



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

FINAL DECISION

July 23, 2013 Government Records Council Meeting

Robert A. Verry
Complainant

Complaint Nos. 2011-160 and 2011-196

v.

Borough of South Bound Brook (Somerset)
Custodian of Record

At the July 23, 2013 public meeting, the Government Records Council (“Council”) considered the June 18, 2013 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council, by a majority vote, adopted the entirety of said findings and recommendations. The Council, therefore, finds that the Complainant has failed to establish in his request for reconsideration of the Council’s September 25, 2012 Final Decision that: 1) the Council’s decision is based upon a “palpably incorrect or irrational basis;” or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. The Complainant failed to do so. The Complainant has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. Thus, the Complainant’s request for reconsideration should be 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 23rd Day of July, 2013

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: July 26, 2013

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

Reconsideration
Supplemental Findings and Recommendations of the Executive Director
July 23, 2013 Council Meeting

Robert A. Verry¹
Complainant

GRC Complaint Nos. 2011-160 and 2011-196

v.

Borough of South Bound Brook (Somerset)²
Custodian of Records

Records Relevant to Complaint: Copies of the following record as referenced in the attached invoice dated March 3, 2011, from Cooper & Cooper:

1. January 26, 2011 entry – “... e-mail from [the Complainant’s Counsel] ...”
2. January 28, 2011 entry – “... e-mail from [the Complainant’s Counsel] regarding adjournment of Case Management Conf.”

Request Made: April 19, 2011 and May 7, 2011

Response Made: April 28, 2011 and May 13, 2011

GRC Complaint Filed: May 9, 2011 and May 31, 2011³

Background

September 25, 2012 Council Meeting:

At its September 25, 2012 public meeting, the Council considered the September 18, 2012 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt, by a majority vote, the entirety of said findings and recommendations. The Council, therefore, found that:

1. Although the Custodian timely responded to the Complainant’s first (1st) OPRA request in writing requesting an extension of time until May 6, 2011 to respond to said request, the Custodian’s failure to timely respond in writing within the extended deadline results in a “deemed” denial of the Complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5(i), and Kohn v. Township of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008). *See also* Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2008-253 (September 2009)

¹ Represented by Walter M. Luers, Esq., of the Law Offices of Walter M. Luers, LLC (Clinton, NJ).

² Donald E. Kazar, Custodian of Records. Represented by Francesco Taddeo, Esq. (Somerville, NJ).

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

2. Although the Custodian provided a written response to the Complainant's second (2nd) OPRA request within the statutorily mandated seven (7) business days, said response is insufficient pursuant to OPRA because it does not grant access, deny access, seek clarification, or request an extension of time. N.J.S.A. 47:1A-5(g), Bart v. City of Paterson Housing Authority, GRC Complaint No 2005-145 (May 2007), and Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2008-48 (Interim Order dated March 25, 2009).
3. Because the Complainant's two (2) requests fail to identify with reasonable clarity the specific government records sought, these request items are invalid under OPRA pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005); New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009); Elcavage v. West Milford Township (Passaic), GRC Complaint No. 2009-07 (April 8, 2010). *See* Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2011-119 (July 2012). Thus, the Custodian has not unlawfully denied access to any records. N.J.S.A. 47:1A-6.
4. Although the Custodian's failure to respond in writing to the Complainant's first (1st) OPRA request within the extended time frame results in a "deemed" denial pursuant to N.J.S.A. 47:1A-5(i) and the Custodian's response to the Complainant's second (2nd) OPRA request was insufficient pursuant to N.J.S.A. 47:1A-5(g), Bart v. City of Paterson Housing Authority, GRC Complaint No 2005-145 (May 2007), and Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2008-48 (Interim Order dated March 25, 2009), the Complainant's requests are invalid and the Custodian did not unlawfully deny the Complainant access to any records. Additionally, the evidence of record does not indicate that the Custodian's violations of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.
5. Pursuant to Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), the Complainant has not achieved the desired result because the complaint did not bring about a change (voluntary or otherwise) in the custodian's conduct. Additionally, pursuant to Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008), no factual causal nexus exists between the Complainant's filing of these Denial of Access Complaints and the relief ultimately achieved. Specifically, the Complainant's two (2) requests are invalid and the Custodian did not unlawfully deny access to any records. Therefore, the Complainant is not a prevailing party entitled to an award of a reasonable attorney's fee pursuant to N.J.S.A. 47:1A-6, Teeters, *supra*, and Mason, *supra*.

Procedural History:

On September 27, 2012, the Council distributed its Final Decision to all parties.

Complainant's Reconsideration:

On October 19, 2012,⁴ the Complainant requests that the Council reconsider its Final Decision based on a mistake.

The Complainant first demands that the Council strike from this record and all past, present and future decisions the language referring to these duplicative complaints resulting in an unnecessary expenditure of scarce administrative resources. Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2011-160 & 2011-196 (Final Decision dated September 25, 2012) at 14. The Complainant contends that the Council did not initiate the investigation, determine that these complaints were frivolous and reduce same to writing. N.J.S.A. 47:1A-7(e). The Complainant contends that there is no precedent preventing a requestor from filing duplicate complaints when denied access to the same records. The Complainant contends that the catalyst for filing both complaints were the actions of the Custodian, yet the Council only criticized the Complainant in its language. *Id.*⁵ The Complainant contends that the Custodian has had many denial of access complaints filed against him and yet the Council has not noted that "... in light of his own knowledge of OPRA ... [t]he custodian's lack of initiative ... [was] an additional factor to be considered by the Council." Blanchard v. Rahway Board of Education, GRC Complaint No. 2003-57 (October 2003).

The Complainant contends that the Council exceeded its authority by combining these two complaints and thus unfairly prejudicing any chance of a favorable adjudication. The Complainant contends that the First Amendment of the Constitution "... prohibits the making of any law ... prohibiting [the Complainant's right] to petition for a governmental redress of grievances." *Id.* The Complainant contends that OPRA gives the Council the ability to adjudicate *a complaint* "... according to law, on the proofs heretofore presented, and such other proofs as may be adduced." United States v. Irwin, 127 U.S. 125, 126 (1888). The Complainant contends that the term "complaint" under OPRA is always singular and never plural.⁶ N.J.S.A. 47:1A-7. The Complainant further argues that OPRA requires the Council to adjudicate complaints independently by using the word "shall," which is an imperative command not open to discretion. The Complainant contends that had the Legislature wanted the Council to use discretion in consolidating complaints, it would have pluralized the term in N.J.S.A. 47:1A-7. The Complainant further argues that the Council has already established a principle of processing complaints independently. Caggiano v. Borough of Stanhope (Sussex), GRC Complaint No. 2005-211 (January 2006)(holding that "... the fact that the records were previously provided to the Complainant on several occasions" was not a lawful basis to deny similar OPRA requests.). The Complainant asserts that the GRC thus established that a custodian

⁴ The GRC granted the Complainant Counsel's request for an extension of time until October 19, 2012, to submit a request for reconsideration; thus, this filing is timely.

⁵ The Complainant refers to "subpoenas" and a March 20, 2011 e-mail. Neither these records or this submission are relevant to the instant complaint.

⁶ The Complainant points to several instances where N.J.S.A. 47:1A-7 refers to "a complaint" or "the complaint."

must handle each request individually and independently regardless of whether the request is identical. The Complainant argues that the Council's referral to his two (2) OPRA requests as the first (1st) and second (2nd) OPRA requests clearly contradicts the principle established in Caggiano, *supra*. The Complainant notes that he has not found any case that applies this principle to denial of access complaints.

The Complainant asserts that combining complaints hinders the fair adjudication of each because no two (2) complaints have the same exact fact pattern. The Complainant contends that combining complaints will always be advantageous to the custodian and not the requestor because the requestor submits individual complaints based upon facts and circumstances of that event. The Complainant contends that the Council has adjudicated at least five (5) complaints filed by anonymous requestors. The Complainant contends that if an anonymous requestor files two (2) complaints for the same records against the same custodian on the same day, the Council would likely adjudicate each complaint individually even if it were rumored that the anonymous requestor was the same person. The Complainant contends that treating a named complainant's complaints differently from anonymous complaints is deliberately disadvantageous and unequivocally prejudicial.

The Complainant argues that the Council erred by consolidating these complaints only to absolve the Custodian of his legal obligations and shift the burden to the Complainant. The Complainant contends that the GRC erroneously held that "the Complainant's actions give the appearance that he attempted to use the GRC's complaint process as leverage on the Custodian to produce a different result in response to the Complainant's second (2nd) OPRA request for the same record." *Id.* at 8. The Complainant contends that this argument is specious at best and that the Council easily could have contacted the Complainant to clarify his actions. The Complainant contends that although OPRA does not require a requestor to provide a reason for seeking records (*citing* Sebastian v. Borough of Ramsey (Bergen), GRC Complaint No. 2010-42 (March 2012), the Council used the Complainant's silence against him by asserting, accepting and applying a reason. The Complainant contends that the Council acted arbitrarily and deprived the Complainant of his rights afforded for in Sebastian, *supra*.

The Complainant asserts that notwithstanding the forgoing, his first complaint dealt with the first (1st) request and was detached from the second (2nd) request. The Complainant notes that although he recognizes and accepts the Council's proceedings in an "expedited manner," the Council's process can take months. The Complainant contends that the Council cannot set a precedence that handcuffs a requestor from submitting requests for identical records because it would impede the public right of access afforded for under OPRA.

The Complainant further contends that the Council erred by determining that the Complainant's two (2) requests were invalid. The Complainant contends that the Custodian never asserted this position; rather, the Custodian certified in the Statement of Information that he believed he has complied with the Complainant's requests. The Complainant contends that rather than relying on the evidence presented, the Council provided a defense for the Custodian. The Complainant asserts that although he recognizes that *N.J.A.C. 5:105-2.1(b)* provides for the Council's authority to raise defenses on a *sua sponte* basis, its holding was unnecessary, not warranted and had no bearing the furthering of the intent of OPRA. The Complainant contends

that these complaints are similar to Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2010-302 (Interim Order dated January 31, 2012)(holding that although the complainant's OPRA request was overly broad on its face, the custodian was able to identify records.) The Complainant contends that the Custodian was obviously able to identify responsive records if he certified in the SOI that he produced the responsive records.

The Complainant contends that the Council further erred by determining that the Complainant was not a prevailing party entitled to an award of reasonable attorney's fees. The Complainant contends that more importantly, the Council misapplied the part of Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008), which shifts the burden to a custodian when "... *an agency fails to respond at all within that time frame*, but voluntarily discloses records after a requestor files suit ..." (Emphasis added.) *Id.* at 51. The Complainant contends that unlike Mason, *supra*, where records were provided after the suit was filed, the Custodian herein refused to disclose the responsive record although he certified that same were available and that he believed he provided the responsive records. The Complainant contends that using the Court's logic in Mason that "... under the terms of [OPRA], the agency *must* start that process with some form of response within seven business days of a request," and that "[s]uch an approach is faithful to OPRA's clear command that *an agency not sit silently once a request is made* ..." (Emphasis added) *Id.* at 51, and the Custodian's "deemed" denial means that the Complainant is a prevailing party because he achieved the desired result of bringing about a change in the Custodian's conduct. The Complainant contends that in principal, the Council's "deemed" denial finding brings about a change because the Custodian has been notified of his unlawful denial of access with the expectation that his future conduct will change. The Complainant contends that to hold otherwise goes against the Legislative intent of OPRA.

Custodian's Objections:

On November 12, 2012, the Custodian's Counsel submitted objections to the Complainant's request for reconsideration.⁷ Counsel asserts that the records at issue are two (2) e-mails from Complainant's Counsel to the Borough's previous counsel. Counsel notes that the Custodian advised of his attempts to obtain responsive records in e-mails dated May 6, and May 7, 2011.

Counsel argues that a cursory review of the Complainant's reconsideration indicates that there is no legal basis for same because the Complainant is merely dissatisfied with the Council's Decision. D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990) and Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996). Counsel further argues that the Complainant's reconsideration, like the original complaints, is a clear example of the highly harassing and frivolous nature of the Complainant's continued OPRA requests and Denial of Access Complaints. Counsel asserts that the Complainant continually files complaints instead of working with the Custodian. Counsel notes that the Complainant invoked the spirit of OPRA; however, the Complainant continues to operate in manner contrary to the spirit by submitting overly broad OPRA requests, placing unfounded conditions on requests for extensions, filing complaints instead of working with the Custodian and requesting the same records on the same

⁷ The GRC granted the Custodian Counsel's request for an extension of time until November 12, 2012 to submit a request for reconsideration because of Hurricane Sandy; thus, this filing is timely.

day he files a complaint. Counsel contends that the Complainant's reconsideration evidences his animus towards the Custodian and Borough with whom he has legally engaged continuously through OPRA.

Counsel asserts that the Council's Decision is appropriate based on the evidence of record. Counsel further implores the Council to review the possibility of seeking fees from the Complainant for his harassing conduct.⁸

Additional Submissions:

On November 19, 2012, the Complainant submitted a response to Custodian Counsel's objections. The Complainant contends that had the Council determined that the subject complaints were frivolous, they would have dismissed same prior to seeking Statements of Information. N.J.S.A. 47:1A-7. The Complainant contends that Counsel falsely asserts that the Complainant has animosity towards the Custodian and the Borough. The Complainant asserts that these assertions explain why the Custodian has treated the Complainant differently and among other things, should be ignored as baseless.

The Complainant further contends that Counsel did not refute the arguments set forth in the request for reconsideration. The Complainant contemplates that either Counsel felt addressing same was unnecessary or that the Council would hold in a manner most favorable to the Custodian.

Analysis

Reconsideration

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. *N.J.A.C. 5:105-2.10*. 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

⁸ The GRC notes that the fee-shifting provision under OPRA only applies to complainants with representation and does not allow for custodians to recoup legal fees. N.J.S.A. 47:1A-6.

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).

On October 19, 2012, the Complainant filed the request for reconsideration of the Council’s September 25, 2012 Final Decision, the last business day of the extended time frame to provide same.⁹

The Council should decline to amend its language in Verry v. Borough of South Bound Brook (Somerset), GRC Complaint Nos. 2011-160 and 2011-196 (Final Decision dated September 25, 2012) at 14. The Complainant’s argument that the Council did not determine that the complaints were frivolous in accordance with N.J.S.A. 47:1A-7(e) is misguided because the Council never indicated that the Complainant’s complaints were frivolous. Rather, the Council determined that the Complainant’s multiple complaints concerning requests for the same exact records in a short amount of time “... resulted in the unnecessary expenditure of scarce administrative resources.” *Id.* at 14.

The Council should reject the portion of the Complainant’s reconsideration concerning consolidation of complaints. Contrary to the Complainant’s assertions, the Council has a long-standing policy of consolidating complaints based on the commonality of parties and issues. *See Janeczko v. NJ Dept. of Law & Public Safety, Div. of Criminal Justice*, GRC Complaint Nos. 2002-79 & 2002-80 (June 2004); Gettler v. Township of Wantage (Sussex), GRC Complaint Nos. 2009-73 & 2009-74 (Interim Order dated January 31, 2012); Kohn v. Township of Livingston (Essex), GRC Complaint Nos. 2009-203 & 2009-211 (March 2013). Furthermore, the Council previously combined several of the Complainant’s previous complaints and the Complainant never before challenged the Council’s consolidation of same until recently in a request for reconsideration of GRC Complaint Nos. 2011-158 and 2011-193.¹⁰

Moreover, the Complainant errs in arguing that consolidating these complaints goes against the Council’s Decision in Caggiano, *supra*. The Council’s holding in Caggiano does not apply to the Council’s processing of complaints; rather, the Council’s holding addresses a custodian’s response to multiple OPRA requests for the same records. Further, the Council

⁹ The GRC notes the Custodian’s Counsel submitted objections. Counsel argues, among other things, that the Complainant’s reconsideration does meet the appropriate standards for reconsideration. Additionally, the Complainant submitted a reply arguing that Counsel’s objections do not address his request for reconsideration point by point.

¹⁰ *See Verry v. Borough of South Bound Brook (Somerset)*, GRC Complaint Nos. 2008-70 & 2008-71 (February 2009); Verry v. Borough of South Bound Brook (Somerset), GRC Complaint Nos. 2009-204 & 2009-205 (August 2012); Verry v. Borough of South Bound Brook (Somerset), GRC Complaint Nos. 2010-105 & 2010-106 (January 2012); Verry v. Borough of South Bound Brook (Somerset), GRC Complaint Nos. 2011-114 et. seq. (July 2012); Verry v. Borough of South Bound Brook (Somerset), GRC Complaint Nos. 2011-128 et. seq. (August 2012); Verry v. Borough of South Bound Brook (Somerset), GRC Complaint Nos. 2011-159 & 2011-195 (September 2012); Verry v. Borough of South Bound Brook (Somerset), GRC Complaint Nos. 2011-161 et. seq. (September 2012).

would have no grounds to combine “anonymous” complaints even if against the same public agency because, by definition, the Council would not know the identity of the complainant and thus could not determine if there was a commonality of both parties. Also contrary to the Complainant’s argument, the Council’s process of consolidation of complaints is not predicated on producing an outcome that would be advantageous to either party. This is evident by the numerous consolidations resulting in various outcomes. Here, the Council’s consolidation of these complaints for adjudication by the Council was sound and consistent with the Council’s previous practices.

The Council should reject the portion of the Complainant’s reconsideration concerning the validity of his OPRA requests. The Council applied its previous holding in Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2011-119 (July 2012), which sought the exact same records. The Council further articulated those reasons why it believed the request was invalid in Verry, supra, and how the exact same decision applied herein.

The Council should also reject the portion of the Complainant’s reconsideration concerning prevailing party attorney’s fees. The Council correctly applied Mason, supra. The Council looked to the Court’s discussion of “... aggressive litigation tactics ...” *Id.* at 78-79. More specifically, the Council noted that “[t]he Court expressed fears that judging cases by more objective merits would tarnish the statute’s intent.” *Id.* The Council weighed the facts of these complaints based on this premise and holds that its conclusion was reasonable based on the timing of the OPRA requests and the Custodian’s responses prior to the filing of these complaints. It should be noted that the Complainant argued he is necessarily a prevailing party when applying the Mason logic that a custodian should respond in seven (7) business days and the Custodian’s “deemed” denial of the April 19, 2011 OPRA request; however, the Custodian did respond to both requests in some manner prior to the filing of these complaints. It should also be noted that the Council determined that the Complainant’s requests were invalid and that the Custodian did not unlawfully deny access to any records.

Finally, the Council has routinely determined that a complainant is not a prevailing party based on a “technical violation of OPRA.” *See* Petrycki, Jr., Esq. v. Township of Hamilton (Atlantic), GRC Complaint No. 2009-159 (May 2010); Wolosky v. Sparta Board of Education (Sussex), GRC Complaint No. 2010-189 (July 2011). Finding a technical violation of OPRA does not change a custodian’s conduct. The technical violation identifies that the custodian has violated the law in some way; however, the technical violation cannot be changed because it already occurred.

As the moving party, the Complainant was required to establish either of the necessary criteria set forth above: 1) that the Council's decision is based upon a "palpably incorrect or irrational basis;" or 2) it is obvious that the Council 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 Council acted arbitrarily, capriciously or unreasonably. *See* D’Atria, supra. Thus, the Complainant’s request for reconsideration should be denied. Cummings, supra; D’Atria, supra; Comcast, supra.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Complainant has failed to establish in his request for reconsideration of the Council's September 25, 2012 Final Decision that: 1) the Council's decision is based upon a "palpably incorrect or irrational basis;" or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. The Complainant failed to do so. The Complainant has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. Thus, the Complainant's request for reconsideration should be 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: Frank F. Caruso
Senior Case Manager

Approved By: Brandon D. Minde, Esq.
Executive Director

June 18, 2013¹¹

¹¹ This complaint was prepared and scheduled for adjudication at the Council's June 25, 2013 meeting; however, this complaint was not adjudicated due to lack of quorum.