



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

PHILIP D. MURPHY  
*Governor*

LT. GOVERNOR SHEILA Y. OLIVER  
*Commissioner*

**FINAL DECISION**

**July 25, 2023 Government Records Council Meeting**

Larry S. Loigman, Esq.  
Complainant

Complaint No. 2021-176

v.

NJ Department of Labor & Workforce Development,  
Division of Unemployment Insurance  
Custodian of Record

At the July 25, 2023 public meeting, the Government Records Council (“Council”) considered the July 18, 2023 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, 2023 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 “extraordinary circumstances.” The Complainant has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. Specifically, the Custodian set forth a detailed explanation of his search for responsive records and the Complainant has asserted unsupported presumptions of the existence of notations on or attachments to letters he sent to the New Jersey Department of Labor. 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 July 2023

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: July 27, 2023**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

*Reconsideration*

**Supplemental Findings and Recommendations of the Executive Director  
July 25, 2023 Council Meeting**

**Larry S. Loigman, Esq.<sup>1</sup>  
Complainant**

**GRC Complaint No. 2021-176**

v.

**N.J. Department of Labor & Workforce Development,  
Division of Unemployment Insurance<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies via e-mail of:

1. All log-ins and attempted log-ins to the Unemployment Insurance Benefits (“UIB”) website from the Complainant’s e-mail address from January 1, 2020 to present, inclusive of all error messages and other responses from the website.
2. All correspondence to or from the Complainant, the Division of Unemployment Insurance (“UI”), and any other officer or official from the N.J. Department of Labor & Workforce Development (“DOL”) regarding an unemployment or pandemic relief claim, including internal memoranda or the disposition of said claims, from January 1, 2020 to present.
3. All appeals filed by the Complainant for unemployment or pandemic relief claim, including all action taken on or disposition of such appeals, from January 1, 2020 to present.

**Custodian of Record:** Christopher Aspinwall  
**Request Received by Custodian:** June 28, 2021  
**Response Made by Custodian:** June 29, 2021  
**GRC Complaint Received:** August 2, 2021

**Background**

January 31, 2023 Council Meeting:

At its January 31, 2023 public meeting, the Council considered the January 24, 2023 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:

[N]otwithstanding the “deemed” denial of access, the Custodian did not unlawfully deny access to any responsive records because he certified, and the record reflects, that he

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

<sup>2</sup> Represented by Deputy Attorney General Bryce K. Hurst.

disclosed all records that existed. Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 2010).

### Procedural History:

On February 6, 2023, the Council distributed its Final Decision to all parties.

On February 12, 2023, the Complainant filed a request for reconsideration of the Council's Final Decision based on extraordinary circumstances. The Complainant requested that the Council reconsider its decision and order the Custodian to perform a more thorough search for responsive records.

The Complainant contended that the Custodian failed to conduct a sufficient search as evidenced by the fact that he did not disclose two (2) letters from the Complainant to Assistant Commissioner Ronald Marino and one (1) letter from the Complainant to the Appeals Tribunal. The Complainant contended that although the Council cited Caggiano v. N.J. Office of the Governor, GRC Complaint No. 2014-408 (September 2015) as a basis for not requiring disclosure of those letters, this situation is different as he was attempting to determine how DOL handled his inquires. The Complainant asserted that the first step is locating the letters; he presumed that DOL then either attached a memorandum or made notes thereon signifying their actions.

The Complainant further argued that he sought records regarding his appeals, Nos. 53364 and 184400, and did not receive any responsive records. The Complainant argued that DOL "was not credible" in asserting that no records existed because this would mean the appeals "disappeared" without any action. The Complainant contended that whatever action or response of the Appeals Tribunal is a record responsive to the subject OPRA request.

### 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 a request for reconsideration of the Council's January 31, 2023 Final Decision on February 12, 2023, five (5) business days from the issuance of the Decision.

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)].

The GRC has reviewed the Complainant’s arguments and disagrees that this complaint should be reconsidered based on “extraordinary circumstances.” The Complainant’s contention with the Council’s Final Decision is that the Custodian did not perform a sufficient search. However, in the Statement of Information, the Custodian details a thorough search in which he contacted UI Systems personnel, the Appeals Tribunal, and DOL’s Office of Legal and Regulatory Services, conducted searches on UI’s “LOOPS” system, and obtained the Complainant’s social security number to perform additional searches. The Custodian further certified to the result of each of these attempts to locate potentially responsive records. Thus, the evidence of record supports that the Council reached its conclusion based on the probative, competent evidence submitted by the parties.

Further, the Complainant argued that the GRC should ignore its precedent in Caggiano, GRC 2014-408 because he had a need for the letters he sent to DOL. However, the Complainant’s presumption that there were notations thereon or memoranda attached dictating how DOL acted on the letters is unsupported and supposition at best. Thus, it cannot be said that “extraordinary circumstances” exist to support disturbing the Council’s Final Decision.

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 “extraordinary circumstances.” 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 Custodian set forth a detailed explanation of his search for responsive records and the Complainant has asserted unsupported presumptions of the existence of notations on or attachments to letters he sent to DOL. 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, 2023 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 "extraordinary circumstances." The Complainant has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. Specifically, the Custodian set forth a detailed explanation of his search for responsive records and the Complainant has asserted unsupported presumptions of the existence of notations on or attachments to letters he sent to the New Jersey Department of Labor. 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  
Executive Director

July 18, 2023



State of New Jersey  
DEPARTMENT OF COMMUNITY AFFAIRS  
101 SOUTH BROAD STREET  
PO Box 819  
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PHILIP D. MURPHY  
Governor

LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

**FINAL DECISION**

**January 31, 2023 Government Records Council Meeting**

Larry S. Loigman, Esq.  
Complainant

Complaint No. 2021-176

v.

NJ Department of Labor & Workforce Development,  
Division of Unemployment Insurance  
Custodian of Record

At the January 31, 2023 public meeting, the Government Records Council (“Council”) considered the January 24, 2023 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 notwithstanding the “deemed” denial of access, the Custodian did not unlawfully deny access to any responsive records because he certified, and the record reflects, that he disclosed all records that existed. Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 2010).

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 31<sup>st</sup> Day of January 2023

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 6, 2023**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
January 31, 2023 Council Meeting**

**Larry S. Loigman, Esq.<sup>1</sup>  
Complainant**

**GRC Complaint No. 2021-176**

v.

**N.J. Department of Labor & Workforce Development,  
Division of Unemployment Insurance<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies via e-mail of:

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2. All correspondence to or from the Complainant, the Division of Unemployment Insurance (“UI”), and any other officer or official from the N.J. Department of Labor & Workforce Development (“DOL”) regarding an unemployment or pandemic relief claim, including internal memoranda or the disposition of said claims, from January 1, 2020 to present.
3. All appeals filed by the Complainant for unemployment or pandemic relief claim, including all action taken on or disposition of such appeals, from January 1, 2020 to present.

**Custodian of Record:** Christopher Aspinwall  
**Request Received by Custodian:** June 28, 2021  
**Response Made by Custodian:** June 29, 2021  
**GRC Complaint Received:** August 2, 2021

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

**Request and Response:**

On June 20, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On June 29, 2021, the Custodian responded in writing advising that he did not locate an unemployment insurance claim for the Complainant. On the same day, the Complainant responded stating that the Custodian had an obligation to respond to each OPRA request item. On July 7, 2021, the Custodian e-mailed the

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

<sup>2</sup> Represented by Deputy Attorney General Bryce K. Hurst.

<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.

Larry S. Loigman, Esq. v. N.J. Department of Labor & Workforce Development, Division of Unemployment Insurance, 2021-176 – Findings and Recommendations of the Executive Director



Complainant stating that he could not locate either a claim or “Single Sign On” account. The Custodian asked the Complainant to provide his social security number (“SSN”) to perform a new search, which the Complainant provided on the same day.

On July 9, 2021, the Custodian responded to the Complainant seeking an extension of time to respond until July 23, 2021 due to the “research” necessary to fulfill the subject OPRA request. On July 11, 2021, the Complainant responded denying consent for the extension of time because there was “no legal or factual basis” for it. On July 22, 2021, the Custodian responded disclosing two (2) e-mails (1 page each) and Appeal documents (5 pages).

#### Denial of Access Complaint:

On August 2, 2021, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant stated that he submitted his OPRA request on June 20, 2021 and received a denial of access on June 29, 2021. The Complainant contended that the Custodian failed to conduct an adequate search resulting in a failed attempt to locate “almost all of the records requested by” him. The Complainant argued he was provided only “1 of perhaps 100 log-ins, no correspondence sent by regular mail to DOL, and no appeals or actions taken.

#### Statement of Information:

On September 3, 2021, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on June 28, 2021. The Custodian certified that his search began with a review of the UI’s Local Office Online Payment System (“LOOPS”) using the Complainant’s name. The Custodian affirmed that after not finding a claim in the LOOPS system, he responded in writing on June 29, 2021 stating same. The Custodian certified that after receiving the Complainant’s retort to his response, he worked internally with his supervisor and UI Systems personnel to determine whether he could perform a search by name or e-mail address. The Custodian certified that UI Systems personnel engaged in a discussion with him on July 7, 2021 where he was advised that an SSN would be required; he obtained same from the Complainant on the same day. The Custodian certified that he sent the SSN to UI Systems for a search and searched UI’s Infoview system where he was unable to find any claim applications. The Custodian certified that he also attempted to obtain confirmation on whether login attempts were tracked and forwarded potentially responsive e-mails to the DOL’s Office of Legal and Regulatory Services for review.

The Custodian affirmed that on July 19, 2021, the Office confirmed they were reviewing e-mails between the Complainant and DOL; on July 20, 2021 they sent two (2) e-mails to him. The Custodian certified that he also contacted the Appeals Tribunal to determine the status of any appeals. The Custodian affirmed that the Tribunal responded advising that no active appeals existed and sent to him the Complainant’s three (3) requests for an appeal. The Custodian affirmed that on July 22, 2021, he e-mailed UI Systems to get an answer on the login question and was told that there was a login attempt on June 27, 2021. The Custodian certified that on July 22, 2021, he responded in writing to the Complainant disclosing seven (7) pages of responsive records without redactions.

The Custodian argued that this complaint should be dismissed because he disclosed all records that existed. Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005). The Custodian averred that, contrary to the Complainant's allegations, he conducted a substantive search to locate responsive records. The Custodian further argued that the Complainant failed to support his allegations by identifying which records were not provided and why those disclosed amounted to an unlawful denial of access. The Custodian argued that in the absence of this contrary evidence, the GRC should find that he properly responded to the subject OPRA request.

## Analysis

### Unlawful Denial of Access

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.

In Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 2010), the Council found that the custodian did not unlawfully deny access to the requested records based on the custodian's certification that all such records were provided to the complainant. The Council held that the custodian's certification, in addition to the lack of refuting evidence from the complainant, was sufficient to meet the custodian's burden of proof. See also Burns, GRC 2005-68; Holland v. Rowan Univ., GRC Complaint No. 2014-63, *et seq.* (March 2015).

Here, the Complainant sought access to records related to his attempts to file a UI claim and appeal. The Custodian disclosed seven (7) pages of records on July 22, 2021. The Complainant subsequently filed this complaint arguing that the Custodian conducted an insufficient search and failed to disclose multiple records. The Complainant argued that he attempted multiple logins and that correspondence he sent to DOL via mail was not included in the response. In the SOI, the Custodian provided a detailed description of his search for any responsive records. The Custodian certified that the Complainant did not have an account and no active appeals, and that the records disclosed represented all records that existed.

Upon review of the facts here, the GRC finds sufficient evidence in the record to indicate that the Custodian disclosed all records that existed, and no further action is required. In reaching this conclusion, the GRC is satisfied that the Custodian performed an adequate search of several DOL systems, obtained additional information when necessary, and worked with multiple employees within DOL to locate responsive records. That comprehensive search resulted in the seven (7) pages of records disclosed to the Complainant, and there is no evidence in the record here to refute that certification.

Moreover, the Complainant's Denial of Access Complaint contention for the existence of additional records appears to partly rest in his assertion that he sent letters to DOL. However, the

GRC notes that it has previously held that custodians were not required to disclose records composed by and sent the requestor. See Caggiano v. N.J. Office of the Governor, GRC Complaint No. 2014-408 (September 2015) (citing Bart v. City of Paterson Hous. Auth. 403 N.J. Super. 609, 618 (App. Div. 2008)). Thus, this allegation is not persuasive. Further, the Complainant's contention that he attempted to log into UI's system multiple times assumes that a record of ever login is created. However, the Custodian's certification regarding his search and the response from UI Systems support regarding the login support his position that no unlawful denial of access occurred. Thus, the GRC is satisfied the Custodian ultimately disclosed all records responsive to the subject OPRA request on July 22, 2021.

Therefore, notwithstanding the "deemed" denial of access, the Custodian did not unlawfully deny access to any responsive records because he certified, and the record reflects, that he disclosed all records that existed. Danis, GRC 2009-156, *et seq.*

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that notwithstanding the "deemed" denial of access, the Custodian did not unlawfully deny access to any responsive records because he certified, and the record reflects, that he disclosed all records that existed. Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 2010).

Prepared By: Frank F. Caruso  
Executive Director

January 24, 2023