



## State of New Jersey

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

PHILIP D. MURPHY  
Governor

TAHESHA L. WAY  
Lieutenant Governor

JACQUELYN A. SUÁREZ  
Acting Commissioner

### FINAL DECISION

#### January 30, 2024 Government Records Council Meeting

Boris Boretsky  
Complainant

Complaint No. 2023-259

v.

Middlesex County Prosecutor's Office  
Custodian of Record

At the January 30, 2024 public meeting, the Government Records Council (“Council”) considered the January 23, 2024 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 December 12, 2023 Administrative Disposition 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 “new evidence” or “extraordinary circumstances”. The Complainant has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. Specifically, the Complainant failed to establish the relevancy of the new evidence and effectively rehashed the arguments already addressed by the Council. 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 30<sup>th</sup> Day of January 2024

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 5, 2024**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

*Reconsideration*

**Supplemental Findings and Recommendations of the Executive Director  
January 30, 2024 Council Meeting**

**Boris Boretsky<sup>1</sup>  
Complainant**

**GRC Complaint No. 2023-259**

v.

**Middlesex County Prosecutor's Office<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Copies via regular mail of the following records pertaining to the matter State v. Boretsky, Ind. No. 02-05-00642:

1. All autopsy photographs (in color);
2. Computer generated, Ten (10) seconds animations of the victim's rib cage and the path of the knife, on CD with stills, created at the request of the prosecutor, by Dr. James R. Lauridsen of Alabama (in color);
3. Complete, certified transcript of all contemporaneous record of all procedures performed during the autopsy.

**Custodian of Record:** Yolanda Ciccone, Esq.

**Request Received by Custodian:** June 16, 2023

**Response Made by Custodian:** June 27, 2023

**GRC Complaint Received:** October 5, 2023

**Background**

December 12, 2023 Council Meeting:

At its December 12, 2023 public meeting, the Council considered the December 5, 2023 Administrative Disposition 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:

The Complainant verified the instant complaint on October 1, 2023, forty (40) days after the last day of the expiration of the sixty (60) calendar day statute of limitation, alleging he was denied access to his OPRA request on June 27, 2023. The Complainant asserted in his motion that he had been dealing with physical pain since 2020 and could not keep track of filing deadlines. However, the Complainant

---

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

<sup>2</sup> No legal representation listed on record.

failed to show good cause to permit the complaint to proceed out of time. Therefore, this complaint shall be dismissed.

### Procedural History:

On December 14, 2023, the Council distributed its Administrative Disposition to the parties.

On December 22, 2023, the Complainant filed a request for reconsideration of the Council's Administrative Disposition based on "new evidence" and "extraordinary circumstances." The Complainant asserted that since June 2023, he was experiencing a medical condition with his left eye, with symptoms including blurred or loss of vision. The Complainant argued that on October 26, 2023, after he filed his motion to file within time, he was diagnosed with a retinal detachment in his left eye. The Complainant asserted that he underwent surgery in late November 2023, and is slowly recovering.

The Complainant argues that the post-filing diagnosis constituted "new evidence," and when combined with his other medical ailments, constituted "extraordinary circumstances" warranting reconsideration and a granting of his motion.

### 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 December 12, 2023 Administrative Order on December 22, 2023, the eighth (8<sup>th</sup>) business day 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).]

Upon review, the GRC is persuaded that the Complainant’s request for reconsideration should be denied. First, the “new evidence” the Complainant raises is the diagnosis of his ocular medical condition dated on or about October 26, 2023. However, the Complainant does not elaborate on how this diagnosis would affect the motion to file within time, or any level of relevancy to the complaint. Next, the Complainant contended that the diagnosis combined with his other medical issues constituted “extraordinary circumstances”. As noted above, the Complainant does not elaborate beyond his conclusory statement as to how the medical conditions affected his ability to file his denial of access complaint within the allotted sixty (60) calendar days, effectively rehashing the arguments he made in his initial motion.

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 “new evidence” or “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 Complainant failed to establish the relevancy of the new evidence and effectively rehashed the arguments already addressed by the Council. 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 December 12, 2023 Administrative Disposition 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 “new evidence” or “extraordinary circumstances”. The Complainant has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. Specifically, the Complainant failed to establish the relevancy of the new evidence and effectively rehashed the arguments already addressed by the Council. 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: Samuel A. Rosado  
Staff Attorney

January 23, 2024



**NEW JERSEY GOVERNMENT RECORDS COUNCIL**  
**Administrative Complaint Disposition – Motion to File Within Time Denied**

**Boris Boretsky**  
**Complainant**

**GRC Complaint No. 2023-259**

v.

**Middlesex County Prosecutor's Office**  
**Custodial Agency**

**Custodian of Record:** Yolanda Ciccarone, Esq.  
**Request Received by Custodian:** June 16, 2023  
**GRC Complaint Received:** October 5, 2023

**Complaint Disposition:** The Complainant verified the instant complaint on October 1, 2023, forty (40) days after the last day of the expiration of the sixty (60) calendar day statute of limitation, alleging he was denied access to his OPRA request on June 27, 2023. The Complainant asserted in his motion that he had been dealing with physical pain since 2020 and could not keep track of filing deadlines. However, the Complainant failed to show good cause to permit the complaint to proceed out of time. Therefore, this complaint shall be dismissed.

**Applicable OPRA Provision:** “Any requestor who is denied access, in whole or in part, to a government record by a custodian, at the option of the requestor, may file a complaint with the Council pursuant to N.J.S.A. 47:1A-6. Such filing shall be made within 60-calendar days or, if the last day of the period is a Saturday, Sunday, or legal holiday, within the next business day, pursuant to N.J.A.C. 1:1-1.4, after the requestor receives a response from the custodian that grants or denies access or, if the custodian does not respond within seven business days of the request, within 60-calendar days following the expiration of such seven-business-day period, whichever is later, unless accompanied by a motion to file within time, showing good cause.” N.J.A.C. 5:105-2.1(a).

**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:** December 12, 2023

Prepared By: Samuel A. Rosado  
Staff Attorney

Date: December 5, 2023

**Distribution Date: December 14, 2023**