



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

August 27, 2013 Government Records Council Meeting

Bernard Reid
Complainant

Complaint No. 2012-248

v.

New Jersey Department of Corrections
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 voted unanimously to adopt 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 May 28, 2013 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 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 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

Bernard Reid¹
Complainant

GRC Complaint No. 2012-248

v.

New Jersey Department of Corrections²
Custodian of Records

Records Relevant to Complaint: Inspection of any and all non-confidential records relating to an ethics complaint filed by the Complainant.³

Custodian of Records: John Falvey
Request Received by Custodian: July 11, 2012
Response Made by Custodian: July 23, 2012
GRC Complaint Received: August 20, 2012

Background

May 28, 2013 Council Meeting:

At its May 28, 2013 public meeting, the Government Records Council (“Council”) considered the May 21, 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 the Complainant’s request is invalid under OPRA because it fails to reasonably specify identifiable government records and constitutes an overbroad and unclear request that would require the Custodian to conduct research outside the scope of his duties. See 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); and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

Procedural History:

On June 11, 2013, the Council sent its Final Decision to all parties.

¹ No legal representation listed on record.

² John Falvey, Custodian of Records. No legal representation listed on record.

³ Other records were requested that are not relevant to this complaint.

Complainant's Reconsideration:

On July 26, 2013, the Complainant filed a request for reconsideration requesting that the Council reconsider its May 28, 2013 Final Decision based on a mistake.

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).

Here, by certification dated June 21, 2013, which was received by the GRC on July 10, 2013, the Complainant stated that he did not receive the Council's May 28, 2013 Final Decision until June 20, 2013.⁴ For this reason, the Complainant asked the GRC for an extension of time to file a request for reconsideration of said Decision. The Complainant's request for an extension of time was granted and the Complainant subsequently filed the request for reconsideration on July 26, 2013, which was accepted by the GRC as a timely submission. The Complainant filed the request for

⁴ The Complainant is an inmate incarcerated in the New Jersey State Prison and mail delivery can be delayed due to security procedures.
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reconsideration based on mistake; however, no mistake is alleged. Rather, the Complainant asserts the Custodian made a mistake by not disclosing the requested records.⁵

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 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 May 28, 2013 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 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 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

⁵ The Complainant repeats many of the same arguments raised in the Denial of Access Complaint. *Bernard Reid v. New Jersey Department of Corrections*, 2012-248 – Supplemental Findings and Recommendations of the Executive Director