



State of New Jersey
GOVERNMENT RECORDS COUNCIL

101 SOUTH BROAD STREET
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TRENTON, NJ 08625-0819

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

FINAL DECISION

August 27, 2013 Government Records Council Meeting

Robert A. Verry
Complainant

Complaint No. 2012-15

v.

Borough of South Bound Brook (Somerset)
Custodian of Record

At the August 27, 2013 public meeting, the Government Records Council (“Council”) considered the August 20, 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 April 30, 2013 Administrative Complaint Disposition 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 has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. Thus, the Complainant failed to support his claim that reconsideration should be granted based on mistake and new evidence and his 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 27th Day of August, 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: August 29, 2013

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

Reconsideration
Supplemental Findings and Recommendations of the Executive Director
August 27, 2013 Council Meeting

Robert A. Verry¹
Complainant

GRC Complaint No. 2012-15

v.

Borough of South Bound Brook (Somerset)²
Custodial Agency

Records Relevant to Complaint: An electronic copy of the prepared script the mayor and council read from at the 2012 Reorganization Meeting.

Custodian of Records: Donald E. Kazar, Clerk

Request Received by Custodian: January 3, 2012

Response Made by Custodian: January 3, 2012

GRC Complaint Received: January 17, 2012

Background

April 30, 2013 Council Meeting:

At its April 30, 2013 public meeting, the Council considered and approved the April 23, 2012 recommendation of the Executive Director that this complaint be administratively dismissed because the Custodian certified that he responded to the Complainant's OPRA request in writing within the statutorily mandated response time indicating that no records responsive to the OPRA request exist. Additionally, the Complainant has failed to provide any competent evidence to contradict the Custodian's certification.

Procedural History:

On April 30, 2013, the Council sent the Administrative Complaint Disposition to all parties.

Complainant's Reconsideration:

On May 9, 2013, the Complainant filed a request for reconsideration requesting that the Council reconsider its April 30, 2013 Administrative Complaint Disposition based on a mistake and new evidence.

¹ Represented by Walter M. Luers, Esq. (Clinton, NJ).

² No legal representation listed on record.

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 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 the matter before the Council, the Complainant filed the request for reconsideration of the April 30, 2013 Administrative Complaint Disposition on May 9, 2013, seven (7) business days from the issuance of said Disposition. The Complainant filed the request for reconsideration based on mistake and new evidence.³ The alleged mistake is (1) the Council placed more weight on the Custodian’s certified statement than the allegations made by the Complainant in the Denial of Access Complaint; and (2) by ignoring evidence that confirmed the mayor and council read from what the Complainant said he terms a “prepared script.” The alleged new evidence is not new evidence as defined herein.

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

³ “New evidence” is evidence that could not have been provided prior to the Council’s decision because the evidence did not exist at that time.
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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 failed to support his claim that reconsideration should be granted based on mistake and new evidence and his 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 April 30, 2013 Administrative Complaint Disposition 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 has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. Thus, the Complainant failed to support his claim that reconsideration should be granted based on mistake and new evidence and his 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: John E. Stewart, Esq.

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

August 20, 2013



NEW JERSEY GOVERNMENT RECORDS COUNCIL

Administrative Complaint Disposition - No Records Responsive to the Request Exist

GRC Complaint No.: 2012-15

Complainant: Robert A. Verry

Public Agency: Borough of South Bound Brook (Somerset)

Custodian of Records: Donald E. Kazar, Clerk

Date of Request: January 3, 2012

Date of Complaint: January 17, 2012¹

Complaint Disposition: The Custodian certifies that he responded to the Complainant's OPRA request in writing within the statutorily mandated response time indicating that no records responsive to the OPRA request exist. Additionally, the Complainant has failed to provide any competent evidence to contradict the Custodian's certification.

Applicable OPRA Provision: OPRA defines a "government record" as any record:

"...that has been made, maintained or kept on file in the course of his or its official business...or that has been received in the course of his or its official business..."
N.J.S.A. 47:1A-1.1.

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 30, 2013

Prepared By: John E. Stewart, Esq.

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

Date: April 23, 2013

Distribution Date: April 30, 2013

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