



State of New Jersey
GOVERNMENT RECORDS COUNCIL
101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

JON S. CORZINE
Governor

JOSEPH V. DORIA, JR.
Commissioner

FINAL DECISION

June 11, 2009 Government Records Council Meeting

Louis P. Toscano
Complainant

Complaint No. 2009-99

v.

New Jersey Department of Law & Public Safety,
Division of Law
Custodian of Record

At the June 11, 2009 public meeting, the Government Records Council (“Council”) considered the May 20, 2009 Supplemental 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 because the Complainant has failed to establish in his motion for reconsideration of the Council’s April 29, 2009 Administrative Disposition that 1) the GRC’s decision is based upon a “palpably incorrect or irrational basis” or 2) it is obvious that the GRC did not consider the significance of probative, competent evidence, and has failed to show that the GRC acted arbitrarily, capriciously or unreasonably in disposing administratively of the complaint, and failed to submit any evidence to contradict the Custodian’s certification that all records responsive to the Complainant’s OPRA request were provided to him within the statutorily required response time, said motion for reconsideration is denied. Cummings v. Bahr, 295 N.J. Super. 374 (App. Div. 1996); D’Atria v. D’Atria, 242 N.J. Super. 392 (Ch. Div. 1990); In The Matter Of The Petition Of Comcast Cablevision Of South Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Television System In The City Of Atlantic City, County Of Atlantic, State Of New Jersey, 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).

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 11th Day of June, 2009

Robin Berg Tabakin, Chair
Government Records Council

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

Janice L. Kovach
Government Records Council

Decision Distribution Date: June 15, 2009

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
June 11, 2009 Council Meeting**

**Louis P. Toscano¹
Complainant**

GRC Complaint No. 2009-99

v.

**NJ Department of Law & Public Safety,
Division of Law²
Custodian of Records**

Records Relevant to Complaint: Letters from Linda Albert, MD, from June 9, 2008 to the present.
Request Made: March 16, 2009
Response Made: March 23, 2009
Custodian: Robert Sanguinetti
GRC Complaint Filed: March 30, 2009

Background

April 29, 2009

Government Records Council's ("Council") Administrative Complaint Disposition. At its April 29, 2009 public meeting, the Council considered the April 22, 2009 Administrative Complaint Disposition 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, found that:

The Custodian certifies that all records responsive to the Complainant's OPRA request have been provided to the Complainant within the statutorily mandated response time. Additionally, the Complainant has failed to provide any evidence to contradict the Custodian's certification.

The Council therefore dismissed the Complainant's Denial of Access Complaint.

April 29, 2009

Council's Interim Order distributed to the parties.

May 6, 2009

Complainant's Motion for Reconsideration. The Complainant requests that the GRC reconsider the Administrative Disposition of his Denial of Access Complaint

¹ No legal representation listed on record.

² Represented by DAG Brady Connaughton, on behalf of the NJ Attorney General.

pursuant to *N.J.A.C. 5:105.2.10*. The Complainant asserts that new evidence requires that the GRC reconsider this matter.

The Complainant attaches to his Motion for Reconsideration a two (2) page summary of the evidence previously submitted by the Complainant in support of his Denial of Access Complaint. The Complainant states his belief that the Custodian advised the Department of Labor, Division of Vocational Rehabilitation Services, to destroy a physician's letter. The Complainant states that the requirement of the Department of Labor, Division of Vocational Rehabilitation Services that he submit a physician's letter for a new intake was fraudulent and illegal. The Complainant asserts that in requiring the letter, the Department of Labor, Division of Vocational Rehabilitation Services deliberately attempted to increase the length of time between the Complainant's requests for service and the receipt of such service.

Analysis

Whether the Complainant has met the required standard for reconsideration of the Council's April 29, 2009 Administrative Disposition?

Pursuant to *N.J.A.C. 5:105-2.10*, parties may file a request for a reconsideration of any decision rendered by the Council within ten (10) business days following receipt of a Council decision. Requests must be in writing, delivered to the Council and served on all parties. Parties must file any objection to the request for reconsideration within ten (10) business days following receipt of the request. The Council will provide all parties with written notification of its determination regarding the request for reconsideration. *N.J.A.C. 5:105-2.10(a) – (e)*.

Applicable case law holds that:

“[a] party should not seek reconsideration merely based upon dissatisfaction with a decision.” *D'Atria v. D'Atria*, 242 N.J. Super. 392, 401 (Ch. Div. 1990). Rather, reconsideration is reserved for those cases where (1) the decision is based upon a "palpably incorrect or irrational basis;" or (2) it is obvious that the finder of fact did not consider, or failed to appreciate, the significance of probative, competent evidence. *E.g., Cummings v. Bahr*, 295 N.J. Super. 374, 384 (App. Div. 1996). The moving party must show that the court acted in an arbitrary, capricious or unreasonable manner. *D'Atria, supra*, 242 N.J. Super. at 401. ‘Although it is an overstatement to say that a decision is not arbitrary, capricious, or unreasonable whenever a court can review the reasons stated for the decision without a loud guffaw or involuntary gasp, it is not much of an overstatement.’ *Ibid.*” In The Matter Of The Petition Of Comcast Cablevision Of South Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Television System In The City Of Atlantic City, County Of Atlantic, State Of New Jersey, 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).

In support of his motion for reconsideration, the Complainant submitted a two (2) page summary of evidence which he had already submitted in support of his Denial of Access Complaint. The Complainant failed to submit any new evidence in support of his motion. As the moving party, the Complainant was required to establish either of the necessary criteria set forth above; namely 1) that the GRC's decision is based upon a "palpably incorrect or irrational basis" or 2) it is obvious that the GRC did not consider the significance of probative, competent evidence. See Cummings, supra. The Complainant failed to do so. The Complainant has also failed to show that the GRC acted arbitrarily, capriciously or unreasonably in disposing administratively of the complaint. See D'Atria, supra. Notably, the Complainant failed to submit any evidence to contradict the Custodian's certification that all records responsive to the Complainant's OPRA request were provided to him within the statutorily required response time.

Therefore, because the Complainant has failed to establish in his motion for reconsideration of the Council's April 29, 2009 Administrative Disposition that 1) the GRC's decision is based upon a "palpably incorrect or irrational basis" or 2) it is obvious that the GRC did not consider the significance of probative, competent evidence, and has failed to show that the GRC acted arbitrarily, capriciously or unreasonably in disposing administratively of the complaint, and failed to submit any evidence to contradict the Custodian's certification that all records responsive to the Complainant's OPRA request were provided to him within the statutorily required response time, said motion for reconsideration is denied. Cummings v. Bahr, 295 N.J. Super. 374 (App. Div. 1996); D'Atria v. D'Atria, 242 N.J. Super. 392 (Ch. Div. 1990); In The Matter Of The Petition Of Comcast Cablevision Of South Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Television System In The City Of Atlantic City, County Of Atlantic, State Of New Jersey, 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that because the Complainant has failed to establish in his motion for reconsideration of the Council's April 29, 2009 Administrative Disposition that 1) the GRC's decision is based upon a "palpably incorrect or irrational basis" or 2) it is obvious that the GRC did not consider the significance of probative, competent evidence, and has failed to show that the GRC acted arbitrarily, capriciously or unreasonably in disposing administratively of the complaint, and failed to submit any evidence to contradict the Custodian's certification that all records responsive to the Complainant's OPRA request were provided to him within the statutorily required response time, said motion for reconsideration is denied. Cummings v. Bahr, 295 N.J. Super. 374 (App. Div. 1996); D'Atria v. D'Atria, 242 N.J. Super. 392 (Ch. Div. 1990); In The Matter Of The Petition Of Comcast Cablevision Of South Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Television System In The City Of Atlantic City, County Of Atlantic, State Of New Jersey, 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).

Prepared By: Karyn Gordon, Esq.
In House Counsel

Approved By: Catherine Starghill, Esq.
Executive Director

May 20, 2009



NEW JERSEY GOVERNMENT RECORDS COUNCIL

Administrative Complaint Disposition – All records responsive to the request provided in a timely manner

GRC Complaint No.: 2009-99

Complainant: Louis Paul Toscano

Custodian: NJ Department of Law & Public Safety, Division of Law,
Robert A. Sanguinetti, JR.

Date of Request: March 16, 2009

Date of Complaint: March 30, 2009¹

Complaint Disposition: The Custodian certifies that all records responsive to the Complainant's OPRA request have been provided to the Complainant within the statutorily mandated response time. Additionally, the Complainant has failed to provide any evidence to contradict the Custodian's certification.

Applicable OPRA Provision: "A custodian shall promptly comply with a request to inspect, examine, copy, or provide a copy of a government record." N.J.S.A. 47:1A-5.g.

"Unless a shorter time period is otherwise provided by statute, regulation, or executive order, a custodian of a government record shall grant access to a government record ... as soon as possible, but not later than seven business days after receiving the request, provided that the record is currently available and not in storage or archived." N.J.S.A. 47:1A-5.i.

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.

Effective Date of Disposition: April 29, 2009

Prepared By: Elizabeth Ziegler-Sears, Esq.
Case Manager/Staff Attorney

Approved By: Catherine Starghill, Esq.
Executive Director

Date: April 22, 2009

Distribution Date: April 29, 2009

¹ The GRC received the Denial of Access Complaint on said date.