



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

February 21, 2017 Government Records Council Meeting

Salvatore J. Moretti
Complainant

v.

Bergen County Prosecutor's Office
Custodian of Record

Complaint No. 2015-390

At the February 21, 2017 public meeting, the Government Records Council ("Council") considered the February 14, 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 January 31, 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 any of the six (6) reasons present on the request for reconsideration form. The Complainant has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. Specifically, the Complainant failed to provide any new or additional arguments as to why his request was somehow valid. 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 21st 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**

Reconsideration

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

**Salvatore J. Moretti¹
Complainant**

GRC Complaint No. 2015-390

v.

**Bergen County Prosecutor's Office²
Custodial Agency**

Records Relevant to Complaint:

November 12, 2015 OPRA request: Hardcopies via U.S. mail of “records [the Bergen County Prosecutor’s Office (“BCPO”)]” has that would be “helpful in continuing to live in Bergen County.”

November 19, 2015 OPRA request: Hardcopies via U.S. mail of “records [or] supporting materials so [the Complainant does] not become a victim of municipal property seizure.”

Custodian of Record: Maureen Parenta

Request Received by Custodian: November 16, 2015, and November 20, 2015

Response Made by Custodian: November 23, 2015, and November 30, 2015

GRC Complaint Received: December 7, 2015

Background

January 31, 2017 Council Meeting:

At its January 31, 2017 public meeting, the Council considered the January 24, 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:

[T]he Complainant’s two (2) OPRA requests generically seek “records” that would aid him, thus rendering the requests invalid because they seek unspecified documents rather than specifically named or identifiable government records. The Custodian therefore lawfully denied access. N.J.S.A. 47:1A-6; Steinhauer-Kula v. Twp. of Downe (Cumberland), GRC Complaint No. 2010-198 (March 2012); Edwards v. Hous. Auth. of Plainfield (Union), GRC Complaint No. 2008-183 *et*

¹ No legal representation listed on record.

² Represented by John M. Carbone, Esq. (Ridgewood, NJ).

seq. (Final Decision dated April 25, 2012); Caggiano v. State of NJ Office of the Governor, GRC Complaint No. 2014-272 (April 2015). The Custodian had no legal duty to research her records to locate those potentially responsive to either of the Complainant's requests. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); NJ Builders Assoc. v. NJ Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

Procedural History:

On February 3, 2017, the Council distributed its Final Decision to all parties. On February 10, 2017, the Government Records Council ("GRC") received via U.S. mail the Complainant's request for reconsideration of the Council's January 31, 2017 Final Decision. The Complainant cited all six (6) reasons listed on the GRC's request for reconsideration form, which are: change in circumstances, extraordinary circumstances, fraud, illegality, mistake, and new evidence. On February 13, 2017, the GRC received Custodian Counsel's 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 Final Decision dated January 31, 2017, on February 10, 2017 (via U.S. mail).

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).

A review of the Complainant's request for reconsideration reveals that no further action is warranted here. As was the case with his OPRA requests and subsequent Denial of Access Complaint, the Complainant continues to focus on events in his life and failed to identify how his requests sufficiently identified any records he sought in correlation with those events. The Complainant advances no arguments compelling enough to persuade the GRC to change its decision. The Complainant's reasons for reconsideration fail to provide any valid arguments to support reconsideration, and the request should therefore be denied.

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 any of the six (6) reasons present on the request for reconsideration form. 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 failed to provide any new or additional arguments as to why his request was somehow valid. 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 January 31, 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 any of the six (6) reasons present on the request for reconsideration form. The Complainant has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. Specifically, the Complainant failed to provide any new or additional arguments as to why his request was somehow valid. 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

February 14, 2017



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

January 31, 2017 Government Records Council Meeting

Salvatore J. Moretti
Complainant

v.

Bergen County Prosecutor's Office
Custodian of Record

Complaint No. 2015-390

At the January 31, 2017 public meeting, the Government Records Council ("Council") considered the January 24, 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 the Complainant's two (2) OPRA requests generically seek "records" that would aid him, thus rendering the requests invalid because they seek unspecified documents rather than specifically named or identifiable government records. The Custodian therefore lawfully denied access. N.J.S.A. 47:1A-6; Steinhauer-Kula v. Twp. of Downe (Cumberland), GRC Complaint No. 2010-198 (March 2012); Edwards v. Hous. Auth. of Plainfield (Union), GRC Complaint No. 2008-183 *et seq.* (Final Decision dated April 25, 2012); Caggiano v. State of NJ Office of the Governor, GRC Complaint No. 2014-272 (April 2015). The Custodian had no legal duty to research her records to locate those potentially responsive to either of the Complainant's requests. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); NJ Builders Assoc. v. NJ Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

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Final Decision Rendered by the
Government Records Council
On The 31st Day of January, 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 3, 2017

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
January 31, 2017 Council Meeting**

**Salvatore J. Moretti¹
Complainant**

GRC Complaint No. 2015-390

v.

**Bergen County Prosecutor's Office²
Custodial Agency**

Records Relevant to Complaint:

November 12, 2015 OPRA request: Hardcopies via U.S. mail of “records [the Bergen County Prosecutor’s Office (“BCPO”)]” has that would be “helpful in continuing to live in Bergen County.”

November 19, 2015 OPRA request: Hardcopies via U.S. mail of “records [or] supporting materials so [the Complainant does] not become a victim of municipal property seizure.”

Custodian of Record: Maureen Parenta

Request Received by Custodian: November 16, 2015, and November 20, 2015

Response Made by Custodian: November 23, 2015, and November 30, 2015

GRC Complaint Received: December 7, 2015

Background³

Request and Response:

On November 12, 2015, the Complainant submitted the first (1st) Open Public Records Act (“OPRA”) request to the Custodian. On November 19, 2015, the Complainant submitted the second (2nd) OPRA request to the Custodian.

On November 23, 2015, the Custodian responded in writing to the Complainant’s first (1st) OPRA request. Therein, the Custodian stated that she could not identify a specific government record amongst the narrative the Complainant provided in his request. On November 30, 2015, the Custodian responded in writing to the Complainant’s second (2nd) OPRA request

¹ No legal representation listed on record.

² Represented by John M. Carbone, Esq. (Ridgewood, NJ).

³ 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.

by denying access for the same reasons on which she relied to deny the Complainant's first (1st) OPRA request.

Denial of Access Complaint:

On December 7, 2015, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserted that he sought access to:

1. All tax records as to reports on assessments due to arsons and felonies;
2. All felonies committed at 387 Street and 340 through 395 Park Street;
3. All Citi Bank robbery reports regarding the Complainant's "stick-up";
4. All evidence of conflicts about the City of Hackensack from 1958 through 1999; and
5. Miscellaneous "others stated in this filing."⁴

Statement of Information:

On January 4, 2016, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that she received the Complainant's first (1st) OPRA request on November 16, 2015. The Custodian certified that she received the Complainant's second (2nd) OPRA request on November 20, 2015. The Custodian certified that she responded to each request in writing on November 23, and November 20, 2015 respectively, denying access because the Complainant did not identify a specific government record.

The Custodian argued that the Complainant's voluminous, but rambling, OPRA requests failed to seek access to any identifiable government records. The Custodian argued that the requests were clearly invalid. Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); Gannett v. NJ Partners L.P. v. Cnty. of Middlesex, 379 N.J. Super. 205, 212 (App. Div. 2005); NJ Builders Assoc. v. NJ Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007). The Custodian noted that a recent decision in the Appellate Division supported her denial of access by rejecting the notion that a custodian had to aid a requestor to reshape an invalid OPRA request into a valid one. Lagerkvist v. Office of the Governor of the State of NJ, 443 N.J. Super. 230 (App. Div. 2015). The Custodian asserted that she was only required to deny the Complainant's OPRA requests as invalid, which she did in a timely manner.

Analysis

Validity of OPRA Request

The New Jersey Appellate Division has held that:

While OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, it is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government

⁴ The Complainant provided a full-length personal history, presumably to aid the GRC in determining which records he sought.

records “readily accessible for inspection, copying, or examination.” N.J.S.A. 47:1A-1.

MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005)(emphasis added).

The Court reasoned that:

Most significantly, the request failed to identify with any specificity or particularity the governmental records sought. *MAG provided neither names nor any identifiers other than a broad generic description of a brand or type of case prosecuted by the agency in the past.* Such an open-ended demand required the Division's records custodian to manually search through all of the agency's files, analyze, compile and collate the information contained therein, and identify for MAG the cases relative to its selective enforcement defense in the OAL litigation. Further, once the cases were identified, the records custodian would then be required to evaluate, sort out, and determine the documents to be produced and those otherwise exempted.

Id. at 549 (emphasis added).

The Court further held that “[u]nder OPRA, agencies are required to disclose only ‘identifiable’ government records not otherwise exempt In short, OPRA does not countenance open-ended searches of an agency's files.” Id. at 549 (emphasis added). Bent, 381 N.J. Super. at 37;⁵ NJ Builders, 390 N.J. Super. at 180; Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

Regarding requests for generic records such as “documents” or “records,” the request at issue in MAG sought “all documents or records evidencing that the ABC sought, obtained or ordered revocation of a liquor license for the charge of selling alcoholic beverages to an intoxicated person in which such person, after leaving the licensed premises, was involved in a fatal auto accident” and “all documents or records evidencing that the ABC sought, obtained or ordered suspension of a liquor license exceeding 45 days for charges of lewd or immoral activity.” Id. at 539-540. The Court did note that plaintiffs failed to include additional identifiers, such as a case name or docket number. *See also* Steinhauer-Kula v. Twp. of Downe (Cumberland), GRC Complaint No. 2010-198 (March 2012)(holding that the complainant’s request item No. 2 seeking “[p]roof of submission . . .” was invalid); Edwards v. Hous. Auth. of Plainfield (Union), GRC Complaint No. 2008-183 *et seq.* (Final Decision dated April 25, 2012)(accepting the ALJ’s decision holding that an newspaper article attached to a subject OPRA request related to the records sought did not cure the deficiencies present in the request) Id. at 12-13; Caggiano v. State of NJ Office of the Governor, GRC Complaint No. 2014-272 (April 2015).

In the instant complaint, Complainant set forth his first (1st) request in a long paragraph of personal events containing a veiled request for unidentifiable records: “I must secure records you have which I believe would be helpful in continuing to live in Bergen County.” The request

⁵ Affirming Bent v. Stafford Police Dep’t, GRC Case No. 2004-78 (October 2004).

also included a multitude of attachments, including letters, newspaper clips, and pictures of book covers. The Complainant composed his second (2nd) request similarly to the first (1st) request. Therein, the Complainant included a long paragraph of personal events and stated “[p]lease search your records for supporting material so I do not become a victim of a municipal property seizure.” The request also included multiple attachments that added screenshots of various movies with superimposed text.

Upon review of the subject requests, the GRC is satisfied that the Custodian lawfully denied access. The Complainant mostly focused on his life events and failed to identify any records he sought in correlation with those events. These requests would undeniably require the Custodian to research every single BCPO record in order to determine whether any pertain to the Complainant or his various life events. OPRA does not contemplate such a request. MAG, 375 N.J. Super. at 546; Caggiano, GRC 2014-272.⁶

Accordingly, the Complainant’s two (2) OPRA requests generically seek “records” that would aid him, thus rendering the requests invalid because they seek unspecified documents rather than specifically named or identifiable government records. The Custodian therefore lawfully denied access. N.J.S.A. 47:1A-6; Steinhauer-Kula, GRC 2010-198 (March 2012); Edwards, GRC 2008-183 *et seq.*; Caggiano, GRC 2014-272. The Custodian had no legal duty to research her records to locate those potentially responsive to either of the Complainant’s requests. MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37; NJ Builders, 390 N.J. Super. at 180; Schuler, GRC 2007-151.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Complainant’s two (2) OPRA requests generically seek “records” that would aid him, thus rendering the requests invalid because they seek unspecified documents rather than specifically named or identifiable government records. The Custodian therefore lawfully denied access. N.J.S.A. 47:1A-6; Steinhauer-Kula v. Twp. of Downe (Cumberland), GRC Complaint No. 2010-198 (March 2012); Edwards v. Hous. Auth. of Plainfield (Union), GRC Complaint No. 2008-183 *et seq.* (Final Decision dated April 25, 2012); Caggiano v. State of NJ Office of the Governor, GRC Complaint No. 2014-272 (April 2015). The Custodian had no legal duty to research her records to locate those potentially responsive to either of the Complainant’s requests. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005); NJ Builders Assoc. v. NJ Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

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

January 24, 2017

⁶ The GRC notes that the Complainant seemed to narrow his requests in the Denial of Access Complaint. However, these five (5) items fail to cure any deficiencies present in the actual requests. Additionally, it is implausible that the Custodian could have gleaned these items from the requests at issue.