



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**

**August 27, 2013 Government Records Council Meeting**

John Schmidt  
Complainant

Complaint No. 2012-312

v.

City of Bayonne (Hudson)  
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 March 22, 2013 Final Decision that either: 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, and has failed to show that the Council acted arbitrarily, capriciously or unreasonably. The Complainant failed to establish that the complaint should be reconsidered. 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 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**

**John Schmidt<sup>1</sup>**  
**Complainant**

**GRC Complaint No. 2012-312**

v.

**City of Bayonne (Hudson)<sup>2</sup>**  
**Custodial Agency**

**Records Relevant to Complaint: None.<sup>3</sup>**

**Custodian of Record:** Robert F. Sloan  
**Request Received by Custodian:** April 30, 2012  
**Response Made by Custodian:** May 31, 2012  
**GRC Complaint Received:** December 10, 2012

**Background**

March 22, 2013 Council Meeting:

At its March 22, 2013 public meeting, the Council considered the March 15, 2013 findings and recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt said findings and recommendations. The Council, therefore, found that:

The Complainant states in his Denial of Access Complaint that his sole argument in said complaint is that the City of Bayonne's OPRA request form is not compliant with OPRA. The Complainant does not assert that he was denied access to any records pursuant to his April 30, 2012 OPRA request. The Complainant's attorney further asserted to the GRC via e-mail on December 12, 2012 that "...this GRC complaint alleges an illegal OPRA request form. It does not allege an illegal denial of access."

Applicable OPRA Provision: OPRA provides that: "A person who is denied access to a government record by the custodian of the record, at the option of the requestor, may institute a proceeding to challenge the custodian's decision

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<sup>1</sup> Represented by Richard Gutman, Esq., (Montclair, NJ).

<sup>2</sup> Peter Cecinini, Esq., Assistant Corporation Counsel, (Bayonne, NJ).

<sup>3</sup> The Complainant does not assert he was denied access to any document.

by...record custodian. . . [filing] a complaint with the Government Records Council established pursuant to [OPRA].” N.J.S.A. 47:1A-6.

[t]he Government Records Council shall... receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to a government record by a record custodian...” (Emphasis added). N.J.S.A. 47:1A-7(b).

#### Procedural History:

On March 25, 2013 the Council distributed its Final Decision to all parties. On April 2, 2013, the Complainant filed a motion for reconsideration of the Council’s March 22, 2013 Final Decision. The Complainant did not allege a basis for his motion for reconsideration. On April 11, 2013, the Custodian submitted a letter brief objecting 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 Complainant filed the request for reconsideration of the Council’s March 22, 2013 Order on April 2, 2013, six (6) 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).

The Complainant, in moving for reconsideration relies on Jesse Wolosky v. Township of Roxbury (Morris) (GRC Complaint No. 2010-183) (December 18, 2012 Final Decision) and Martin O'Shea v. Township of West Milford (Passaic) (GRC Complaint No. 2007-237). The Complainants in both the Wolosky and O'Shea matters requested access to documents and were denied. The denial provided the Council with jurisdiction to hear the cases. N.J.S.A. 47:1A-7(b). In the instant matter Complainant filed a "GRC complaint solely on the grounds that the City of Bayonne's official OPRA request form violated OPRA". Complainant's Brief dated April 2, 2013, pg. 5. As the moving party, the Complainant was required to establish either of the necessary criteria set forth above: that either 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. *See Cummings, supra*. The Complainant failed to establish that the complaint should be reconsidered. 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 March 22, 2013 Final Decision that either: 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, and has failed to show that the Council acted arbitrarily, capriciously or unreasonably. The Complainant failed to establish that the complaint should be reconsidered. 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: Dawn R. SanFilippo, Esq.  
Senior Counsel

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

August 20, 2013