant. On July 14, 2025, the Custodian responded certifying that the records were sent to the Complainant via e-mail on March 6, 2023.

Accordingly, the Custodian unlawfully denied access to the Complainant’s OPRA request for “home drawings and plans delineating foundation drain and any storm drainage.” N.J.S.A. 47:1A-6. Specifically, the instant request amounted to a request for site plans, which are not exempt pursuant to the security exemption. N.J.S.A. 47:1A-1.1. However, the GRC declines to order any further action because the Custodian disclosed the requested site plans to the Complainant on March 6, 2023.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian unlawfully denied access to the Complainant’s OPRA request for “home drawings and plans delineating foundation drain and any storm drainage.” N.J.S.A. 47:1A-6. Specifically, the instant request amounted to a request for site plans, which are not exempt pursuant to the security exemption. N.J.S.A. 47:1A-1.1. However, the GRC declines to order any further action because the Custodian disclosed the requested site plans to the Complainant on March 6, 2023.

Prepared By: Maria M. Rossi
Staff Attorney

July 22, 2025