



**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*

**RICHARD E. CONSTABLE, III**  
*Commissioner*

**FINAL DECISION**

**February 25, 2014 Government Records Council Meeting**

Richard and Dawn Sabik  
Complainant

Complaint No. 2011-222

v.

Borough of Dunellen (Middlesex)  
Custodian of Record

At the February 25, 2014 public meeting, the Government Records Council (“Council”) considered the February 18, 2014 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 this complaint be dismissed because the Complainant (via Counsel) withdrew their complaint in a letter to the Honorable Margaret Monaco, Administrative Law Judge, dated January 24, 2014, because it became apparent that the records at issue were provided to the Complainants before or at the time they filed this complaint. Therefore, no further adjudication is required.

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 25<sup>th</sup> Day of February, 2014

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: February 26, 2014**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director  
February 25, 2014 Council Meeting**

**Richard and Dawn Sabik<sup>1</sup>  
Complainant**

**GRC Complaint No. 2011-222**

v.

**Borough of Dunellen (Middlesex)<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:**

December 10, 2010 Request: Copies of the following:<sup>3</sup>

1. Towing applications for the 2011 towing rotation;
2. Authorization letter from the Custodian to the Department of Motor Vehicles dated October 30, 2009;
3. Audio recording of the December 6, 2010 Borough of Dunellen (“Borough”) meeting;
4. Police or investigation report on the GMC truck that was taken to 100 South Washington Avenue for investigation;
5. Police investigation report dated December 20, 2009 of the Chevy Venture recovered stolen vehicle;
6. Bids received for all auction vehicles; and
7. All information pertaining to the auctioning, bid amount accepted, application for title, bill of sale and purchase for three (3) vehicles.<sup>4</sup>

December 29, 2010 Request: Copies of the following:<sup>5</sup>

1. Authorization letter from the Custodian to the Department of Motor Vehicles dated October 30, 2009;
2. Audio recording of the December 6, 2010 Borough meeting limited to the public portion and complaints of the Complainant;
3. Police investigation report on the 2002 Mercury Mountaineer that requested to be brought to 100 South Washington Avenue;
4. Follow up of report #09-14116 by Officer Delbuono on the recovery location, fingerprinting of the 1999 Chevy Venture that was handled by Officer Delbuono and observed by Chief Cappella on December 20, 2009 approximately around 5:00 a.m. through 6:00 a.m.; and

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

<sup>2</sup> Represented by John E. Bruder, Esq., of the Law Offices of John E. Bruder (Bound Brook, NJ).

<sup>3</sup> The Complainant requests additional documentation not relevant to the adjudication of this complaint.

<sup>4</sup> The Complainant lists three (3) vehicles that the Borough auctioned.

<sup>5</sup> The Complainant requests additional documentation not relevant to the adjudication of this complaint

5. Information not provided as requested on December 20, 2010 for request Item No. 7: Purchaser of the vehicles transferred from the Borough Police Department as listed on title amount the Borough received from the sale of the vehicles.<sup>6</sup>

January 12, 2011 Request: Copies of the following:<sup>7</sup>

1. Original letter written to the Department of Motor Vehicles in regards to the five (5) vehicles in dispute that was filed in the Custodian's file cabinet on Borough letterhead containing the Custodian's signature;
2. Audio recording of the December 6, 2010 Borough meeting;
3. Police investigation report on the 2002 Mercury Mountaineer that was requested to be stored at 100 South Washington Avenue, license plate number UXB56A registered to Stephen Young, Case Number 09-5380 on or around May 8, 2009;
4. Follow up report or records of the recovery and fingerprinting that was performed by Officer Delbuono regarding stolen case number 09-14116; and
5. Information not provided as requested on December 20, 2010 for request Item No. 7: Purchaser of the vehicles transferred from the Borough Police Department as listed on title amount the Borough received from the sale of the vehicles.<sup>8</sup>

**Custodian of Record:** William Robbins

**Requests Received by Custodian:** December 10, 2010, December 29, 2010  
and January 12, 2011

**Responses Made by Custodian:** December 17, 2010, January 10, 2011  
and February 7, 2011

**GRC Complaint Received:** June 20, 2011

### Background

July 23, 2013 Council Meeting:

At its July 23, 2013 public meeting, the Council considered the July 16, 2013 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, found that:

[T]he Custodian has failed to establish in his request for reconsideration of the Council's April 30, 2013 Interim Order either 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 Custodian has also failed to show that the Council acted arbitrarily, capriciously

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<sup>6</sup> The Complainant lists three (3) vehicles that the Borough auctioned. The Complainant asserts in the Denial of Access Complaint that she filed a request for the records responsive to the first (1<sup>st</sup>) OPRA request Item No. 6. However, there is no evidence that she requested these records on December 29, 2010.

<sup>7</sup> The Complainant requests additional documentation not relevant to the adjudication of this complaint

<sup>8</sup> The Complainant asserts in the Denial of Access Complaint that she filed a request for the records responsive to the first (1<sup>st</sup>) OPRA request Item No. 6. However, there is no evidence that she requested these records on January 12, 2011.

or unreasonably. There is insufficient evidence of a mistake or new evidence. Thus, the Custodian'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 S. Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Tel. Sys. In The City Of Atl. City, Cnty. Of Atl., State Of N.J., 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003). The Council's April 30, 2013 Interim Order referring this complaint to the Office of Administrative Law is continued here.

#### Procedural History:

On July 26, 2013, the Council distributed its Interim Order to all parties. On September 23, 2013, the complaint was transmitted to the Office of Administrative Law ("OAL").

On January 24, 2014, the Complainants' Counsel sent a letter to the Honorable Margaret Monaco, Administrative Law Judge, withdrawing this complaint because it became apparent that the records at issue were provided to the Complainants before or at the time they filed this complaint.

#### Analysis

No analysis required.

#### Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that this complaint be dismissed because the Complainant (via Counsel) withdrew their complaint in a letter to the Honorable Margaret Monaco, Administrative Law Judge, dated January 24, 2014, because it became apparent that the records at issue were provided to the Complainants before or at the time they filed this complaint. Therefore, no further adjudication is required.

Prepared By: Frank F. Caruso  
Senior Case Manager

Approved By: Dawn R. SanFilippo, Esq.  
Senior Counsel

February 18, 2014



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

RICHARD E. CONSTABLE, III  
Commissioner

**FINAL DECISION**

**July 23, 2013 Government Records Council Meeting**

Richard and Dawn Sabik  
Complainant

Complaint No. 2011-222

v.

Borough of Dunellen (Middlesex)  
Custodian of Record

At the July 23, 2013 public meeting, the Government Records Council (“Council”) considered the July 16, 2013 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 the Custodian has failed to establish in his request for reconsideration of the Council’s April 30, 2013 Interim Order either 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 Custodian has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. There is insufficient evidence of a mistake or new evidence. Thus, the Custodian’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). The Council’s April 30, 2013 Interim Order referring this complaint to the Office of Administrative Law is continued here.

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**

**Richard and Dawn Sabik<sup>1</sup>  
Complainant**

**GRC Complaint No. 2011-222**

**v.**

**Borough of Dunellen (Middlesex)<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:**

December 10, 2010 Request: Copies of the following:<sup>3</sup>

1. Towing applications for the 2011 towing rotation;
2. Authorization letter from the Custodian to the Department of Motor Vehicles dated October 30, 2009;
3. Audio recording of the December 6, 2010 Borough of Dunellen (“Borough”) meeting;
4. Police or investigation report on the GMC truck that was taken to 100 South Washington Avenue for investigation;
5. Police investigation report dated December 20, 2009 of the Chevy Venture recovered stolen vehicle;
6. Bids received for all auction vehicle; and
7. All information pertaining to the auctioning, bid amount accepted, application for title, bill of sale and purchase for three (3) vehicles.<sup>4</sup>

December 29, 2010 Request: Copies of the following:<sup>5</sup>

1. Authorization letter from the Custodian to the Department of Motor Vehicles dated October 30, 2009;
2. Audio recording of the December 6, 2010 Borough meeting limited to the public portion and complaints of the Complainant;
3. Police investigation report on the 2002 Mercury Mountaineer that requested to be brought to 100 South Washington Avenue;
4. Follow up of report #09-14116 by Officer Delbuono on the recovery location, fingerprinting of the 1999 Chevy Venture that was handled by Officer Delbuono and observed by Chief Cappella on December 20, 2009 approximately around 5:00 a.m. through 6:00 a.m.; and

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

<sup>2</sup> Represented by John E. Bruder, Esq., of the Law Offices of John E. Bruder (Bound Brook, NJ).

<sup>3</sup> The Complainant requests additional documentation not relevant to the adjudication of this complaint

<sup>4</sup> The Complainant lists three (3) vehicles that the Borough auctioned.

<sup>5</sup> The Complainant requests additional documentation not relevant to the adjudication of this complaint



5. Information not provided as requested on December 20, 2010 for request Item No. 7: Purchaser of the vehicles transferred from the Borough Police Department as listed on title amount the Borough received from the sale of the vehicles.<sup>6</sup>

January 12, 2011 Request: Copies of the following:<sup>7</sup>

1. Original letter written to the Department of Motor Vehicles in regards to the five (5) vehicles in dispute that was filed in the Custodian's file cabinet on Borough letterhead containing the Custodian's signature;
2. Audio recording of the December 6, 2010 Borough meeting;
3. Police investigation report on the 2002 Mercury Mountaineer that was requested to be stored at 100 South Washington Avenue, license plate number UXB56A registered to Stephen Young, Case Number 09-5380 on or around May 8, 2009;
4. Follow up report or records of the recovery and fingerprinting that was performed by Officer Delbuono regarding stolen case number 09-14116; and
5. Information not provided as requested on December 20, 2010 for request Item No. 7: Purchaser of the vehicles transferred from the Borough Police Department as listed on title amount the Borough received from the sale of the vehicles.<sup>8</sup>

**Custodian of Record:** William Robbins

**Requests Received by Custodian:** December 10, 2010, December 29, 2010 and January 12, 2011

**Responses Made by Custodian:** December 17, 2010, January 10, 2011 and February 7, 2011

**GRC Complaint Received:** June 20, 2011

### Background

April 30, 2013 Council Meeting:

At its April 30, 2013 public meeting, the Council considered the April 23, 2013 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:

1. Although the Custodian responded to the Complainant's OPRA request for the towing applications timely and in writing, the Custodian's response is insufficient because he failed to provide a lawful basis for a denial pursuant to N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i) and DeAppolonio, Esq. v. Borough of Deal (Monmouth), GRC Complaint No. 2008- 62 (September 2009). Further, the Council declines to order disclosure of the requested towing applications because the

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<sup>6</sup> The Complainant lists three (3) vehicles that the Borough auctioned. The Complainant asserts in the Denial of Access Complaint that she filed a request for the records responsive to the first (1<sup>st</sup>) OPRA request Item No. 6. However, there is no evidence that she requested these records on December 29, 2010.

<sup>7</sup> The Complainant requests additional documentation not relevant to the adjudication of this complaint

<sup>8</sup> The Complainant asserts in the Denial of Access Complaint that she filed a request for the records responsive to the first (1<sup>st</sup>) OPRA request Item No. 6. However, there is no evidence that she requested these records on January 12, 2011.

Complainant acknowledges in her Denial of Access Complaint that she received said applications on January 10, 2011.

2. Because the Custodian's response to the Complainant's December 29, 2010 OPRA request for an investigation report failed to specify a lawful basis for a denial to the record sought in the OPRA request and instead stated that the requested record was denied because it had already been provided to the Complainant, the Custodian's response to the Complainant's December 29, 2010 request was insufficient pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Caggiano v. Borough of Stanhope (Sussex), GRC Complaint No. 2005-211 (January 2006). Further, the Custodian did not bear his burden of proof that he timely responded to the Complainant's January 12, 2011 OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's January 12, 2011 OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007). The Council declines to order disclosure of the investigation report responsive to the first (1<sup>st</sup>) OPRA request Item No. 4 and the second (2<sup>nd</sup>) and third (3<sup>rd</sup>) OPRA requests Item No. 3 because the Custodian certified that he provided a copy of said investigation report on February 7, 2011. Moreover, the Complainant asserted in her Denial of Access Complaint that she received a copy of the investigation report on February 7, 2011, at a Borough meeting.
3. Because the Custodian's response to the Complainant's December 29, 2010 OPRA request for the follow up police investigation report failed to specify a lawful basis for a denial to the record sought in the OPRA request and instead stated that the requested record was denied because it had already been provided to the Complainant, the Custodian's response to the Complainant's December 29, 2010 request was insufficient pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Caggiano v. Borough of Stanhope (Sussex), GRC Complaint No. 2005-211 (January 2006). The Council declines to order disclosure of the police investigation report responsive to the first (1<sup>st</sup>) OPRA request Item No. 5 and the second (2<sup>nd</sup>) and third (3<sup>rd</sup>) OPRA request Item No. 4 because the Custodian certified that he provided a copy of said investigation report on February 7, 2011. Moreover, the Complainant asserted in her Denial of Access Complaint that she received a copy of the follow up police investigation report on February 7, 2011, at a Borough meeting.
4. Because the Complainant's request is overly broad since it fails to specifically identify a government record, said request for the records responsive to the bids received for all auction vehicles responsive to the first (1<sup>st</sup>) OPRA request Item No. 6 is invalid under OPRA pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005) and New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007).

5. Because the Custodian's responses to the Complainant's December 29, 2010 and January 12, 2011 OPRA requests for the additional information related to the auctioning of three (3) vehicles failed to specify a date certain upon which the Complainant could expect disclosure of said records, the Custodian's responses to the Complainant's December 29, 2010 and January 12, 2011 requests were insufficient pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Russomano v. Township of Edison (Middlesex), GRC Complaint No. 2002-86 (July 2003). However, the Council declines to order disclosure of the information pertaining to the auctioning, bid amount, application for title, bill of sale and purchase for three (3) vehicles responsive to the first (1<sup>st</sup>) OPRA request Item No. 7 and second (2<sup>nd</sup>) and third (3<sup>rd</sup>) OPRA requests Item No. 5 because the Custodian certified in the SOI that there was no additional information to provide to the Complainant and the Complainant has provided no competent credible evidence to refute the Custodian's certification. Thus, no additional records responsive to the Complainant's request exist pursuant to N.J.S.A. 47:1A-6. See Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005).
6. Because the Custodian's response to the Complainant's December 29, 2010 OPRA request for the authorization letter failed to specify a lawful basis for a denial to the record sought in the OPRA request and instead stated that the requested record was denied because it had already been provided to the Complainant, the Custodian's response to the Complainant's December 29, 2010 request was insufficient pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Caggiano v. Borough of Stanhope (Sussex), GRC Complaint No. 2005-211 (January 2006).
7. Since there are issues of contested facts, specifically whether the Complainant received a copy of the authorization letter dated October 30, 2009, to the Department of Motor Vehicles responsive to the first (1<sup>st</sup>) OPRA request Item No. 2 and the second (2<sup>nd</sup>) and third (3<sup>rd</sup>) OPRA requests Item No. 1, this complaint should be referred to the Office of Administrative Law ("OAL") to determine whether the Complainant received a copy of the authorization letter. Additionally, if necessary, OAL should make a determination of whether the Custodian knowingly and willfully violated OPRA and unlawfully denied access to the requested authorization letter under the totality of the circumstances. See Semprevivo v. Pinelands Regional School District Board of Education, GRC Complaint No. 2007-135 (Interim Order October 31, 2007).
8. Because the Custodian did not bear his burden of proof that the requested \$500.00 deposit was authorized by N.J.S.A. 47:1A-5(f), such deposit is unlawful pursuant to N.J.S.A. 47:1A-5(f); N.J.S.A. 47:1A-6. See Wolosky v. Township of Mine Hill (Morris), GRC Complaint No. 2010-161 (Interim Order December 20, 2011).
9. Since there are issues of contested facts, specifically whether the Complainant received a copy of the audio recording of the December 6, 2010 Borough Meeting responsive to the first (1<sup>st</sup>) OPRA request Item No. 3 and the second (2<sup>nd</sup>) and third (3<sup>rd</sup>) OPRA requests Item No. 2, this complaint should be referred to OAL to

determine whether the Complainant received a copy of the audio recording. Additionally, if necessary, OAL should make a determination of whether the Custodian knowingly and willfully violated OPRA and unlawfully denied access to the requested audio recording under the totality of the circumstances. *See Semprevivo v. Pinelands Regional School District Board of Education*, GRC Complaint No. 2007-135 (Interim Order October 31, 2007).

#### Procedural History:

On May 2, 2013, the Council distributed its Interim Order to all parties.

#### Reconsideration:

On May 14, 2013, the Custodian filed a request for reconsideration requesting that the Council reconsider its April 30, 2013 Interim Order based on a mistake and new evidence. On May 29, 2013, the Complainant's Counsel submitted objections to the request for reconsideration.

### Analysis

#### Reconsideration

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)*.

In the matter before the Council, the Custodian filed the request for reconsideration of the Council's Order dated April 30, 2013, on May 14, 2013, eight (8) business days from the issuance of the Council's Order.

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).

As the moving party, the Custodian 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 Custodian failed to do so. The Custodian has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. *See D'Atria, supra*. There is insufficient evidence of a mistake or new evidence. Thus, the Custodian's request for reconsideration should be denied. *Cummings, supra; D'Atria, supra; Comcast, supra*. The Council's April 30, 2013 Interim Order referring this complaint to the Office of Administrative Law is continued here.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that the Custodian has failed to establish in his request for reconsideration of the Council's April 30, 2013 Interim Order either 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 Custodian has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. There is insufficient evidence of a mistake or new evidence. Thus, the Custodian'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). The Council's April 30, 2013 Interim Order referring this complaint to the Office of Administrative Law is continued here.

Prepared By: Dara L. Barry  
Communications Manager

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

July 16, 2013