



State of New Jersey

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Commissioner

FINAL DECISION

May 21, 2024 Government Records Council Meeting

Joseph Oettinger, Jr.
Complainant

Complaint No. 2022-54

v.

Borough of Westwood (Bergen)
Custodian of Record

At the May 21, 2024 public meeting, the Government Records Council (“Council”) considered the May 14, 2024 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:

1. The Custodian unlawfully denied access to the requested Property Record Cards under OPRA. N.J.S.A. 47:1A-6. Specifically, PRCs consist of information also contained in CAMA databases, which the GRC has already found to be disclosable. Hopkins v. Monmouth Cnty., GRC 2014-01. Further, neither the privacy exemption nor Executive Order No. 26 (Gov. McGreevey, 2002) apply to the requested Property Record Cards. Thus, the Custodian had an obligation to disclose them with any individual redactions for specific exempt information, such as security information or personal information exempt under Daniel’s Law, where applicable. Thus, the Custodian shall disclose the responsive Property Record Cards to the Complainant via his preferred method of delivery.
2. **The Custodian shall comply with conclusion No. 1 above within ten (10) business days from receipt of the Council’s Final Decision. In the circumstance where the records ordered for disclosure are not provided to the Complainant, the Council’s Final Decision may be enforced in the Superior Court of New Jersey. N.J. Court Rules, R. 4:67-6; N.J.A.C. 5:105-2.9(c).**

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 21st Day of May 2024

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: May 23, 2024

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
May 21, 2024 Council Meeting**

**Joseph Oettinger, Jr.¹
Complainant**

GRC Complaint No. 2022-54

v.

**Borough of Westwood (Bergen)²
Custodial Agency**

Records Relevant to Complaint: Copies of the 2022 Assessment Year Property Record Card (“PRC”) for four (4) specific properties in the Borough of Westwood (“Borough”).

Custodian of Record: Karen Hughes

Request Received by Custodian: March 7, 2022

Response Made by Custodian: March 7, 2022

GRC Complaint Received: March 14, 2022

Background³

Request and Response:

On March 5, 2022, a Saturday, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On March 7, 2022, the Custodian responded in writing denying access to the responsive PRCs under Executive Order No. 26 (Gov. McGreevey, 2002) (“EO 26”). The Custodian noted that PRCs are “available to the property owner upon request” and attached a PRC authorization form (“Authorization”).

Later on March 7, 2022, the Complainant e-mailed Tax Assessor Sarah Holbig informing her of his request and the Custodian’s denial. The Complainant noted that he sought the records to complete a “Comparable Sales Analysis Form” (“Form”) for a possible tax appeal. The Complainant noted that he sought and obtained PRCs in the past, even through physical inspection. The Complainant asked Ms. Holbig to contact him to discuss how he could obtain the PRCs. Ms. Holbig responded referring the Complainant to the Authorization and stating that PRCs “are now requested with a different form rather than OPRA” due to EO 26. Later that day, the Complainant submitted the Authorization for his properties and made additional arguments as to why he believed EO 26 did not apply to the PRCs. The Complainant stated that without withdrawing his

¹ No legal representation listed on record.

² Represented by Levi J. Kool, Esq. of Huntington, Bailey, LLP (Westwood, 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.

OPRA request, he was submitting a “New Jersey Common Law request” and an offer to inspect those applicable PRCs as opposed to receiving copies.

On March 9, 2022, Ms. Holbig responded in writing disclosing the PRC for the Complainant’s property based on the completed PRC authorization form. Ms. Holbig also offered inspection of the other three (3) PRCs.

On March 10, 2022, the Complainant e-mailed the Custodian disputing the denial to at least two (2) of the PRCs, noting that the properties are owned by companies and not “natural person[s].” The Complainant further stated that he was concerned that the Borough was requiring him to submit OPRA requests for PRCs and has previously received them in connection with tax assessment appeals from the 2017 through 2020 tax years. The Complainant also noted that he reached out to the Government Records Council (“GRC”) for guidance and was told that it had no decisions related to PRC disclosure. The Complainant averred that he believed it would be “beneficial to both custodians and [OPRA] requesters” to file a complaint have the GRC and have them decide on the issue.

Later on March 10, 2022, the Custodian e-mailed the Complainant stating that she believed Ms. Holbig notified him that the responsive records were available for inspection. The Custodian confirmed that she received the PRCs and was expecting the Complainant to appear at the Borough. On March 14, 2022, the Custodian e-mailed Ms. Holbig and Custodian’s Counsel advising that the Complainant inspected the responsive PRCs that morning.

Denial of Access Complaint:

On April 7, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant stated that he made the subject OPRA request to complete a Form provided by the Bergen County Board of Taxation (“County”) to determine whether it was feasible to file a tax appeal for 2022. The Complainant noted that if he decided to file a tax appeal, the Form would be submitted as evidence at any hearing before the County. The Complainant averred that three (3) of the properties for which PRCs were sought are comparable to his property. The Complainant asserted that the PRCs contained the information required on that form; the only alternative would be to seek permission from the property owners “to perform an intrusive detailed inspection of” the properties. The Complainant further noted that the fourth property is his own.

The Complainant disputed that EO 26 applied to PRCs, noting that they contain a “*partial* description of a *single* asset belonging to a person.” (Emphasis in original). The Complainant argued that PRCs contain no information that EO 26 is meant to protect. The Complainant expressed concern that a liberal application of EO 26 could result in a public agency being able to exempt access to a larger quantity of records because of “some descriptive reference, however trivial, to the assets of a natural person.” The Complainant also noted that counties maintain deeds, mortgages, liens, and other records that relate specifically to a natural person’s finances that are readily available to the public. The Complainant argued that even if EO 26 applied here, it would not apply to two (2) of the properties because they are held by commercial properties. The Complainant contended that those companies due not qualify as a “natural person.”

The Complainant lastly noted that he previously received PRCs from the Borough and its Tax Assessor. The Complainant stated that other municipalities advise the public on their websites to submit OPRA requests to obtain PRCs. The Complainant stated that the Borough has similarly put this practice in place and has regularly disclosed PRCs over the last few years in response to his OPRA requests. The Complainant contended that these prior disclosures either precludes the Custodian from now relying on EO 26 as a valid basis for denial or estops her from denying the subject OPRA request.

Statement of Information:

On April 7, 2022, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on March 7, 2022. The Custodian certified that she responded in writing on the same day denying access to the requested PRCs under EO 26. The Custodian noted that the Complainant was given the opportunity to inspect the responsive PRCs and did so on March 14, 2022.

The Custodian argued that this complaint should be dismissed because the Complainant inspected the responsive records on March 14, 2022; thus, no denial of access occurred. The Custodian argued that should the GRC decide to review whether she lawfully denied the PRCs, the finding should be in the affirmative based on EO 26 and privacy interest.

Regarding EO 26, the Custodian argued that the Internal Revenue Service (“IRS”) recognizes that a person’s residence is an asset for tax purposes. See I.R.S. Topic No. 703, Basis of Assets (March 12, 2021). The Custodian noted that Black’s Law Dictionary also includes in its definition of an asset “[a]n item that is owned and has value . . . real estate . . . [and] all the property of a person . . .” The Custodian thus argued that EO 26 clearly exempts from access a “natural person’s . . . assets” and same has not been invalidated or overturned. The Custodian thus argued that EO 26 applied to the responsive PRCs as an appropriate exemption because the information contained therein describes a natural person’s assets.

Regarding privacy interest, the Custodian argued that disclosure of the “intimate details of a property” represents a significant invasion of privacy. The Custodian argued that government should not be engaged in the commercialization of data and are required to protect a citizen’s reasonable expectation of privacy where submission of personal information is mandatory. The Custodian then argued that the public “participates in the appraisal process voluntarily” with an expectation that the collected data will not be disseminated, nor does the Borough include disclosure waivers. The Custodian noted that the N.J. Real Property Appraiser Manual, Volume 1 (“Manual”) provides that this data “should be treated as confidential . . . and should not be discussed or used for any other purpose.” Id. at I-5. The Custodian argued the forgoing clearly requires assessors to adhere to the confidentiality required by the Manual. The Custodian also cited additional paragraphs in the Manual addressing how assessors should conduct their assessments to gain public confidence. The Custodian noted that although both excerpts were removed from the 2022 Manual, the Association of Municipal Assessors of New Jersey continue to support the underlying principles expressed therein. The Custodian argued that disclosure of PRCs, especially to commercial entities, could hinder public confidence in the process to the point of a collapse in voluntary participation to the detriment of each assessor’s Constitutional duty. Constitution of the

State of New Jersey, Article VIII, Section 1. The Custodian also argued, as stated in the Manual, tax assessors strive to keep quality in local tax assessment administrations because “local property taxes [are] the prime financial foundation of local government.” The Custodian argued that the commercialization of property records “may well destroy the financial foundation of the local government.”

Additional Submissions:

On April 8, 2022, the Complainant responded to the Custodian’s SOI. The Complainant first noted that this complaint should not be considered moot because he ultimately received the responsive records after making a separate common law request. The Complainant argued that notwithstanding his inspection, this complaint focused solely on the issue of whether the Custodian was required to disclose PRCs under OPRA.

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 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 . . .” N.J.S.A. 47:1A-1. Moreover, OPRA provides that its provisions “shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to . . . Executive Order of the Governor . . .” N.J.S.A. 47:1A-9(a). To this end, EO 26 provides that:

The following records shall not be considered to be government records subject to public access pursuant to [OPRA] . . . *information describing a natural person’s finances, income, assets, liability, net worth, bank balances, financial history or activities, or creditworthiness, except as otherwise required by law to be disclosed.*

[Id. at 4(b) (emphasis added).]

Here, the Complainant sought access to PRCs for four (4) specific properties, one of which was his own property. The Custodian responded denying access under EO 26 but noted that the Complainant may access the PRC for his own property by completing an Authorization. In the ensuing communications, both parties disagreed over the application of EO 26 to PRCs; however, the Complainant was subsequently given access to his own PRC and was able to inspect the other three (3) PRCs in response to a common law request.

The Complainant then filed this complaint asking the GRC to determine whether PRCs were disclosable under OPRA. The Complainant argued that EO 26 did not apply to PRCs, which contained partial data of a single asset. The Complainant further argued that counties maintain and readily make available to the public many different types of property records like PRCs. Further, the Complainant asserted that even if EO 26 applied to PRCs, two (2) of those requested were for businesses. The Complainant lastly argued that the Borough, like other municipalities, directs citizens to submit OPRA requests for PRCs. The Complainant noted that the Borough previously disclosed same to him upon submission of OPRA requests over the last few years.

In the SOI, the Custodian argued that the complaint should be dismissed because the Complainant inspected the responsive PRCs on March 14, 2022. Alternatively, the Custodian argued that EO 26 applied to PRCs based on IRS guidance and the Black's Law Dictionary definition of an "asset", which includes "real estate . . . [and] all the property." The Custodian also argued that privacy interest and the State's policy urging confidentiality in the appraisal process require a denial under OPRA's privacy exemption. The Custodian argued that government agencies should not be disclosing mandatory information given thereto absent a waiver of confidentiality. Citing the Manual, the Custodian argued that disclosure of PRCs under OPRA would undermine tax appraisers' ability to conduct quality assessments. The Custodian lastly argued that public agencies should not be in the business commercializing records and that doing so could result in the destruction of the local government "financial foundation."

In response to the SOI, the Complainant argued that this complaint was not moot. The Complainant noted that while he eventually received access, same was granted under the common law and not OPRA. The Complainant thus argued that the outstanding question of disclosability under OPRA remains.

Initially, the GRC notes that the evidence of record confirms that the Complainant inspected the responsive PRCs on March 14, 2022. However, as noted by the Complainant, such access was provided in response to separate request processes after being denied under OPRA. Thus, the GRC rejects the Custodian's assertion that the instant complaint should be dismissed due to the inspection because the central issue of whether the Custodian unlawfully denied access to the responsive PRCs *under OPRA* has not dissolved the controversy before the Council. See e.g. Philips v. City of Rahwah (Union), GRC Complaint No. 2021-236 (August 2023) (holding that disclosure there did not moot the complaint because the central issue remained).

Further, the GRC notes that the Complainant's assertion that OPRA requires disclosure of PRCs because he previously received them under OPRA is in error. Prior disclosure is not a necessary indicator of a record's actual disclosability status. By example, a custodian's disclosure of a social security number, which is obviously exempt from access under N.J.S.A. 47:1A-1.1, does not convert it to disclosable in perpetuity thereafter. Thus, the GRC must decide on this issue within the confines of the current complaint absent contemplation of prior disclosures.

The disclosure of PRCs is a matter of first impression: neither the GRC nor the courts have decided on the disclosability of PRCs under OPRA.⁴ However, the GRC finds an appropriate comparison in Hopkins v. Monmouth Cnty. Bd. of Taxation, et al., GRC Complaint No. 2014-01, *et seq.* (June 2018), where the disclosability of computer assisted mass appraisal (“CAMA”) was at issue. There, the complainant sought access to CAMA data for multiple municipalities in three (3) counties, which was denied under varying bases. Based on complex technological issues raised by the parties, and because disclosure of CAMA data was a matter of first impression, the Council decided to refer the complaint to the Office of Administrative Law (“OAL”) to develop the record.

During the OAL hearing, William Raska, owner of Microsystems, provided testimony describing how assessors use CAMA data to perform assessments. Mr. Raska confirmed that the program provided to assessors is called the “PRC-5” and that assessors can produce PRCs from the program. *Id.* Further, the custodian for Monmouth County confirmed that while he did not know if a PRC was a public record, “Mod-IV information and a PDF sketch” for each property was available online.⁵ The OAL subsequently held in an Initial Decision that CAMA data was a “government record” subject to access and that no exemptions applied. Hopkins, GRC 2014-01 (Interim Order dated July 26, 2016) at 2. The Initial Decision subsequently became final by operation of law and was relied on by the GRC in several subsequent complaints to find that CAMA data was subject to disclosure under OPRA. *See e.g. Hopkins v. Twp. of Howell (Monmouth)*, GRC Complaint No. 2014-33 (Interim Order dated April 24, 2018).

The GRC is compelled by its prior decision in Hopkins, GRC 2014-01 that PRCs are subject to disclosure under OPRA. Those records, used to determine its tax value, are comprised entirely of the type of data contained within a CAMA database. To suggest that CAMA data would be disclosable, but the record reflecting a portion thereof is not, would lead to an absurd result here. Thus, the GRC finds Hopkins persuasive to its finding that PRCs are subject to disclosure under OPRA.

As to the Custodian’s privacy claim argument, the N.J. Supreme Court has held that “. . . before an extended analysis of the [Doe v. Poritz, 142 N.J. 1 (1994)] factors is required, a custodian must present a colorable claim that public access to the records requested would invade a person’s objectively reasonable expectation of privacy.” Brennan v. Bergen Cnty. Prosecutor's Office, 233 N.J. 330, 342 (2018). *See also* Bozzi v. City of Jersey City, 248 N.J. 274 (2021). Here, the argument is couched not in terms of privacy information such as home addresses or e-mail addresses. Instead, the Custodian argued that disclosure of the detailed assessment numbers would violate this provision because citizens have a reasonable expectation to property assessment data. The Custodian supported this argument by noting that citizens participate in the appraisal process voluntarily and the Manual has for years instructed assessors to treat the data as confidential (until the statement was recently removed). The Custodian also argued that disclosure of PRCs under OPRA would collapse the voluntary participation of assessments.

⁴ The GRC notes that the Superior Court of New Jersey, Appellate Division previously held that PRCs were disclosable under OPRA’s predecessor, the Right to Know Law. De Lia v. Kiernan, 119 N.J. Super. 581, 584-585 (App. Div. 1972).

⁵ The GRC has confirmed that PRCs for properties in Monmouth County can be accessed directly through the County’s Open Public Records System Search (OPRS). <https://oprs.co.monmouth.nj.us/oprs/External.aspx?iId=12> (accessed May 10, 2024).

The GRC does not view OPRA's privacy exemption to cover the data contained with PRCs and must thus reject the Custodian claim that it applies. OPRA's privacy exemption generally refers to individual information, such as names and home addresses. Brennan, 233 N.J. at 337-338. The Legislature's further contemplation of the limitation of the privacy exemption to personal information is found in the mission of the Privacy Study Commission, which was to ". . . promptly study the issue of whether and to what extent home addresses and telephone number[s] of citizens should be disclosed by public agencies. . . ." EO 26; *Final Report: Privacy Study Commission* 15 (Dec 2004). The GRC was unable to find any support for the premise that property data carries a similar privacy interest warranting consideration for exemption under N.J.S.A. 47:1A-1. For this very reason, the GRC cannot glean a colorable claim requiring it to perform a balancing test of the requested PRCs. Brennan, 233 N.J. at 342. Briefly, the GRC is also not persuaded that statements made in the Manual, which have recently been removed in a newer edition, have statutory backing to qualify as a valid exemption under OPRA.

Moving to the Custodian's argument that PRCs are exempt from disclosure under EO 26, the GRC also rejects this argument. While the Custodian provides a definition for the term "asset" from the IRS and Black's Law Dictionary, the GRC is not compelled to find that a record showing the basic valuation of a property for tax purposes to necessarily be connective to the intent of EO 26. First, the value of a home is not directly connected to its inhabitants: the home value remains the same at the time of valuation absent its owners. Second, the application of EO 26 has typically related to distinctly personal fiduciary information, whereas real estate values are particularly public and accessible through multiple forums both governmental and commercial. The GRC thus finds that inclusion of the valuation of real estate is an overly broad application of EO 26's exemption.

Finally, the GRC cannot accept the Custodian's argument on the potential commercial use of PRCs. The Council has already held that there are no restrictions on the commercial use of records contained in OPRA. Spaulding v. Cnty. of Passaic, GRC Complaint No. 2004-199 (September 2006). Further, the Complainant is obviously not a commercial entity; rather, he is a resident considering whether to appeal his own assessment results. Thus, the potential usage of PRCs for commercial purposes is of no moment to this adjudication.

Accordingly, the Custodian unlawfully denied access to the requested PRCs under OPRA. N.J.S.A. 47:1A-6. Specifically, PRCs consist of information also contained in CAMA databases, which the GRC has already found to be disclosable. Hopkins v. Monmouth Cnty., GRC 2014-01. Further, neither the privacy exemption nor EO 26 apply to the requested PRCs. Thus, the Custodian had an obligation to disclose them with any individual redactions for specific exempt information, such as security information or personal information exempt under Daniel's Law, where applicable. Thus, the Custodian shall disclose the responsive PRCs to the Complainant via his preferred method of delivery.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian unlawfully denied access to the requested Property Record Cards under OPRA. N.J.S.A. 47:1A-6. Specifically, PRCs consist of information also contained in CAMA databases, which the GRC has already found to be disclosable. Hopkins v. Monmouth Cnty., GRC 2014-01. Further, neither the privacy exemption nor Executive Order No. 26 (Gov. McGreevey, 2002) apply to the requested Property Record Cards. Thus, the Custodian had an obligation to disclose them with any individual redactions for specific exempt information, such as security information or personal information exempt under Daniel's Law, where applicable. Thus, the Custodian shall disclose the responsive Property Record Cards to the Complainant via his preferred method of delivery.

2. **The Custodian shall comply with conclusion No. 1 above within ten (10) business days from receipt of the Council's Final Decision. In the circumstance where the records ordered for disclosure are not provided to the Complainant, the Council's Final Decision may be enforced in the Superior Court of New Jersey. N.J. Court Rules, R. 4:67-6; N.J.A.C. 5:105-2.9(c).**

Prepared By: Frank F. Caruso
Executive Director

May 14, 2024