



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

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

LORI GRIFA
Commissioner

FINAL DECISION

October 26, 2010 Government Records Council Meeting

Thomas Caggiano
Complainant

Complaint No. 2010-173

v.

Borough of Stanhope (Sussex)
Custodian of Record

At the October 26, 2010 public meeting, the Government Records Council (“Council”) considered the September 13, 2010 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 August 24, 2010 Findings and Recommendations 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 of the complaint, and failed to submit any evidence to contradict the effect of Judge Dana’s December 3, 2008 Judgment, 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 26th Day of October, 2010

Robin Berg Tabakin, Chair
Government Records Council

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

Stacy Spera, Secretary
Government Records Council

Decision Distribution Date: November 1, 2010

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
October 26, 2010 Council Meeting**

**Thomas Caggiano¹
Complainant**

GRC Complaints No. 2010-173

v.

**Borough of Stanhope (Sussex)²
Custodian of Records**

Records Relevant to Complaint: Various

Request Made: July 4, 2010

Response Made: None

Custodian: Ellen Horak

GRC Complaint Filed: July 27, 2010³

Background

August 24, 2010

Government Records Council's ("Council") Final Decision. At its August 24, 2010 public meeting, the Council considered the August 17, 2010 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, found that:

This case should be dismissed based on Judge Dana's December 3, 2008 Judgment.

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

August 30, 2010

Council's Final Decision distributed to the parties.

September 10, 2010

Complainant's Motion for Reconsideration. The Complainant requests that the GRC reconsider the final adjudication of his Denial of Access Complaint.⁴ The Complainant asserts that mistake, extraordinary circumstances, fraud and illegality require that the GRC reconsider these matters.

¹ No legal representation listed on record.

² No legal representation listed on record.

³ The GRC received the Denial of Access Complaints on said dates.

⁴ *N.J.A.C. 5:105.2.10* governs reconsiderations of the Council's decisions.

As part of the motion for reconsideration, the Complainant incorporates a six (6) page summary of evidence in these matters and several other matters not relevant to the instant matters.⁵

Analysis

Whether the Complainant has met the required standard for reconsideration of the Council's August 24, 2010 Findings and Recommendations?

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 six (6) page summary of the same or similar evidence and unsupported allegations which he had already submitted in support of his Denial of Access Complaints. 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

⁵ The Complainant previously made the same, or similar, assertions in the Denial of Access Complaint. *Thomas Caggiano v. Borough of Stanhope (Sussex)*, 2010-173 – Supplemental Findings and Recommendations of the Executive Director

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 relevant, probative evidence to support his contention that mistake, extraordinary circumstances, fraud or illegality compel the Council to reconsider these matters.

Therefore, because the Complainant has failed to establish in his motion for reconsideration of the Council's August 24, 2010 Findings and Recommendations 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 of the complaint, and failed to submit any evidence to contradict the effect of Judge Dana's December 3, 2008 Judgment, 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 August 24, 2010 Findings and Recommendations 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 of the complaint, and failed to submit any evidence to contradict the effect of Judge Dana's December 3, 2008 Judgment, 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

September 13, 2010



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CHRIS CHRISTIE
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FINAL DECISION

August 24, 2010 Government Records Council Meeting

Thomas Caggiano
Complainant

Complaint No. 2010-173

v.

Borough of Stanhope (Sussex)
Custodian of Record

At the August 24, 2010 public meeting, the Government Records Council ("Council") considered the August 17, 2010 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 this case should be dismissed based on Judge Dana's December 3, 2008 Judgment.

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 24th Day of August, 2010

Robin Berg Tabakin, Chair
Government Records Council

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

Stacy Spera, Secretary
Government Records Council

Decision Distribution Date: August 30, 2010



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
August 24, 2010 Council Meeting**

**Thomas Caggiano¹
Complainant**

GRC Complaint Nos. 2010-173

v.

**Borough of Stanhope (Sussex)²
Custodian of Records**

Records Relevant to Complaint: Various
Request Made: July 4, 2010
Response Made: None
Custodian: Ellen Horak
GRC Complaint Filed: July 27, 2010³

Background

December 3, 2008

Judgment of the Honorable Craig U. Dana, J.M.C., Joint Municipal Court of the Townships of Green, Fredon, Hampton and the Borough of Andover. Judge Dana issues a Judgment of Conviction for harassment and trespass violations prohibiting Thomas Caggiano from having any contact with any present or former employee or official of the Borough of Stanhope except that Mr. Caggiano may mail his tax and utility payments to the Borough and he may call 911 if he has an emergency.

July 4, 2010

Complainant's Open Public Records Act ("OPRA") request. The Complainant submits an OPRA request to the Custodian in a letter referencing OPRA.

July 27, 2010

Denial of Access Complaint filed with the Government Records Council ("GRC") with the following attachments:

- OPRA request in letter format from the Complainant to the Custodian dated July 4, 2010

¹ No legal representation listed on record.

² Represented by Richard Stein, Esq., Laddey Clerk & Ryan (Sparta, NJ).

³ The GRC received the Denial of Access Complaint on said date.

July 19, 2010

Order of the Honorable N. Peter Conforti, J.S.C., denying Complainant's motion seeking an order for contempt and dismissal of municipal appeals, and continuing Judge Dana's Order in full force and effect.

Analysis

No analysis is required.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that this case should be dismissed based on Judge Dana's December 3, 2008 Judgment.

Prepared By: Karyn Gordon, Esq.
In House Counsel

Approved By: Catherine Starghill, Esq.
Executive Director

August 17, 2010