



State of New Jersey
GOVERNMENT RECORDS COUNCIL
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

LORI GRIFA
Commissioner

FINAL DECISION

October 26, 2010 Government Records Council Meeting

Thomas Caggiano
Complainant

Complaint No. 2010-211

v.

Sussex County Prosecutor's Office
Custodian of Record

At the October 26, 2010 public meeting, the Government Records Council ("Council") considered the September 13, 2010 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 evidence of record shows that the instant Denial of Access Complaint is without any reasonable factual basis. N.J.S.A. 47:1A-7.e.
- 2) Because the evidence of record indicates that the Complainant in this complaint commenced the instant complaint "in bad faith, solely for the purpose of harassment[;]" the Complainant's continuous, repetitive filings of OPRA requests and Denial of Access Complaints is "in bad faith, solely for the purpose of harassment," the Complainant's Denial of Access Complaint herein should therefore be dismissed as frivolous pursuant to N.J.S.A. 47:1A-7.e. Caggiano v. Borough of Stanhope, GRC Complaint Nos. 2007-20, 2007-21, 2007-22, 2007-23 (Consolidated)(September 2007); Caggiano v. Borough of Stanhope, GRC Complaint No. 2007-161 (October 2007); Caggiano v. Borough of Stanhope, GRC Complaint No. 2007-182 (October 2007).

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 26th Day of October, 2010

Robin Berg Tabakin, Chair
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Stacy Spera, Secretary
Government Records Council

Decision Distribution Date: November 1, 2010

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
October 26, 2010 Council Meeting**

**Thomas Caggiano¹
Complainant**

GRC Complaint No. 2010-211

v.

**Sussex County Prosecutor's Office²
Custodian of Records**

Records Relevant to Complaint: Various

Request Made: July 11, 2010³

Response Made: None

Custodian: David Weaver

GRC Complaint Filed: August 19, 2010

Background

January 21, 2004

Judgment of the Honorable John Mulhern, Municipal Court of Hampton and Stillwater in the matter of State of New Jersey v. Thomas Caggiano, Docket Nos. S-2003-083-1910 and S-2003-084-1910. Judge Mulhern issues a Judgment of Conviction for harassment violations and prohibiting Thomas Caggiano from having any contact with the Sussex County Soil Conservation District except through counsel.

October 21, 2007

The Executive Director of the GRC, Catherine Starghill, Esq., files a criminal harassment complaint against the Complainant in Mercer County Municipal Court captioned State of New Jersey v. Thomas Caggiano, at Docket No. S-2007-075464. The basis of this harassment complaint was the Complainant's transmission of threatening pornographic material to the Executive Director.

October 29, 2007

Order of the Honorable Neil H. Schuster, J.S.C., granting the GRC a temporary civil restraining order against the Complainant, providing in pertinent part as follows:

¹ No legal representation listed on record.

² Represented by Robert Campbell, Esq., Office of the Sussex County Prosecutor (Newton, NJ).

³ The GRC received the Denial of Access Complaint on said date.

“[Thomas Caggiano is temporarily enjoined and restrained from] calling, e-mailing or faxing plaintiff Government Records Council members and employees.”

December 3, 2008

Judgment of the Honorable Craig U. Dana, J.M.C., Joint Municipal Court of the Townships of Green, Fredon, Hampton and the Borough of Andover. Judge Dana issues a Judgment of Conviction for harassment and trespass violations prohibiting Thomas Caggiano from having any contact with any present or former employee or official of the Borough of Stanhope except that Mr. Caggiano may mail his tax and utility payments to the Borough and he may call 911 if he has an emergency.

May 7, 2009

Order of the Honorable Maria M. Sypek, J.S.C., granting the GRC’s motion for a permanent injunction against the Complainant, providing in pertinent part as follows:

“[Thomas Caggiano] is permanently enjoined and restrained from calling, e-mailing or faxing plaintiff or its members or employees. Defendant may only communicate with plaintiff by regular mail.”

May 22, 2009

Judgment of the Honorable Judge Louis Sancinito, Trenton Municipal Court. Judge Sancinito issues a Judgment of Conviction finding for harassment against Thomas Caggiano in the matter of State of New Jersey v. Thomas Caggiano, Docket No. S2007-75464, and sentencing the Complainant to 30 days in jail⁴ and a \$500 fine.

May 26, 2009

Letter from John Tonelli, Supreme Court of New Jersey, Advisory Committee on Judicial Conduct, to the Complainant. Mr. Tonelli advises the Complainant that, after reviewing the Complainant’s voluminous submissions, the Committee has found no basis for a charge of improper judicial conduct and declines to institute formal disciplinary proceedings.

March 18, 2010

Order of the Honorable Thomas V. Manahan, P.J.Cr., Superior Court of New Jersey, Criminal Division. On the Court’s own motion, Judge Manahan dismisses the numerous Affidavits of Probable Cause filed by the Complainant in various municipal courts in Morris and Sussex Counties. Judge Manahan also dismisses additional Affidavits of Probable Cause filed up to and including March 18, 2010, which the Complainant filed in the Towns of Morristown and Newton which are pending review and which name numerous government officials, including the Sussex County Prosecutor and Municipal and Superior Court Judges, among others.

⁴ The jail sentence was suspended.

July 7, 2010

Letter from Gregory Mueller, First Assistant Prosecutor, Sussex County Prosecutor's Office to the Complainant. Mr. Mueller states that over the past several weeks the Complainant has contacted and attempted to contact the Victim/Witness Coordinator to express the Complainant's opinions and to seek advice and assistance. Mr. Mueller also states that the Complainant has sent several long e-mails to the Victim/Witness Coordinator, left her messages requesting that she take certain action and has suggested changes to the way she runs her unit. Mr. Mueller further states that the Complainant has visited the office in an attempt to visit with the Victim/Witness Coordinator. Mr. Mueller also states that it is his understanding that the Coordinator attempted to explain to the Complainant that the Complainant is not eligible for the services of the Victim/Witness Coordinator's office, but that the Complainant has disputed this and has continued his attempts at contact.

Mr. Mueller states that he has reviewed the Attorney General Standards concerning the Rights of Crime Victims, as well as the Crime Victim's Guide to the Criminal Justice System published by the Division of Criminal Justice. Mr. Mueller states that he has determined based on his review of the Guidelines and the reasons which the Complainant expressed to the Victim/Witness Coordinator as to why he believes he is eligible for services, that the Complainant clearly does not qualify for assistance with the Victim/Witness Unit of the Sussex County Prosecutor's Office.

Mr. Mueller further states that the Victim/Witness Unit is extremely busy and the time necessary to deal with artificial or contrived issues takes away from the services the office can provide to true victims of crime. Mr. Mueller requests that the Complainant cease contacting the Victim/Witness Coordinator, but states that if the Complainant is a true victim of a crime in Sussex County in the future, that the Office will be willing and happy to assist the Complainant.

July 11, 2010

The Complainant's OPRA request. The Complainant requests in writing various records relevant to this complaint.⁵

August 19, 2010

The Complainant files a Denial of Access Complaint with the Government Records Council ("GRC"), attaching the following:⁶

- Letter from Richard L. Beasley, Supervisory Special Agency, U.S. Department of Justice, Federal Bureau of Investigation, to the Complainant dated January 25, 2010
- Order of N. Peter Conforti, J.S.C., in the matter of Indictment No. 08-09-00316-1 dated May 11, 2010

⁵ The Complainant's OPRA request took the form of a seven (7) page, single spaced letter referencing OPRA.

⁶ The Complainant attached additional materials which are not relevant to the adjudication of this complaint.

- *Six who sued Sussex County Prosecutor's Office receive \$225K payout, computer reprint from The Newark Star-Ledger dated July 2, 2010*
- Letter from Gregory Mueller, First Assistant Prosecutor, Office of the Sussex County Prosecutor, to the Complainant dated July 7, 2010.
- Letter from Peter Zegarac, Inspector in Charge, U.S. Postal Inspection Service to the Complainant dated July 12, 2010
- Screen shot from www.thomascaggiano.com/10605.pdf

The Complainant declines mediation of this complaint.

August 25, 2010

Letter from the Honorable John A. Papparazzo, Netcong Borough Municipal Court Judge to the Complainant.⁷ Judge Papparazzo states that due to the Complainant's threatening, harassing, and inappropriate telephone calls to the Borough of Netcong Municipal Court, the Complainant may no longer contact the Court office by telephone, fax or e-mail. Judge Papparazzo further states that the Complainant may only contact the Netcong Borough Municipal Court by letter sent via U.S. Mail to Judge Papparazzo. Judge Papparazzo also states that any further contact by the Complainant to the Court Administrator will be immediately forwarded to the Chief of Police, Netcong Police Department.

Analysis

Whether the Denial of Access Complaint filed by the Complainant is frivolous?

OPRA provides that:

“If any party declines mediation or if mediation fails to resolve the matter to the satisfaction of all parties, the council shall initiate an investigation concerning the facts and circumstances set forth in the complaint. *The council shall make a determination as to whether the complaint is ... frivolous or without any reasonable factual basis.* If the council shall conclude that the complaint is ... 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.” [Emphasis added]. N.J.S.A. 47:1A-7.e.

N.J.S.A. 2A:15-59.1, the Frivolous Litigation Act, states in pertinent part that:

⁷ The Complainant submitted a copy of Judge Papparazzo's letter to the GRC as part of a facsimile transmission to the GRC dated August 29, 2010. This facsimile transmission, and other transmissions which occurred on July 24, 2010 and July 26, 2010, August 23, 2010, August 27, 2010, and August 31, 2010, are in direct contravention of the permanent restraining order issued by Judge Sypek against the Complainant. Pursuant to *N.J.A.C. 1:1-15.2(a)* and (b), the GRC takes judicial notice of these facts.

“In order to find that a complaint, counterclaim, cross-claim or defense of the nonprevailing party was frivolous, the judge shall find on the basis of the pleadings, discovery, or the evidence presented that ... [t]he complaint, counterclaim, cross-claim or defense was commenced, used or continued in bad faith, solely for the purpose of harassment, delay or malicious injury[.]” [Emphasis added]. N.J.S.A. 2A:15-59.1.b.(1).

A claim constitutes frivolous litigation if “judging the [claimant's] conduct as a whole,” the claim “was brought in bad faith, for the purpose of delay and harassment.” Deutch & Shur, P.C. v. Roth, 284 N.J. Super. 133, 139 (Law Div.1995).

In Deutch, the defendant retained the plaintiff attorneys to represent him in an action to recover insurance proceeds. The defendant lied under oath about four convictions of insurance fraud and lost the case, then refused to pay the plaintiffs’ fees. The plaintiffs filed an action to recover and the defendant did not answer. A default judgment was entered and a levy was placed on the defendant's property. The defendant then had the judgment vacated and filed a counterclaim alleging legal malpractice. The trial court granted the plaintiffs' motion to strike the defendant's counterclaim and granted summary judgment to the plaintiffs. The court granted plaintiffs' motion for fees and costs under N.J.S.A. 2A:15-59.1. In doing so, the court found that the defendant had prosecuted his counterclaim to delay and harass and had no basis for believing that he had somehow been wronged by plaintiffs. Deutch, supra, 284 N.J. Super. at 139. The court further found that the only purpose of the defendant’s counterclaim was to “scare” the plaintiff into compromise or make collection more expensive. *Id.*

With regard to the definition of “bad faith,” the Superior Court of New Jersey, Appellate Division has held that:

[w]e regard “malice” (explicit in N.J.S.A. 2A:15-59.1b and implicit in R. 1:4-8(a)) and “bad faith” to be related, but not necessarily identical concepts. Dictionary definitions of malice require an animus that is lacking in the concept of bad faith. However, the Supreme Court has held when describing the elements of tortious interference with business, that malice, an element of the tort, “is not used in the literal sense requiring ill will toward the plaintiff,” but instead “malice is defined to mean that the harm was inflicted intentionally and without justification or excuse.” Printing Mart v. Sharp Electronics, 116 N.J. 739, 751, 563 A.2d 31 (1989) (quoting Restatement (Second) of Torts Chapter 37 at 5 (introductory note) and citing Rainier's Dairies v. Raritan Valley Farms, Inc., 19 N.J. 552, 563, 117 A.2d 889 (1955)). We adopt the latter definition when construing the term malice in the present context... Moreover, we note that the bad faith necessary for sanctions here can be demonstrated, as stated in N.J.S.A. 2A:15-59.1b, if litigation was used in bad faith “solely for the purpose of harassment, delay or malicious injury.”

Port-O-San Corp. v. Teamsters Local Union No. 863, Welfare & Pension Funds, 363 N.J. Super. 431, 438 (App. Div. 2003).

The evidence of record indicates that the Complainant in these complaints commenced the instant complaints “in bad faith, solely for the purpose of harassment [.]”

The Complainant has a long history before the Council of filing Denial of Access Complaints against various state and local agencies.⁸ Since 2004, the Complainant herein has filed 84 Denial of Access Complaints before the Council, excluding the instant matter. Of these, 17 were duplicate cases⁹ and 13 were administratively disposed of as invalid OPRA requests.¹⁰ Moreover, the Council takes judicial notice¹¹ that many of these complaints bear sequential docket numbers and were filed on the same day or within a matter of days against the same agency or agencies.¹²

The Council takes further judicial notice of the website maintained by the Complainant at www.thomascaggiano.com, which contains more than 100 references to the Government Records Council, its counsel and its staff in highly pejorative terms, as well as hundreds of disparaging or belittling references to state and local government and officials and employees thereof. A review of the Complainant’s website discloses that it contains the Complainant’s lengthy recitation of the various complaints and orders to show cause which he has filed against numerous state and local agencies and employees thereof in local, state and federal courts. Moreover, the Complainant has posted on his website the facts of the dismissals of such proceedings at every level of local, state and federal judiciary, and evinces his displeasure at such dismissals, as well as his stated intention to continue filing similar proceedings. The Complainant has also posted on his website copies of complaints he has filed with the Supreme Court of New Jersey, Advisory Committee on Judicial Conduct against local and state judges who have dismissed the Complainant’s suits.

⁸ These include the Borough of Stanhope, the Sussex County Prosecutor’s Office, the Sussex County Soil Conservation District, the New Jersey Department of Agriculture, the New Jersey Department of Law and Public Safety, Division of Consumer Affairs, the Township of Green Municipal Court and the New Jersey Government Records Council.

⁹ Caggiano v. Borough of Stanhope (Sussex), GRC Complaint Nos. 2006-28, -29, -30, -31, -32, -33, -34, -35, -36, -37, -38, -39, -40, -41, -42, -43, -47.

¹⁰ Caggiano v. Borough of Stanhope (Sussex), GRC Complaint Nos. 2007-27, -28, -29, -30, -31, -32, -33, -34, -35, -36, -37, -38, -39.

¹¹ Pursuant to *N.J.A.C. 1:1-15.2(a)* and (b), official notice may be taken of judicially noticeable facts (as explained in N.J.R.E. 201 of the New Jersey Rules of Evidence), as well as of generally recognized technical or scientific facts within the specialized knowledge of the agency or the judge. The Appellate Division has held that it was appropriate for an administrative agency to take notice of an appellant’s record of convictions, because judicial notice could have been taken of the records of any court in New Jersey, and appellant’s record of convictions were exclusively in New Jersey. See Sanders v. Division of Motor Vehicles, 131 *N.J. Super.* 95 (App.Div. 1974).

¹² Caggiano v. Borough of Stanhope (Sussex), GRC Complaint Nos. 2006-226, -227, -228, -229, -230, -231, -232, -233, -234, -235; 2006-27, -28, -29, -30, -31, -32, -33, -34, -35, -36, -37, -38, -39, -40, -41, -42, -43, -47; 2007-20, -21, -22, -23, -24, -25, -26, -27, -28, -29, -30, -31, -32, -33, -34, -35, -36, -37, -38, -39, -40, -43, -44, -45, -46, -47, -48.

The evidence of record, including the Complainant's website and materials he has provided directly to the GRC, clearly show the Complainant's intention to use the judicial processes in bad faith, to harass and annoy local and state agencies and their officials and employees. The evidence of record also clearly shows that the Complainant is undeterred in this purpose by the dismissal of his complaints, and that the Complainant continues to intend to harass and annoy local and state agencies by filing complaints solely for the purpose of harassment.

The evidence of record is therefore abundantly clear that the Complainant has used the records request and Denial of Access Complaint processes afforded him under OPRA to harass state and local agencies and the officials and employees thereof. The evidence of record clearly shows that the Complainant filed the instant complaint with the intent to harass the Sussex County Prosecutor's Office, its members and staff. The evidence is also clear that the Complainant intends to continue to use the request and complaint process afforded him under OPRA in bad faith, to harass and annoy state and local agencies, their employees and officials. Moreover, the number and frequency of the OPRA requests the Complainant has made and Denial of Access Complaints he has filed provide further support for the conclusion that the Complainant's continuous, repetitive filing of OPRA requests and Denial of Access Complaints is "in bad faith, solely for the purpose of harassment[.]" Caggiano v. Borough of Stanhope, GRC Complaint Nos. 2007-20, 2007-21, 2007-22, 2007-23 (Consolidated)(September 2007); Caggiano v. Borough of Stanhope, GRC Complaint No. 2007-161 (October 2007); Caggiano v. Borough of Stanhope, GRC Complaint No. 2007-182 (October 2007).

The Complainant's Denial of Access Complaint herein should therefore be dismissed as frivolous pursuant to N.J.S.A. 47:1A-7.e.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

- 1) The evidence of record shows that the instant Denial of Access Complaint is without any reasonable factual basis. N.J.S.A. 47:1A-7.e.
- 2) Because the evidence of record indicates that the Complainant in this complaint commenced the instant complaint "in bad faith, solely for the purpose of harassment[;]" the Complainant's continuous, repetitive filings of OPRA requests and Denial of Access Complaints is "in bad faith, solely for the purpose of harassment," the Complainant's Denial of Access Complaint herein should therefore be dismissed as frivolous pursuant to N.J.S.A. 47:1A-7.e. Caggiano v. Borough of Stanhope, GRC Complaint Nos. 2007-20, 2007-21, 2007-22, 2007-23 (Consolidated)(September 2007); Caggiano v. Borough of Stanhope, GRC Complaint No. 2007-161 (October 2007); Caggiano v. Borough of Stanhope, GRC Complaint No. 2007-182 (October 2007).

Prepared By: Karyn Gordon, Esq.
In House Counsel

Approved By: Catherine Starghill, Esq.
Executive Director

September 13, 2010