



State of New Jersey
GOVERNMENT RECORDS COUNCIL

101 SOUTH BROAD STREET
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

FINAL DECISION

October 29, 2013 Government Records Council Meeting

Sabino Valdes
Complainant

Complaint No. 2012-329

v.

Union City Board of Education (Hudson)
Custodian of Record

At the October 29, 2013 public meeting, the Government Records Council (“Council”) considered the October 22, 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 August 27, 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. The Complainant failed to establish that the complaint should be reconsidered based on a mistake, fraud and illegality. While the Complainant argues that decisions in Elizabeth Educ. Assoc. v. Elizabeth BOE, 2012 N.J. Super. Unpub. LEXIS 1245 (App. Div. 2012) and Kelley v. Koval, 2013 N.J. Super. Unpub. LEXIS 1939 (App. Div. 2013) support his argument that the Council’s Final Decision should be reconsidered, this reasoning is misplaced. Specifically, Elizabeth Educ. Assoc. stands for the proposition that a custodian must provide a requestor with a list of personnel information that is expressly identified as records under N.J.S.A. 47:1A-10, and Kelley stands for the proposition that a public agency must abide by the Open Public Meetings Act by approving minutes in a timely manner; neither is relevant here. 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 29th Day of October, 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: November 1, 2013

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

Reconsideration
Supplemental Findings and Recommendations of the Executive Director
October 29, 2013 Council Meeting

Sabino Valdes¹
Complainant

GRC Complaint No. 2012-329

v.

Union City Board of Education (Hudson)²
Custodial Agency

Records Relevant to Complaint: Onsite inspection of motion made and carried by the Union City Board of Education (“BOE”) to approve executive and special meeting held on June 13, 2000, included in the minutes made for any regular or special meeting held for the months of January 2001, to March 2011.

Custodian of Record: Anthony N. Dragona
Request Received by Custodian: October 12, 2012
Response Made by Custodian: November 20, 2012
GRC Complaint Received: December 28, 2012

Background

August 27, 2013 Council Meeting:

At its August 27, 2013 public meeting, the Council considered the August 20, 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:

[B]ecause the Complainant’s request fails to identify the specific minutes sought and would require the Custodian to research minutes for a ten (10) year period in order to determine whether any of those minutes contain the motions sought by the Complainant, said request is invalid. Valdes v. Union City BOE (Hudson), GRC Complaint No. 2011-147 *et seq.* (July 2012); Taylor v. Cherry Hill Board of Education (Camden), GRC Complaint No. 2008-258 (August 2009); Ray v. Freedom Academy Charter School (Camden), GRC Complaint No. 2009-185 (Interim Order dated August 24, 2010). Further, the Custodian has lawfully denied access to the Complainant’s request. N.J.S.A. 47:1A-6.

Id.

¹ No legal representation listed on record.

² Represented by Susanne Lavelle, Esq. (Union City, NJ).

Procedural History:

On August 29, 2013, the Council distributed its Final Decision to all parties. On September 18, 2013, the Complainant filed a request for reconsideration of the Council's August 27, 2013 Final Decision based on a mistake, fraud and illegality. The Complainant argues that decisions in Elizabeth Educ. Assoc. v. Elizabeth BOE, 2012 N.J. Super. Unpub. LEXIS 1245 (App. Div. 2012), and Kelley v. Koval, 2013 N.J. Super. Unpub. LEXIS 1939 (App. Div. 2013), support his argument that the Council's Final Decision should be reconsidered. On October 3, 2013, the Custodian's Counsel submitted objections to the Complainant's 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 August 27, 2013 Final Decision on September 18, 2013, ten (10) 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).

The GRC has reviewed the decisions provided by the Complainant and finds that same are not on point with the facts herein and do not establish that the Council's decision should be

reconsidered. Specifically, Elizabeth Educ. Assoc., LEXIS 1245, stands for the proposition that a custodian must provide a requestor with a list of personnel information that is expressly identified as records under N.J.S.A. 47:1A-10, and Kelley, LEXIS 1939, stands for the proposition that a public agency must abide by the Open Public Meetings Act by approving minutes in a timely manner. Thus, neither decision is relevant here.

As the moving party, the Complainant was required to establish either of the necessary criteria set forth above: 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*, 295 N.J. Super. at 384. The Complainant failed to establish that the complaint should be reconsidered based on a mistake, fraud and illegality. The Complainant has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. *See D’Atria*, 242 N.J. Super. at 401. Thus, the Complainant’s request for reconsideration should be denied. *Cummings*, 295 N.J. Super. at 384; *D’Atria*, 242 N.J. Super. at 401; *Comcast*, 2003 N.J. PUC at 5-6.

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 August 27, 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. The Complainant failed to establish that the complaint should be reconsidered based on a mistake, fraud and illegality. While the Complainant argues that decisions in Elizabeth Educ. Assoc. v. Elizabeth BOE, 2012 N.J. Super. Unpub. LEXIS 1245 (App. Div. 2012) and Kelley v. Koval, 2013 N.J. Super. Unpub. LEXIS 1939 (App. Div. 2013) support his argument that the Council’s Final Decision should be reconsidered, this reasoning is misplaced. Specifically, Elizabeth Educ. Assoc. stands for the proposition that a custodian must provide a requestor with a list of personnel information that is expressly identified as records under N.J.S.A. 47:1A-10, and Kelley stands for the proposition that a public agency must abide by the Open Public Meetings Act by approving minutes in a timely manner; neither is relevant here. 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

October 22, 2013