

THE STATE OF NEW HAMPSHIRE

**HILLSBOROUGH, SS.
SOUTHERN DISTRICT**

**SUPERIOR COURT
No. 2023-CV-00141**

Julie A. Smith

v.

City of Nashua

ORDER

The petitioner, Julie A. Smith, has brought this pro se action against the City of Nashua (the “City”) seeking access to public records pursuant to RSA 91-A. The Court held a final hearing on this matter on May 10, 2023. After considering the record, the arguments, and the applicable law, the Court finds and rules as follows.

The Court draws the following facts from the record. On August 26, 2022, the petitioner sent an e-mail to the City’s then-Administrative Services Director, Kim Kleiner, stating, “Pursuant to the Right to Know Law (RSA[] 91-A), I am requesting you please provide within 5 days the following items: Documents and records provided by Vision Government Solutions on assessment increases for various categories of properties.” (Pet. Ex. 4.) Neither Ms. Kleiner nor any representative from the City responded to this request. Thereafter, on November 13, 2022, the petitioner sent an e-mail to the City’s assessing office, stating, “As per 91A Right-to-Know protocols, I am requesting all formulas, guidelines and methods used for appraising both modular homes and single trailers. Please send me all relevant documentation within 5 days.” (Pet. Ex. 6.) The City interpreted this request as seeking a document known as a USPAP Compliance Report (the “USPAP Report”), an interpretation which the petitioner never contested. At the time, the USPAP Report was in the process of being written by Vision Government

Solutions (“VSG”), the entity the City hired to conduct a city-wide property re-evaluation in 2022.

On November 21, 2022, the City’s new Administrative Services Director, Tim Cummings, responded to the petitioner’s November 13, 2022 e-mail, stating, in relevant part: “The City is in receipt of your request dated November 13, 2022, under NH RSA 91-A, the ‘Right-to-Know’ law. . . . The City requires additional time to search for additional records and to review. We will respond on or before January 6, 2023.” (Pet. Ex. 7.) On November 29, 2022, Mr. Cummings sent the petitioner a letter stating that the City “do[es] not and will not have [the USPAP Report] in our office until it is submitted by [VSG].” (Pet. Ex. 8.) Mr. Cummings further represented that a PDF version of the USPAP Report “will be uploaded onto the [City’s] website and the hard copy will be available at the Assessing Department” once it was available. (Id.) On January 6, 2023, Mr. Cummings sent another letter to the petitioner informing her that the City had a received a draft version of the USPAP Report from VGS. However, Mr. Cummings indicated that the draft report still needed to be reviewed by the City and the State of New Hampshire, and therefore the City was withholding that draft version from disclosure pursuant to an exemption in the Right-to-Know law. See RSA 91-A:5, IX. He also noted that he would provide a further update on or before January 31, 2023.

On January 31, 2023, the City’s newly-hired Records Administrator, Gary Perrin, e-mailed the petitioner with an update. He indicated that the USPAP Report was still in draft form, and that the City would provide an additional update on or before March 31, 2023. It is unclear if the City provided an update by that date. Apparently frustrated with the City’s response times, the petitioner filed a “Petition for Access to Public

Records Pursuant to RSA 91-A:7” on March 24, 2023. On April 19, 2023, presumably in an attempt to resolve this matter, the City sent the petitioner the draft USPAP Report in PDF format. In so doing, the City agreed to waive its previous claim that the draft version was exempt from disclosure under the Right-to-Know law. In addition, at the final hearing on this matter, the City agreed to pay the petitioner’s legal costs associated with the filing of this action (i.e. the entry fee and the sheriff’s service fee). As a result of these developments, the City now asserts that this case is moot. The Court agrees.

As the title of her petition makes clear, the petitioner has brought this action pursuant to RSA 91-A:7. (See Pet. at 1.) That statute authorizes “[a]ny person aggrieved by a violation of [RSA 91-A] [to] petition the superior court for injunctive relief.” RSA 91-A:7, I (emphasis added). In addition to authorizing injunctive relief, the Right-to-Know law authorizes the Court to provide other remedies, including: (1) an award of “reasonable attorney’s fees and costs” in certain circumstances, RSA 91-A:8, I; (2) “invalidat[ing] an action of a public body or public agency taken at a meeting held in violation” of RSA 91-A, RSA 91-A:8, III; and (3) imposing a civil penalty on certain individuals who violate RSA 91-A in “bad faith,” RSA 91-A:8, V. See generally Cioffi v. Town of Sanbornton, No. 2001-E-022, 2001 N.H. Super. LEXIS 22, **7–8 (Aug. 7, 2001) (interpreting RSA 91-A:7 and -8 as providing same remedies). However, RSA 91-A does not authorize the Court to provide general declaratory relief. See Currier v. Town of Gilmanston, 621 F. Supp. 3d 233, 258 (D.N.H. 2022) (holding that “RSA 91-A provides only for specific remedies, and declaratory relief is not among of them”).

Of these available remedies, the petitioner seeks an order requiring the City to disclose the draft USPAP Report as well as an award of the costs she incurred “in

bringing and prosecuting this action.” (Pet. Prayer for Relief ¶ E.) However, both of these issues are now moot. Specifically, the City provided the draft USPAP Report to the petitioner on April 19, 2023. Thus, there is no need for the Court to decide whether the draft USPAP Report was exempt from disclosure pursuant to RSA 91-A:5, IX, or, relatedly, whether to issue affirmative injunctive relief requiring the City to disclose it. See generally Thurston Enters. v. Baldi, 128 N.H. 760, 764 (1986) (holding that injunctions should only issue “to prevent future conduct rather than to remedy past conduct”). Likewise, the City has agreed to pay the petitioner’s costs associated with bringing this action. As such, the Court need not decide whether an award of costs would otherwise be warranted under RSA 91-A:8, I. Cf. ATV Watch v. N.H. Dep’t of Res. & Econ. Dev., 155 N.H. 434, 441 (2007) (holding that Right-to-Know action was not mooted by agency’s voluntary disclosure of disputed documents during pendency of case as petitioner may have been entitled to an award of costs). Finally, to the extent the petitioner seeks a general declaration that the City’s withholding of the draft USPAP Report violated the Right-to-Know law, the Court reiterates that “RSA 91-A provides only for specific remedies, and declaratory relief is not among of them.” Currier, 621 F. Supp. 3d at 258. Accordingly, the Court does not address that issue.

In short, the City has voluntarily agreed to all of the relief the petitioner has requested that is actually available under the Right-to-Know law. Accordingly, there is nothing left for the Court to decide. The petition is therefore DISMISSED as MOOT.

So ordered.

Date: June 28, 2023



Hon. Charles S. Temple,
Presiding Justice