



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
Acting Commissioner

FINAL DECISION

May 27, 2010 Government Records Council Meeting

Thomas Caggiano
Complainant

Complaint No. 2010-61

v.

Borough of Stanhope (Sussex)
Custodian of Record

At the May 27, 2010 public meeting, the Government Records Council (“Council”) considered the May 20, 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 April 28, 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 27th Day of May, 2010

Robin Berg Tabakin, Chairman
Government Records Council

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

Charles A. Richman, Secretary
Government Records Council

Decision Distribution Date: June 3, 2010

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
May 27, 2010 Council Meeting**

**Thomas Caggiano¹
Complainant**

GRC Complaint No. 2010-61

v.

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

Records Relevant to Complaint: Various
Request Made: October 11, 2009
Response Made: None
Custodian: Ellen Horak
GRC Complaint Filed: March 19, 2010³

Background

April 28, 2010

Government Records Council's ("Council") Final Decision. At its April 28, 2010 public meeting, the Council considered the April 21, 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.

April 30, 2010

Council's Final Decision distributed to the parties.

May 14, 2010

Complainant's Motion for Reconsideration. The Complainant requests that the GRC reconsider the final adjudication of his Denial of Access Complaint pursuant to *N.J.A.C. 5:105.2.10*. The Complainant asserts that fraud requires that the GRC reconsider this matter.

¹ No legal representation listed on record.

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

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

The Complainant attaches to his Motion for Reconsideration a five (5) page summary of the evidence previously submitted by the Complainant in support of his Denial of Access Complaint, as well as copies of correspondence and other materials not relevant to the instant matter.

May 18, 2010

Letter from the Complainant to the GRC. The Complainant submits additional materials which he contends supports his request for reconsideration.

Analysis

Whether the Complainant has met the required standard for reconsideration of the Council's April 28, 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 five (5) page summary of evidence which he had already submitted in support of his Denial of Access Complaint, as well as copies of additional correspondence and materials not relevant to the instant matter. 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 support his contention that fraud compels the Council to reconsider this matter.

Therefore, because the Complainant has failed to establish in his motion for reconsideration of the Council's April 28, 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 April 28, 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

May 20, 2010



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GOVERNMENT RECORDS COUNCIL
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CHRIS CHRISTIE
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KIM GUADAGNO
Lt. Governor

LORI GRIFA
Acting Commissioner

FINAL DECISION

April 28, 2010 Government Records Council Meeting

Thomas Caggiano
Complainant

Complaint No. 2010-61

v.

Borough of Stanhope (Sussex)
Custodian of Record

At the April 28, 2010 public meeting, the Government Records Council (“Council”) considered the April 21, 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 prohibiting any contact between Mr. Caggiano and officials of the Borough of Stanhope except for Mr. Caggiano’s payment of tax and utility payments and 911 calls for emergencies.

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 28th Day of April, 2010

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, Secretary
Government Records Council

Decision Distribution Date: April 30, 2010

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
April 28, 2010 Council Meeting**

**Thomas Caggiano¹
Complainant**

GRC Complaint No. 2010-61

v.

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

Records Relevant to Complaint: Various
Request Made: October 11, 2009
Response Made: None
Custodian: Ellen Horak
GRC Complaint Filed: March 19, 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.

October 11, 2009

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

March 19, 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 October 11, 2009;
- E-mail from the Complainant to the Custodian dated March 13, 2010;
- Screenshot of an automated message generated by the Borough of Stanhope website acknowledging receipt of an electronic message sent by the Complainant.

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.

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 prohibiting any contact between Mr. Caggiano and officials of the Borough of Stanhope except for Mr. Caggiano's payment of tax and utility payments and 911 calls for emergencies.

Prepared By: Karyn Gordon, Esq.
In House Counsel

Approved By: Catherine Starghill, Esq.
Executive Director

April 21, 2010