



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
Acting Commissioner

FINAL DECISION

May 29, 2012 Government Records Council Meeting

Dr. Alan Bell
Complainant

Complaint No. 2012-39

v.

Paterson Public Schools (Passaic)
Custodian of Record

At the May 29, 2012 public meeting, the Government Records Council (“Council”) considered the May 22, 2012 *Reconsideration* 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 failed to establish in his request for reconsideration of the Council’s March 27, 2012 Administrative Disposition that the Council’s decision was based upon a “palpably incorrect or irrational basis” or that it is obvious the finder of fact did not consider, or failed to appreciate, the significance of probative, competent evidence. Further, the Complainant failed to demonstrate that the Council in rendering its decision acted in an arbitrary, capricious or unreasonable manner. Accordingly, reconsideration of the Council’s decision, based upon the Complainant’s asserted reasons for said reconsideration, is denied. See Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996), D’Atria v. D’Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990), and 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 May, 2012



Robin Berg Tabakin, Chair
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Denise Parkinson Vetti, Secretary
Government Records Council

Decision Distribution Date: June 1, 2012

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

Reconsideration

**Supplemental Findings and Recommendations of the Executive Director
May 29, 2012 Council Meeting**

Dr. Alan Bell¹
Complainant

GRC Complaint No. 2012-39

v.

Paterson Public Schools (Passaic)²
Custodian of Records

Records Relevant to Complaint: None requested.³

Request Made: No specific date given.

Response Made: No specific date given

Custodian: Daisy Ayala

GRC Complaint Filed: February 21, 2012⁴

Background

March 27, 2012

Government Records Council's ("Council") Administrative Complaint Disposition. At its March 27, 2012 public meeting, the Council considered the Administrative Complaint Disposition and all related documentation submitted by the parties. The Council voted unanimously to administratively dispose of this complaint on the grounds that the Custodian certified that she never received a records request from the Complainant.

March 27, 2012

The Council's Administrative Disposition distributed to the parties.

April 2, 2012⁵

Letter from the Complainant to the GRC. The Complainant asks the Council to reconsider its final administrative determination in this matter. The Complainant states that the Custodian has acted in bad faith.⁶

¹ No legal representation listed on record.

² Represented by Carol R. Smeltzer, Esq., Assistant General Counsel of Paterson Public Schools (Paterson, NJ).

³ The Complainant failed to provide a copy of his OPRA request in his Denial of Access Complaint filed February 21, 2012. In addition, the Complainant made no legal arguments or assertions of fact in the Denial of Access Complaint as to how he was unlawfully denied access to government records. Moreover, the Complainant never asserted what records he is seeking.

⁴ The GRC received the Denial of Access Complaint on said date.

⁵ The Complainant submits additional documentation that is not relevant to the adjudication of this complaint.

Analysis

Whether the Complainant has met the required standard for reconsideration of the Council's March 27, 2012 Administrative Disposition?

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 requested reconsideration of the Council's March 27, 2012 Administrative Disposition on April 2, 2012, four (4) business days after receiving the Council's decision on March 27, 2012. Thus, the Council will consider the Complainant's request for reconsideration of this matter as timely filed pursuant to N.J.A.C. 5:105-2.10(a) and (b).

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 instant matter, the Complainant made no legal arguments and provided no new competent evidence in support of his request for reconsideration to refute the Custodian's certification that she never received any correspondence from the Complainant regarding the request at issue herein. Instead, the Complainant's request

⁶ The Complainant provided no further legal argument or new, competent, evidence in support of this request for reconsideration.
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for reconsideration merely stated that the Custodian acted in bad faith. Therefore, there is no basis upon which the Council reconsider this matter.

Accordingly, the Complainant failed to establish in his request for reconsideration of the Council's March 27, 2012 Administrative Disposition that the Council's decision was based upon a "palpably incorrect or irrational basis" or that it is obvious the finder of fact did not consider, or failed to appreciate, the significance of probative, competent evidence. Further, the Complainant failed to demonstrate that the Council in rendering its decision acted in an arbitrary, capricious or unreasonable manner. Accordingly, reconsideration of the Council's decision, based upon the Complainant's asserted reasons for said reconsideration, is denied. *See Cummings v. Bahr*, 295 N.J. Super. 374, 384 (App. Div. 1996), *D'Atria v. D'Atria*, 242 N.J. Super. 392, 401 (Ch. Div. 1990), and 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).

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Complainant failed to establish in his request for reconsideration of the Council's March 27, 2012 Administrative Disposition that the Council's decision was based upon a "palpably incorrect or irrational basis" or that it is obvious the finder of fact did not consider, or failed to appreciate, the significance of probative, competent evidence. Further, the Complainant failed to demonstrate that the Council in rendering its decision acted in an arbitrary, capricious or unreasonable manner. Accordingly, reconsideration of the Council's decision, based upon the Complainant's asserted reasons for said reconsideration, is denied. *See Cummings v. Bahr*, 295 N.J. Super. 374, 384 (App. Div. 1996), *D'Atria v. D'Atria*, 242 N.J. Super. 392, 401 (Ch. Div. 1990), and 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: Darryl C. Rhone
Case Manager

Approved By: Catherine Starghill, Esq.
Executive Director

May 22, 2012



NEW JERSEY GOVERNMENT RECORDS COUNCIL
Administrative Complaint Disposition – No correspondence received by the
Custodian regarding this request.

GRC Complaint No.: 2012-39

Complainant: Dr. Alan Bell

Public Agency: Paterson Public Schools (Passaic)

Custodian of Record: Daisy Ayala

Date of Request: N/A

Date of Complaint: February 21, 2012¹

Complaint Disposition:

On March 12, 2012, the Custodian certified that she did not receive a records request from the Complainant. Additionally, the Complainant has failed to provide any evidence to contradict the Custodian's certification. Therefore, this Complaint is without any reasonable factual basis to pursue.

Applicable OPRA Provision:

"The custodian of a public agency shall adopt a form for the use of any person who requests access to a government record held or controlled by the public agency. The form shall provide space for the name, address, and phone number of the requestor and a brief description of the government record sought. The form shall include space for the custodian to indicate which record will be made available, when the record will be available, and the fees to be charged. The form shall also include the following: (1) specific directions and procedures for requesting a record; (2) a statement as to whether prepayment of fees or a deposit is required; (3) the time period within which the public agency is required by [OPRA], to make the record available; (4) a statement of the requestor's right to challenge a decision by the public agency to deny access and the procedure for filing an appeal; (5) space for the custodian to list reasons if a request is denied in whole or in part; (6) space for the requestor to sign and date the form; (7) space for the custodian to sign and date the form if the request is fulfilled or denied. The custodian may require a deposit against costs for reproducing documents sought through an anonymous request whenever the custodian anticipates that the information thus requested will cost in excess of \$5 to reproduce." N.J.S.A. 47:1A-5.f.

"A request for access to a government record shall be in writing and hand-delivered, mailed, transmitted electronically, or otherwise conveyed to the appropriate custodian." N.J.S.A. 47:1A- 5.g.

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



"The council shall make a determination as to whether the complaint is within its jurisdiction or frivolous or *without any reasonable factual basis*. (Emphasis added)." N.J.S.A. 47:1A-7.e.

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: March 27, 2012

Prepared By: Darryl C. Rhone
Case Manager

Approved By: Catherine Starghill, Esq.
Executive Director

Date: March 20, 2012

Distribution Date: March 27, 2012