



State of New Jersey  
DEPARTMENT OF COMMUNITY AFFAIRS  
101 SOUTH BROAD STREET  
PO Box 819  
TRENTON, NJ 08625-0819

CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

CHARLES A. RICHMAN  
Commissioner

**FINAL DECISION**

**April 25, 2017 Government Records Council Meeting**

Sean Vandy  
Complainant

v.

Newfield Police Department (Gloucester)  
Custodian of Record

Complaint No. 2015-356

At the April 25, 2017 public meeting, the Government Records Council (“Council”) considered the April 18, 2017 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 February 21, 2017 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. The Complainant has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. Specifically, the Complainant argued that he sought information, as opposed to specific, identifiable government records. The Complainant’s argument only reinforced the Council’s decision that the request was invalid. 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 S. Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Tel. Sys. In The City Of Atl. City, Cnty. Of Atl., State Of N.J., 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 25<sup>th</sup> Day of April, 2017

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: April 27, 2017**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

*Reconsideration*

**Supplemental Findings and Recommendations of the Executive Director  
April 25, 2017 Council Meeting**

**Sean Vandy<sup>1</sup>  
Complainant**

**GRC Complaint No. 2015-356**

v.

**Newfield Police Department (Gloucester)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** “Gallow stop me yesterday at about 2:45 and told me I can’t walk through the park, it’s Eggerton School Property. I want to know who told him or how he found out I was walking through Park. Who told him it was school property. And since when?” (*sic*).

**Custodian of Record:** Toni L. VanCamp  
**Request Received by Custodian:** September 15, 2015  
**Response Made by Custodian:** September 18, 2015  
**GRC Complaint Received:** November 13, 2015

**Background**

February 21, 2017 Council Meeting:

At its February 21, 2017 public meeting, the Council considered the February 14, 2017 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:

[There was] no unlawful denial of access because the request was invalid under OPRA. Therefore, the Custodian has borne his burden of proof that he did not unlawfully deny access to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. LaMantia v. Jamesburg Public Library (Middlesex), GRC Complaint No. 2008-140 (February 2009).

Procedural History:

On February 23, 2017, the Council distributed its Final Decision to all parties. On March 8, 2017, the Complainant filed a request for reconsideration of the Council’s February 21, 2017

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<sup>1</sup> No legal representation listed on record.

<sup>2</sup> Represented by Daniel E. Rybeck, Esq. (Cherry Hill, NJ).

Final Decision based on a mistake. In seeking reconsideration, the Complainant raised no legal arguments. In pertinent part, the Complainant merely reiterated that he wanted to know who called the police on him. Additionally, the Complainant asserted his belief that OPRA “was for anybody to receive information . . . .”

On April 7, 2017, the Custodian’s Counsel submitted objections to the request for reconsideration.<sup>3</sup> Therein, Counsel contended that the Complainant failed to provide any arguments or case law to support a reconsideration of the Council’s Final Decision.

### 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 February 21, 2017 Final Decision on March 8, 2017, nine (9) 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, . . . 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 S. Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Tel. Sys. In The City Of Atl. City, Cnty. Of Atl., State Of N.J., 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).

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<sup>3</sup> The Complainant did not simultaneously provide a copy of his request for reconsideration to the Custodian. Thus, the GRC provided a copy of the request for reconsideration to the Custodian on March 24, 2017, and provided her ten (10) business days, or until April 7, 2017, to submit objections in accordance with N.J.A.C. 5:105-2.10(d).

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. In the instant matter, the Complainant failed to establish that the complaint should be reconsidered based on a mistake. The Complainant has also failed to show that the Council acted arbitrarily, capriciously, or unreasonably. *See D'Atria*, 242 N.J. Super. at 401. Specifically, the Complainant argued that he sought information, as opposed to specific, identifiable government records. The Complainant's argument only reinforced the Council's decision that the request was invalid. 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 February 21, 2017 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. The Complainant has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. Specifically, the Complainant argued that he sought information, as opposed to specific, identifiable government records. The Complainant's argument only reinforced the Council's decision that the request was invalid. 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 S. Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Tel. Sys. In The City Of Atl. City, Cnty. Of Atl., State Of N.J.*, 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).

Prepared By: Frank F. Caruso  
Communications Specialist/Resource Manager

April 18, 2017



State of New Jersey  
DEPARTMENT OF COMMUNITY AFFAIRS  
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CHRIS CHRISTIE  
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**FINAL DECISION**

**February 21, 2017 Government Records Council Meeting**

Sean Vandy  
Complainant

Complaint No. 2015-356

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Newfield Police Department (Gloucester)  
Custodian of Record

At the February 21, 2017 public meeting, the Government Records Council (“Council”) considered the February 14, 2017 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 no unlawful denial of access because the request was invalid under OPRA. Therefore, the Custodian has borne his burden of proof that he did not unlawfully deny access to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. LaMantia v. Jamesburg Public Library (Middlesex), GRC Complaint No. 2008-140 (February 2009).

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 21<sup>st</sup> Day of February, 2017

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: February 23, 2017**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
February 21, 2017 Council Meeting**

**Sean Vandy<sup>1</sup>  
Complainant**

**GRC Complaint No. 2015-356**

v.

**Newfield Police Department (Gloucester)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** “Gallow stop me yesterday at about 2:45 and told me I can’t walk through the park, it’s Eggerton School Property. I want to know who told him or how he found out I was walking through Park. Who told him it was school property. And since when?” (*sic*).

**Custodian of Record:** Toni L. VanCamp  
**Request Received by Custodian:** September 15, 2015  
**Response Made by Custodian:** September 18, 2015  
**GRC Complaint Received:** November 13, 2015

**Background<sup>3</sup>**

**Request and Response:**

On September 15, 2015, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On an unknown date, the Custodian responded in writing, stating, “[t]he report you are requesting has not yet been completed. As soon as the report is finished you will be contacted.” On September 18, 2015, three (3) business days following receipt of the request, the Custodian sent the completed report to the Complainant.

**Denial of Access Complaint:**

On November 13, 2015, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asked, “[w]ho told them I was in the park and who them [*sic*] it was school property? Since when?” The Complainant made no additional legal arguments.

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<sup>1</sup> No legal representation listed on record.

<sup>2</sup> Represented by Daniel E. Rybeck, Esq. (Cherry Hill, NJ).

<sup>3</sup> The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

### Statement of Information:

On January 11, 2016, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that the Newfield Police Department (“Department”) received the Complainant’s OPRA request on September 15, 2015. The Custodian certified that Patrolman J. Schaw responded in writing, advising that a report, concerning the incident referenced by the Complainant, had not yet been completed. This response was not dated. The Custodian certified that the requested report was completed on September 18, 2015, and provided to the Complainant that same day.

### Analysis

#### Invalid OPRA Request

OPRA provides that government records made, maintained, kept on file, or received by a public agency in the course of its official business are subject to public access unless otherwise exempt. N.J.S.A. 47:1A-1.1. A custodian must release all records responsive to an OPRA request “with certain exceptions.” N.J.S.A. 47:1A-1. Additionally, OPRA places the burden on a custodian to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6.

The GRC has consistently found that requests that ask questions instead of requesting specific documents are not valid OPRA requests pursuant to N.J.S.A. 47:1A-1 et. seq. In LaMantia v. Jamesburg Public Library (Middlesex), GRC Complaint No. 2008-140 (February 2009), the complainant requested the number of Jamesburg residents that hold library cards. The GRC deemed that the complainant’s request was a request for information, holding that “because request Item No. 2 of the Complainant’s June 25, 2008 OPRA request seeks information rather than an identifiable government record, the request is invalid pursuant to [MAG, supra] ...” *Id.* at 6. *See also* Ohlson v. Township of Edison (Middlesex), GRC Complaint No. 2007-233 (August 2009). Additionally, in Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009), the complainant’s September 13, 2007 OPRA request asked five (5) questions. The Council determined that the request was an invalid request that failed to identify government records.

In the instant matter, the Complainant asked a series of questions, referencing an incident involving himself and occurring a day prior to the filing of his OPRA request. Although the Complainant provided references to himself, a date, and a location, he did not specifically request a government record. Instead, he asked questions regarding the underlying incident. Additionally, in his Denial of Access Complaint, he made no legal arguments regarding a denial of access of records but instead reiterated the fact-seeking questions he asked in his initial OPRA request.

OPRA provides that the Council “shall make a determination as to whether the complaint is within its jurisdiction or frivolous or without any reasonable factual basis. If the council shall conclude that the complaint is outside its jurisdiction, frivolous or without factual basis, it shall reduce that conclusion to writing and transmit a copy thereof to the complainant and to the records custodian against whom the complaint was filed.” N.J.S.A. 47:1A-7(e). Although the

Complainant here provided a record to the Complainant, the request itself was not a valid request under OPRA.

Based on the foregoing, the GRC finds no unlawful denial of access because the request was invalid under OPRA. Therefore, the Custodian has borne his burden of proof that he did not unlawfully deny access to the Complainant's OPRA request. N.J.S.A. 47:1A-6. LaMantia, GRC 2008-140.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find no unlawful denial of access because the request was invalid under OPRA. Therefore, the Custodian has borne his burden of proof that he did not unlawfully deny access to the Complainant's OPRA request. N.J.S.A. 47:1A-6. LaMantia v. Jamesburg Public Library (Middlesex), GRC Complaint No. 2008-140 (February 2009).

Prepared By: Husna Kazmir  
Staff Attorney

February 14, 2017