



State of New Jersey  
GOVERNMENT RECORDS COUNCIL  
101 SOUTH BROAD STREET  
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TRENTON, NJ 08625-0819

CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

LORI GRIFA  
Commissioner

**FINAL DECISION**

**July 27, 2010 Government Records Council Meeting**

John Martocci  
Complainant

Complaint No. 2010-22

v.

New Jersey Department of Corrections  
Custodian of Record

At the July 27, 2010 public meeting, the Government Records Council (“Council”) considered the July 20, 2010 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 because the Complainant has failed to establish in his motion for reconsideration of the Council’s April 28, 2010 final administrative determination that 1) the GRC's decision is based upon a “palpably incorrect or irrational basis” or 2) it is obvious that the GRC did not consider the significance of probative, competent evidence, and has failed to show that the GRC acted arbitrarily, capriciously or unreasonably in disposing administratively of the complaint, said motion for reconsideration is denied. *See 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 South Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Television System In The City Of Atlantic City, County Of Atlantic, State Of New Jersey, 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 27<sup>th</sup> Day of July, 2010

Robin Berg Tabakin, Chair  
Government Records Council

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

Charles A. Richman, Secretary  
Government Records Council

**Decision Distribution Date: August 2, 2010**

**STATE OF NEW JERSEY**  
**GOVERNMENT RECORDS COUNCIL**  
*Reconsideration to Settle the Record*  
**Supplemental Findings and Recommendations of the Executive Director**  
**July 27, 2010 Council Meeting**

**John Martocci<sup>1</sup>**  
**Complainant**

**GRC Complaint No. 2010-22**

v.

**New Jersey Department of Corrections<sup>2</sup>**  
**Custodian of Records**

**Records Relevant to Complaint:**

1. A copy of the contract between the Complainant and Community Educational Centers (“CEC”) for assessment services at Talbot Hall from June 16, 2009 until August 17, 2009.
2. Any and all monies paid to CEC or Talbot Hall.
3. A copy of the Complainant’s clinical assessment conducted at Talbot Hall, along with any and all documents used for the assessment or used after the assessment for the purposes of classification.
4. A copy of the contract for the Complainant’s classification to (sic) Tully House, which is another CEC owned and operated facility, from August 17 to August 18, 2009.
5. All monies paid, or to be paid, to Tully House.

**Request Made:** August 18, 2009

**Response Made:** August 26, 2009

**Custodian:** Deirdre Fedkenheuer

**GRC Complaint Filed:** February 17, 2010<sup>3</sup>

**Background**

**August 18, 2009**

Complainant’s Open Public Records Act (“OPRA”) request. The Complainant requests the records relevant to this complaint listed above on an official OPRA request form.

**August 26, 2009**

Custodian’s response to the OPRA request.<sup>4</sup> The Custodian responds in writing to the Complainant’s OPRA request on the third (3<sup>rd</sup>) business day following receipt of

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

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

<sup>3</sup> The GRC received the Denial of Access Complaint on said date.

<sup>4</sup> Ruth Steinruck, OPRA Liaison for the Division of Programs and Community Services of the DOC, sent this response on behalf of the Custodian.

such request.<sup>5</sup> The Custodian states that access to Item 1, Item 3 and Item 4 of the Complainant's request is denied because the records are not made, maintained or filed by the New Jersey Department of Corrections ("DOC"). The Custodian suggests that the Complainant submit a formal request for the records to Tully House and Talbot Hall or CEC to see if those agencies have the records that the Complainant requested from the DOC. The Custodian states that she needs further clarification of the Complainant's requests for Item 2 and Item 5.

### **August 30, 2009**

Letter from the Complainant to the Custodian. The Complainant informs the Custodian that, with respect to the fees and/or monies paid to CEC, he was transferred to Talbot Hall on June 16, 2009 and remained at that facility until August 17, 2009, when he was transferred to Tully House where he presently resides. The Complainant further states that Talbot Hall, Tully House and/or CEC was paid to house the Complainant pursuant to agreements and the Complainant states that he is requesting a copy of those agreements, as well as any and all payments made for his housing pursuant to the agreements.

### **September 11, 2009**

Letter from the Custodian to the Complainant.<sup>6</sup> The Custodian informs the Complainant that, in reply to his clarified requests for Item 2 and Item 5, records of fees are not maintained by the DOC on an individual basis. The Custodian provides the Complainant with a formula that he can use to compute the monies paid based on a per diem rate. The Custodian also reminds the Complainant that the DOC informed the Complainant in the response to his OPRA request that the DOC does not maintain individual copies of halfway house contracts and/or assessments. The Custodian informs the Complainant that such records are maintained by each halfway house and suggests that the Complainant submit a formal request to Tully House and Talbot Hall or CEC to try to obtain copies of the records.

### **February 17, 2010**

Denial of Access Complaint filed with the Government Records Council ("GRC") attaching several documents.<sup>7</sup>

The Complainant states that he provided his records request to the Custodian on September 1, 2009 and that the Custodian responded by denying said request on November 22, 2009.<sup>8</sup> The Complainant further states in the Denial of Access Complaint - Detail Summary that he received a response from the Custodian to his Denial of Access

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<sup>5</sup> The request was stamped received on August 21, 2009.

<sup>6</sup> Ruth Steinruck, OPRA Liaison for the Division of Programs and Community Services of the DOC, sent this letter on behalf of the Custodian.

<sup>7</sup> The Complainant attached a copy of handwritten notes, copies of several letters from him to the Director of Talbot Hall and the Commissioner of DOC and a letter from the Associate Deputy Director of Talbot Hall to the Complainant. These letters and writings dispute his placement in Talbot Hall and argue against such placement; however they not only post-date the date of the Complainant's OPRA request but also are not relevant to this Denial of Access Complaint.

<sup>8</sup> The Complainant failed to attach to his Denial of Access Complaint either the OPRA request dated September 1, 2009 or the Custodian's response dated November 22, 2009.

Complaint on September 11, 2009, stating that “the Final Assessment Report was not contained or maintained (sic) by the Department of corrections (sic) and that the request for such record should be made out to **Tully House** or **Talbert Hall**.” (Emphasis in original.) The Complainant completes his complaint narrative by explaining the actions he took after receiving the Custodian’s September 11, 2009 letter.

**March 2, 2010**

Offer of Mediation sent to both parties.

**March 3, 2010**

The Complainant agrees to mediate this complaint.<sup>9</sup>

**March 11, 2010**

Request for the Statement of Information (“SOI”) sent to the Custodian.

**March 12, 2010**

E-mail from the GRC to the Custodian. The GRC informs the Custodian that the Complainant recited conflicting dates in his complaint. The GRC informs the Custodian that the Complainant first alleged that he filed his OPRA request on September 1, 2009 and received a response from the Custodian on November 22, 2009, then in his narrative stated that he filed his OPRA request sometime after September 4, 2009 and received a response on September 11, 2009. The GRC informs the Custodian that the Complainant failed to attach to his complaint a copy of his OPRA request or the Custodian’s response to the request. The GRC requests the Custodian forward a copy of the Complainant’s OPRA request and the agency’s response to the request, if any, as soon as possible.

**March 16, 2010**

Letter from the Complainant to the GRC. The Complainant states that the law library in the facility in which he is incarcerated does not have a copy of OPRA or the GRC policy and procedures. The Complainant asks the GRC to supply him with such material so he will be in a position to prepare a response to the Custodian’s Statement of Information.

**March 22, 2010**

Letter from the GRC to the Complainant. The GRC informs the Complainant that information regarding OPRA and GRC procedures may be found on the GRC website. The GRC provides the Complainant with the address for the GRC website, as well as a copy of N.J.S.A. 47:1A-1 et seq. (OPRA) and N.J.A.C. 5:105-1.1 et seq. (the GRC regulations).

**March 23, 2010**

Letter from Dr. Ralph Fretz of the CEC to the Complainant. Dr. Fretz informs the Complainant that “...we are not at liberty to distribute [the requested records] to you.

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<sup>9</sup> The Custodian did not respond to the Offer of Mediation within the time period provided for such response and subsequently the Custodian formally declined to participate in mediation.

You need to contact the DOC, Office of Community Programs...” Dr. Fretz also informs the Complainant that the CEC cannot be of any further direct service to the Complainant.

### **March 25, 2010**

Letter from the Complainant to the GRC.<sup>10</sup> The Complainant informs the GRC that the GRC advised the Custodian in a letter dated March 11, 2010 that the SOI must be completed and returned to the GRC within five (5) business days. The Complainant states that because he believes the SOI was not returned to the GRC within five (5) business days, he asks that the GRC proceed with the adjudication based only on the information submitted in the Denial of Access Complaint. The Complainant also states that the Custodian has unlawfully refused to provide the Complainant with copies of the records he requested.

### **March 26, 2010**

Custodian’s SOI with the following attachments:

- Complainant’s OPRA request dated August 18, 2009
- Custodian’s response to the OPRA request dated August 26, 2009
- Letter from the Complainant to the Custodian dated August 30, 2009
- Letter from the Custodian to the Complainant dated September 11, 2009

The Custodian certifies that no records that may have been responsive to the request were destroyed in accordance with the Records Destruction Schedule established and approved by New Jersey Department of State, Division of Archives and Records Management.

The Custodian certifies that on August 21, 2009 she received an OPRA request from the Complainant for the records which form the basis of this complaint. The Custodian also certifies that Ms. Steinruck responded to the Complainant’s OPRA request on August 26, 2009 and informed the Complainant that access to Item 1, Item 3 and Item 4 of the Complainant’s request is denied because the records are not made, maintained or filed by the DOC. The Custodian also certifies that Ms. Steinruck suggested that the Complainant submit a formal request for the records to Tully House and Talbot Hall or CEC to see if those agencies may have the records that the Complainant requested from the DOC. The Custodian further certifies that she asked for further clarification of the Complainant’s requests for Item 2 and Item 5.

The Custodian also certifies that on or about September 10, 2009, she received a letter from the Complainant clarifying his requests for Items No. 2 and No. 5. The Custodian avers that on September 11, 2009, Ms. Steinruck wrote to the Complainant and informed him that records of fees are not maintained or filed by the DOC on an individual basis. The Custodian also averred that Ms. Steinruck provided the

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<sup>10</sup> The Complainant attaches several letters, including the Custodian’s September 11, 2009 letter to him and several pieces of correspondence to and from halfway houses that are not relevant to the Complainant’s Denial of Access Complaint.

Complainant with information so that the Complainant could make calculations and estimate the costs he was attempting to obtain.

The Custodian certifies that the DOC does not have any records that are responsive to the Complainant's OPRA request.

### **March 30, 2010**

The Complainant's response to the Custodian's SOI. The Complainant asserts that he has new evidence in the form of the letter that he received from Dr. Ralph Fretz of the CEC dated March 23, 2010. The Complainant offers this letter as evidence that the records he requested exist and that he is being shuttled from one government agency to another, as each agency defers to the other in order to avoid disclosing the requested records.

### **April 28, 2010**

At the April 28, 2010 public meeting, the Government Records Council considered the April 22, 2010 proposed Administrative Complaint Disposition and rendered a final administrative determination in this matter because, pursuant to N.J.S.A. 47:1A-1.1., the Custodian certified that she responded to the Complainant in writing within the statutorily mandated response time indicating that no records responsive to the OPRA request exist and, additionally, the Complainant failed to provide any probative evidence to contradict the Custodian's certification.

### **April 28, 2010**

The Administrative Complaint Disposition is distributed to the parties.

### **May 4, 2010**

Letter from the Complainant to the GRC. The Complainant states that on March 30, 2010 he forwarded to the GRC an amendment to his complaint pursuant to *N.J.A.C. 5:105-2.3(h)(1)*. The Complainant wants to know if his amendment was accepted by the GRC. The Complainant further states that he never received a copy of the SOI from the Custodian. The Complainant contends that because the GRC advised the Custodian in a letter dated March 11, 2010 that the SOI must be completed and returned to the GRC within five (5) business days, and because the Custodian allegedly never filed the SOI in a timely manner, the GRC should proceed with the adjudication based only on the information submitted in the Complainant's Denial of Access Complaint. The Complainant asks the GRC to provide him with a status report regarding his complaint.

### **May 7, 2010**

Letter from the Complainant to the GRC with the following attachments:

- Custodian's response to the OPRA request dated August 26, 2009
- Letter from the Associate Deputy Director of Talbot Hall to the Complainant dated October 7, 2009<sup>11</sup>
- Letter from Dr. Ralph Fretz of the CEC to the Complainant dated March 23, 2010
- Letter from the Complainant to the GRC dated March 25, 2010

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<sup>11</sup> See footnote 7.

- The Complainant's response to the Custodian's SOI dated March 30, 2010
- Copy of an envelope addressed to the Complainant and containing the GRC's return address with a superimposed receipt dated May 5, 2010
- Letter from the Complainant to Marcus Hicks, DOC, Office of Community Programs, undated.<sup>12</sup>

The Complainant acknowledges receipt of the April 28, 2010 Administrative Complaint Disposition for the instant complaint. The Complainant asserts that he is appalled by the GRC's administrative determination for several reasons.

The Complainant states that although the Custodian is required to respond to the Complainant's OPRA request within the statutorily mandated response time, the Complainant never received a response to his OPRA request. The Complainant contends that the Custodian's response would have been tracked and receipted by the prison system; however, no receipt exists because he never signed one acknowledging he received the Custodian's response.

The Complainant also states that he sent a letter to the GRC dated March 25, 2010, wherein he (a) requested from the GRC a copy of the Custodian's response to his OPRA request, and (b) asked the GRC to rule on the instant complaint based only upon the information he submitted because the Custodian failed to submit the SOI to the GRC in a timely manner. The Complainant further contends that he again wrote the GRC on March 30, 2010, providing new and additional information but the GRC ignored his correspondence.

The Complainant attaches another copy of the letter that he received from Dr. Ralph Fretz of the CEC dated March 23, 2010. The Complainant argues that the letter confirms the existence of the records he requested and therefore the GRC made an error by accepting the Custodian's certification averring that no records responsive to the request exist.

The Complainant's concluding paragraph provides as follows:

"I would request from the GRC a review of the decision made regarding the complaint filed with them. Based on the evidence available to them, the lack of the Record Custodian to supply the Complainant with a copy of the response, and bound by statute to do, the answer to the complaint by the GRC is not based on the evidence to support it in the record and is an injustice to the Complainant." (Superfluous punctuation removed.)

### **May 11, 2010<sup>13</sup>**

Letter from the GRC to the Complainant. The GRC replies to the Complainant's letter dated May 4, 2010. The GRC informs the Complainant that a copy of the

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<sup>12</sup> This letter represents an effort by the Complainant to follow the instructions in Dr. Ralph Fretz's letter dated March 23, 2010; however, it is not relevant to the instant Denial of Access Complaint.

<sup>13</sup> The Complainant's letter dated May 7, 2010 was not received by the GRC until May 19, 2010. As such, this letter from the GRC to the Complainant appears to be out of chronological order.



Custodian's SOI is enclosed. The GRC also informs the Complainant that his complaint was administratively dismissed on April 28, 2010 because the Custodian certified that no records responsive to the Complainant's request exist. The GRC further informs the Complainant that, contrary to his recent assertions, the Complainant did not notify the GRC in his March 30, 2010 correspondence that he was amending his complaint pursuant to *N.J.A.C. 5:105-2.3(h)1*. The GRC goes on to state that the letter to the Complainant from Dr. Ralph Fretz of the CEC dated March 23, 2010 did not contradict the Custodian's certification but rather stated that the CEC was not at liberty to distribute the requested records because the DOC Office of Community Programs must authorize such distribution.

#### **May 21, 2010<sup>14</sup>**

E-mail from the GRC to the Custodian. The GRC provides the Custodian with a copy of the Complainant's May 7, 2010 letter to the GRC. The GRC notifies the Custodian that in view of the Complainant's comments in the concluding paragraph of his letter, the GRC has decided that said letter should be treated as a request for reconsideration pursuant to *N.J.A.C. 5:105-2.10*.<sup>15</sup> The GRC also notifies the Custodian that if she wishes to file an objection to the request for reconsideration, she must do so pursuant to the aforementioned regulation.<sup>16</sup>

### **Analysis**

#### **Whether the Complainant has met the required standard for reconsideration of the Council's April 28, 2010 Final Administrative Determination?**

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 submitted a letter to the GRC dated May 7, 2010. In the letter, the Complainant acknowledged receipt of the Council's April 28, 2010 final administrative determination and stated "I would request from the GRC a review of the decision made regarding the complaint filed with them." The GRC will therefore treat this letter as a request for reconsideration pursuant to *N.J.A.C. 5:105-2.10*. Accordingly, the Complainant's request for reconsideration of the Council's final administrative determination was dated May 7, 2010, seven (7) business days from the issuance of the Council's determination.

Applicable case law holds that:

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<sup>14</sup> Additional correspondence was submitted by the parties. However, said correspondence is either not relevant to this complaint or restates the facts/assertions already presented to the GRC.

<sup>15</sup> The Complainant was copied with this e-mail via First Class Mail.

<sup>16</sup> The Custodian did not forward a submission to the GRC.

“[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, supra, 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 South Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Television System In The City Of Atlantic City, County Of Atlantic, State Of New Jersey, 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).

In support of his motion for reconsideration, the Complainant asserts that mistake and the GRC’s failure to consider the significance of new probative, competent evidence require the Council’s reconsideration of its April 29, 2009 decision. Specifically, with respect to mistake, the Complainant contends that the Council should not have administratively dismissed this complaint because the Administrative Complaint Disposition provides as follows:

“The Custodian certifies that she responded to the Complainant in writing within the statutorily mandated response time indicating that no records responsive to the OPRA request exist.”

The Complainant asserts that the Custodian failed to respond to his OPRA request within the statutorily mandated period of time. The GRC notes that the Complainant is referring to N.J.S.A. 47:1A-5.i., which provides:

“[u]nless a shorter time period is otherwise provided by statute, regulation, or executive order, a custodian of a government record shall grant access ... or deny a request for access ... as soon as possible, but not later than seven business days after receiving the request...The requestor shall be advised by the custodian when the record can be made available. If the record is not made available by that time, access shall be deemed denied...”

The Complainant also alleges that the GRC failed to consider the significance of new probative, competent evidence and therefore the administrative dismissal is not based on sufficient evidence to support it in the record and is an injustice to the Complainant. The Complainant contends that the new evidence is a letter that he received from Dr. Ralph Fretz of the CEC dated March 23, 2010, wherein Dr. Fretz informs the Complainant, *inter alia*, that “...we are not at liberty to distribute [the requested records] to you. You need to contact the DOC, Office of Community Programs

as they are the only entity that can distribute this data.” The Complainant states that Dr. Fretz’s statement confirms the existence of the requested records and therefore the GRC erred in accepting the Custodian’s certification that no records responsive to the OPRA request exist.

The Complainant’s allegation that the GRC mistakenly accepted the Custodian’s certification that she responded to the Complainant’s OPRA request in writing within the statutorily mandated response time, based upon the Complainant’s assertion that he did not receive a copy of the response, is not correct. N.J.S.A. 47:1A-5.i. imposes an affirmative duty upon a custodian to grant access or deny a request for access not later than seven (7) business days after receiving the OPRA request. Although the Complainant states that he never received the Custodian’s response to his OPRA request, as proven by the alleged lack of a prison receipt form, from an evidentiary standpoint, this statement cannot overcome a legal certification. Moreover, there is affirmative evidence in the record to support a conclusion that the Complainant did in fact receive the Custodian’s response to the OPRA request.

In the instant case, the Custodian certified in the SOI that she responded to the Complainant’s OPRA request on August 26, 2009 and the Custodian attached to the SOI a copy of the written response. The Complainant never presented any probative evidence to contradict the Custodian’s averment.<sup>17</sup> Conversely, the Complainant provided proof to the GRC that he did in fact receive a copy of the Custodian’s response because a copy of the Custodian’s August 26, 2009 response to the OPRA request was one of the attachments to his letter to the GRC dated May 7, 2010.<sup>18</sup>

With respect to the Complainant’s allegation that the GRC failed to consider new evidence; *to wit*, the letter to him from Dr. Ralph Fretz of the CEC dated March 23, 2010, that letter did not contradict the Custodian’s certification. Dr. Fretz did not assert that the DOC had the records responsive to the Complainant’s request in their custody. Rather he stated that the CEC was ***not at liberty to distribute the requested records*** because the DOC, Office of Community Programs must authorize such distribution. Whether the CEC maintains the records or not is irrelevant because the OPRA request which formed the basis of this complaint was not made to the CEC, it was made to the DOC. The Complainant misinterpreted the Custodian’s response. The Custodian certified that no records responsive to the Complainant’s request are made, maintained or kept on file by the DOC.

As the moving party, the Complainant was required to establish either of the necessary criteria set forth above; namely 1) that the GRC's decision is based upon a "palpably incorrect or irrational basis" or 2) it is obvious that the GRC did not consider the significance of probative, competent evidence. *See Cummings, supra*. The Complainant failed to do so. The Complainant has also failed to show that the GRC acted

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<sup>17</sup>The Complainant’s only evidence was his uncertified statement in a letter to the GRC dated May 7, 2010, that the prison system always requires a prisoner to sign a receipt for legal mail and no such receipt could be found for the Custodian’s response to his OPRA request.

<sup>18</sup> Although the Complainant would have received a copy of the OPRA response when the GRC sent him a copy of the Custodian’s SOI, the GRC did not mail the copy of the SOI to the Complainant until May 11, 2010.

arbitrarily, capriciously or unreasonably in reaching its decision. *See D'Atria, supra.* Notably, the Complainant failed to submit any evidence to contradict the Custodian's certification that the DOC does not have any records that are responsive to the Complainant's OPRA request. Further, the Complainant failed to present any evidence which was not available at the time of the Council's adjudication which would change the substance of the Council's decision.

Therefore, because the Complainant has failed to establish in his motion for reconsideration of the Council's April 28, 2010 Final Administrative Determination that 1) the GRC's decision is based upon a "palpably incorrect or irrational basis" or 2) it is obvious that the GRC did not consider the significance of probative, competent evidence, and has failed to show that the GRC acted arbitrarily, capriciously or unreasonably in disposing administratively of the complaint, said motion for reconsideration is denied. *See Cummings, supra, D'Atria, supra, and Comcast Cablevision, supra.*

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that because the Complainant has failed to establish in his motion for reconsideration of the Council's April 28, 2010 final administrative determination that 1) the GRC's decision is based upon a "palpably incorrect or irrational basis" or 2) it is obvious that the GRC did not consider the significance of probative, competent evidence, and has failed to show that the GRC acted arbitrarily, capriciously or unreasonably in disposing administratively of the complaint, said motion for reconsideration is denied. *See 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 South Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Television System In The City Of Atlantic City, County Of Atlantic, State Of New Jersey, 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).

Prepared By: John E. Stewart  
Case Manager/*In Camera* Attorney

Approved By: Catherine Starghill, Esq.  
Executive Director

July 20, 2010



## NEW JERSEY GOVERNMENT RECORDS COUNCIL

### Administrative Complaint Disposition – No Records Responsive to the Request Exist

**GRC Complaint No.:** 2010-22

**Complainant:** John Martocci

**Custodian:** New Jersey Department of Corrections, Deirdre Fedkenheuer

**Date of Request:** August 18, 2009

**Date of Complaint:** February 17, 2010<sup>1</sup>

**Complaint Disposition:** The Custodian certifies that she responded to the Complainant in writing within the statutorily mandated response time indicating that no records responsive to the OPRA request exist. Additionally, the Complainant has failed to provide any probative evidence to contradict the Custodian's certification.

**Applicable OPRA Provision:** N.J.S.A. 47:1A-1.1.

**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:** April 28, 2010

Prepared By: John E. Stewart  
Case Manager/*In Camera* Attorney

Approved By: Catherine Starghill, Esq.  
Executive Director

April 22, 2010

**Distribution Date: April 28, 2010**

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<sup>1</sup> The GRC received the Denial of Access Complaint on said date.