



State of New Jersey

DEPARTMENT OF COMMUNITY AFFAIRS
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PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lieutenant Governor

KIMBERLY K. HOLMES
Acting Commissioner

INTERIM ORDER

August 29, 2023 Government Records Council Meeting

Anonymous
Complainant

Complaint No. 2023-93

v.

Atlantic County One Stop Center
Custodian of Record

At the August 29, 2023 public meeting, the Government Records Council (“Council”) considered the August 22, 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:

1. The Complainant has failed to establish in their request for reconsideration of the Council’s May 30, 2023 Administrative Order 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 rehashed arguments that the Council already determined did not meet the regulatory threshold to allow the Complainant to proceed anonymously. 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).
2. The Council’s May 30, 2023 Administrative Order is reinstated. **Thus, the Complainant is required to submit a “a written statement expressing [their] willingness to proceed on a non-anonymous basis to the Executive Director within 30 days of receiving [this] decision.” N.J.A.C. 5:105-2.3(k).**

Interim Order Rendered by the
Government Records Council
On The 29th Day of August 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: August 29, 2023

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

Reconsideration

**Supplemental Findings and Recommendations of the Executive Director
August 29, 2023 Council Meeting**

**Anonymous (Pending)¹
Complainant**

GRC Complaint No. 2023-93

v.

**Atlantic County One Stop Center²
Custodial Agency**

Records Relevant to Complaint: Copies of e-mails sent or received by Rodney Finx, Francis Kuhn, and Alicia Oatman (through both their work account and other e-mails addresses used for official business) regarding the Complainant between November 1, 2021 and January 2, 2023.

Custodian of Record: Joseph Guenther

Request Received by Custodian: January 16, 2023

Response Made by Custodian: January 26, 2023

GRC Complaint Received: April 25, 2023

Background

May 30, 2023 Council Meeting:

At its May 30, 2023 public meeting, the Council considered the May 23, 2023 Administrative Order 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 sought to proceed anonymously under N.J.A.C. 5:105-2.3(j) and included an explanation addressing their circumstances for such request. Upon review, the Complainant has not provided compelling circumstances meeting any of the four (4) standards set forth in N.J.A.C. 5:105-2.3(j)1-4; thus, their request to proceed anonymously is denied.

This is an Administrative Order requiring the Complainant to submit a “a written statement expressing [their] willingness to proceed on a non-anonymous basis to the Executive Director within 30 days of receiving [this] decision.” N.J.A.C. 5:105-2.3(k). Should the Complainant not submit the above statement within the applicable time frame, this complaint shall be dismissed. Id.

¹ No legal representation listed on record.

² No legal representation listed on record.

Procedural History:

On June 3, 2023, the Council distributed its Administrative Order to all parties.

On June 19, 2023, the Complainant filed a request for reconsideration of the Council's Administrative Order based on a "mistake." The Complainant asserted that their justification for proceeding anonymously was "lost in the mix" of the Denial of Access Complaint and that it caused the Council difficulty in discerning the need to remain anonymous. The Complainant contended that their request to remain confidential satisfied N.J.A.C. 5:105-2.3(j)(2), (3), and (4).

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 May 30, 2023 Administrative Order on June 19, 2023, the ninth (9th) 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).]

The Complainant asserts in their request for reconsideration that they believed the Council made a "mistake" because the justification for proceeding anonymously was "lost in the mix" of

their Denial of Access Complaint. The Complainant then proceeded to essentially rehash prior arguments: the records sought regarding their own private matter; the topics included unemployment of “dislocated workers and [DVRS] disability services;” the complaint would brand the Complainant as a “‘troublemaker or difficult person’;” and the Complainant should be free to discover whether they were treated fairly by a government program “. . . without a threat that [their] OPRA inquiry or appeal, may be publicly posted.”

The GRC is persuaded that the Complainant’s request for reconsideration should be denied because the Council did not make a “mistake.” First, the Complainant’s arguments were not “lost in the mix;” rather, each was considered prior to the Council denying the Complainant’s request to proceed anonymously. Second, each of the arguments do not present compelling evidence necessary to meet the threshold to proceed anonymously under N.J.A.C. 5:105-2.3(j). As noted by the court in A.A. v. Gramiccioni, 442 N.J. Super. 276 (App. Div. 2015):

A.A. has presented no reason, let alone a compelling reason, why he should be permitted to proceed anonymously. He has not shown that his case falls within those rare instances where the court permitted anonymous filing in a civil case. See G.D. v. Kenny, 205 N.J. 275, (2011) (defamation action arising from an expungement); Application of X, 59 N.J. 533, (1971) (gun permit applications); M.H.B. v. H.T.B., 100 N.J. 567 (1985) (matters involving children); Fireman's Fund Ins. Co. v. Imbesi, 361 N.J. Super. 539 (App. Div.), certif. denied, 178 N.J. 33, (2003) (sexual harassment where the victim contracted a venereal disease); In re A.I., 303 N.J. Super. 105, (App. Div. 1997) (Megan's Law); In re Return of Weapons to J.W.D., 290 N.J. Super. 451 (App. Div. 1996), aff'd in part, rev'd in part, 149 N.J. 108, (1997) (domestic violence); [T.S.R. v. J.C.], 288 N.J. Super. 48, 56 (App. Div. 1996) (child victims of sexual abuse); J.W.P. v. W.W., 255 N.J. Super. 1 (App. Div. 1991) (paternity); C.J. v. Vuinovich, 252 N.J. Super. 122, (App. Div. 1991) (permitting use of initials to protect the identity of an AIDS patient whose disease was material to the cause of action); In re Adoption of Indian Child, 219 N.J. Super. 28 (App. Div. 1987), aff'd, 111 N.J. 155 (1988) (juvenile actions and adoptions); and In re L.B., 369 N.J. Super. 354 (Law Div. 2004) (expungement). As we have stated,

[a] plaintiff should be permitted to proceed anonymously only in those exceptional cases involving matters of a highly sensitive and personal nature, real danger of physical harm, or where the injury litigated against would be incurred as a result of the disclosure of a plaintiff's identity. The risk that a plaintiff may suffer some embarrassment is not enough.

[A.B.C. v. XYZ Corp.], 282 N.J. Super. 494, 499-500 (App. Div. 1995) (quoting Doe v. Frank, 951 F.2d 320, 324 (11th Cir. 1992)).]

A.A.'s case is not an exceptional case compelling anonymity.

[Id. at 285.]

In reviewing A.A.'s listed cases where plaintiffs were allowed to proceed anonymously, it becomes clearer that the Complainant has not reached the necessary threshold here. Simply put, the Complainant's assumption that this complaint will reflect poorly on them and should be private because it is a private matter appears to revolve around an assertion of "some embarrassment" resulting from the filing. The Complainant has failed to prove that there would be any impact on either of the above warranting them to remain anonymous throughout the process.

Moreover, there is no evidence in the record to support that significant personal or other medical information will be on full display for the public to view if the Complainant proceeded without anonymous status. Also, there is no evidence that the Complainant being identified here will curtail their ability to determine if they were treated fairly. In fact, the Complainant appears to have provided their real name and/or initials to the Custodian as part of the OPRA request and subsequently sent their Denial of Access Complaint, complete with actual contact information, to the Custodian. These actions signal that the Complainant did not fear that disclosing their identity would infringe on their ability to seek records to ascertain whether they were treated fairly. Finally, the underlying employment issue prompting the Complainant to file their OPRA request is not before the GRC: this adjudication focuses solely on whether the Custodian unlawfully denied access to the subject OPRA request. Thus, the Complainant's arguments do not reach the bar set through A.A. and promulgated in the GRC's regulations to warrant allowing them to proceed anonymously. N.J.A.C. 5:105-2.3(j).

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 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 rehashed arguments that the Council already determined did not meet the regulatory threshold to allow the Complainant to proceed anonymously. 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.

Based on the above, the Council's May 30, 2023 Administrative Order is reinstated. **Thus, the Complainant is required to submit a "a written statement expressing [their] willingness to proceed on a non-anonymous basis to the Executive Director within 30 days of receiving [this] decision." N.J.A.C. 5:105-2.3(k).**

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Complainant has failed to establish in their request for reconsideration of the Council's May 30, 2023 Administrative Order 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 rehashed arguments that the Council already determined did not meet the regulatory threshold to allow the Complainant to proceed anonymously. 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).

2. The Council's May 30, 2023 Administrative Order is reinstated. **Thus, the Complainant is required to submit a "a written statement expressing [their] willingness to proceed on a non-anonymous basis to the Executive Director within 30 days of receiving [this] decision." N.J.A.C. 5:105-2.3(k).**

Prepared By: Frank F. Caruso
Executive Director

August 22, 2023



NEW JERSEY GOVERNMENT RECORDS COUNCIL
Administrative Order – Request to Proceed Anonymously Denied

**Anonymous
Complainant**

GRC Complaint No. 2023-93

v.

**Atlantic County One Stop Center
Custodial Agency**

Custodian of Record: Joseph Guenter
Request Received by Custodian: January 16, 2023
GRC Complaint Received: April 25, 2023

Order: The Complainant sought to proceed anonymously under N.J.A.C. 5:105-2.3(j) and included an explanation addressing their circumstances for such request. Upon review, the Complainant has not provided compelling circumstances meeting any of the four (4) standards set forth in N.J.A.C. 5:105-2.3(j)1-4; thus, their request to proceed anonymously is denied.

This is an Administrative Order requiring the Complainant to submit a “a written statement expressing [their] willingness to proceed on a non-anonymous basis to the Executive Director within 30 days of receiving [this] decision.” N.J.A.C. 5:105-2.3(k). Should the Complainant not submit the above statement within the applicable time frame, this complaint shall be dismissed. Id.

Effective Date of Disposition: May 30, 2023

Prepared By: Frank F. Caruso
Executive Director

Date: May 23, 2023

Distribution Date: June 5, 2023