



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Acting Commissioner

FINAL DECISION

January 31, 2012 Government Records Council Meeting

David J. Roundtree
Complainant

Complaint No. 2011-305

v.

New Jersey Department of State, Division of Elections
Custodian of Record

At the January 31, 2012 public meeting, the Government Records Council (“Council”) considered the January 24, 2012 *Reconsideration* Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. By a majority vote, the Council adopted 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 October 25, 2011 Administrative Complaint Disposition 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, and failed to submit any evidence to contradict the Council’s decision that his e-mail was not a valid OPRA request, said motion for reconsideration is 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 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 31st Day of January, 2012



Robin Berg Tabakin, Chair
Government Records Council

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

Denise Parkinson Vetti, Secretary
Government Records Council

Decision Distribution Date: February 6, 2012

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

Reconsideration
Supplemental Findings and Recommendations of the Executive Director
January 31, 2012 Council Meeting

David J. Roundtree¹
Complainant

GRC Complaint No. 2011-305

v.

New Jersey Department of State,
Division of Elections²
Custodian of Records

Records Relevant to Complaint: The Complainant submitted an e-mail with this list of questions for the Custodian.³

1. “Did the Custodian and Donna Barber (“Ms. Barber”), Government Representative, call the Complainant on the telephone and discuss how the Complainant found out what was said in the Custodian’s office by Donna Kelly (“Ms. Kelly”), Deputy Attorney General? (Yes or No).
2. Was Ms. Barber present in the Custodian’s office when the Custodian asked the Complainant questions? (Yes or No).
3. Did the Custodian state that Ms. Kelly gave the Custodian a verbal answer with regards to Senator Jim Whelan (“Senator Whelan”) complaint and did the Custodian support his decision from a statute or written opinion from Ms. Kelly? (Yes or No).
4. Did the Custodian ask Ms. Kelly if the Custodian could write the Complainant a letter and if the Custodian could contact the Complainant when the letter would be sent? (Yes or No).
5. Is there a statute or administrative code that allows the Custodian to substitute the name Jim Whelan for James Whelan? Furthermore, being that there is no Jim Whelan in the voter database, should this application be voided based on N.J.S.A. 19:1-1 that a candidate must be a voter to run for office?
6. Did the Division of Elections follow N.J.S.A. 19:1-1 when handling petitions? (Yes or No). Explain if the Custodian is supposed to understand N.J.S.A. 19:1-1? (Yes or No).
7. What is the outcome if a candidate’s petition does not conform with N.J.S.A. 19:1-1? Is said petition rejected? (Yes or No).
8. Did the Custodian send the Complainant two (2) sections within N.J.S.A. 19:1-1 and did the Custodian provide a brief explanation of such statutes? (Yes or No).
9. Did the Custodian read N.J.S.A. 19:3-7? (Yes or No).

¹ No legal representation listed on record.

² No legal representation listed on record.

³ The Complainant’s e-mail did not reference OPRA.

10. Are the employees within the Division of Elections trained to know how to accept and deny petitions and were all employees trained in the same way? (Yes or No) If yes, please send the Complainant information to support this question. If no, please explain why not and why these procedures are not in place.
11. Are there any written policies, procedures, or guidelines by the Division of Elections, detailing the process on how to handle petitions by the Division? (Yes or No).
12. Is there a section within N.J.S.A. 19:1-1 to allow the Division to substitute a “nick name” for a legal name when accepting a petition? Furthermore, is a voting card submitted to verify if the candidate is registered to vote so that candidate can run for office? (Yes or No). If not, please state why Mr. Whelan received a pass.
13. Does the candidate have to be a voter in order to run for office and can the voter use his “nick name” to register to vote? (Yes or No).

Request Made: No date listed on request⁴

Response Made: No response made

Custodian: Robert F. Giles

GRC Complaint Filed: October 5, 2011

Background

October 25, 2011

Government Records Council (“Council’s”) Administrative Complaint Disposition. At its October 25, 2011 public meeting, the Council considered the October 25, 2011 Administrative Complaint Disposition of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said administrative complaint disposition. The Council, therefore, found that:

“The Complainant submitted a non-form written request that did not reference OPRA. The Custodian did not respond to the Complainant’s request. The GRC’s authority is limited to adjudicating denial of access complaints based on valid OPRA requests.”⁵

The Council therefore dismissed the Complainant’s Denial of Access Complaint.

October 26, 2011

Council’s Administrative Complaint Disposition distributed to the parties.

November 7, 2011

Complainant’s Motion for Reconsideration. The Complainant requests that the GRC reconsider the Administrative Complaint Disposition of his Denial of Access

⁴ The Complainant also does not list a date for his OPRA request on the Denial of Access Complaint.

⁵ In Renna v. County of Union, 407 N.J. Super. 230 (App. Div. 2009), the Appellate Division held that although requestors shall continue to use public agencies’ OPRA request forms when making requests, no custodian shall withhold such records if the written request for such records, not presented on the official form, contains the requisite information prescribed in the section of OPRA requiring custodians to adopt a form, *Id.* Therefore, requestors may submit correspondence that requests records from a custodian under OPRA, as long as the request properly invokes OPRA.

Complaint pursuant to *N.J.A.C. 5:105-2.10*. The Complainant asserts that mistake, extraordinary circumstances and new evidence requires that the GRC reconsider this matter. The Complainant attaches a two (2) page argument in support of his reconsideration wherein he states that he asked a set of questions to clarify the Custodian's response to a previous OPRA request in which the Custodian stated that the requested records do not exist.⁶

Analysis

Whether the Complainant has met the required standard for reconsideration of the Council's October 25, 2011 Administrative Disposition?

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)*.

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, 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 submitted a two (2) page argument wherein he stated that he asked a set of questions to clarify the Custodian's response to a previous OPRA request in which the Custodian stated that the

⁶ The Complainant's request for reconsideration does not address whether the Complainant's e-mail was a valid OPRA request. The evidence of record indicates that the Complainant filed a separate Denial of Access Complaint, *Roundtree v. NJ Department of State, Division of Elections*, GRC Complaint No. 2011-266, concerning said OPRA request; such request is not the subject of the instant complaint. David J. Roundtree v. NJ Department of State, Division of Elections, 2011-305 – Supplemental Findings and Recommendations 3 of the Executive Director

requested records do not exist. The Complainant failed to provide any argument that the e-mail request herein constituted a valid OPRA request.

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 arbitrarily, capriciously or unreasonably in disposing administratively of the complaint. *See D'Atria, supra*. Notably, the Complainant failed to submit any evidence to prove why his list of questions in e-mail format referenced OPRA in any way or was on an official OPRA request form, thus making it an official OPRA request.

Therefore, because the Complainant has failed to establish in his motion for reconsideration of the Council's October 25, 2011 Administrative Complaint Disposition 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, and failed to submit any evidence to contradict the Council's decision that his e-mail was not a valid OPRA request, said motion for reconsideration is 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 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).

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 October 25, 2011 Administrative Complaint Disposition 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, and failed to submit any evidence to contradict the Council's decision that his e-mail was not a valid OPRA request, said motion for reconsideration is 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 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: Harlynn A. Lack, Esq.
Case Manager

Approved By: Catherine Starghill, Esq.
Executive Director

January 24, 2012



NEW JERSEY GOVERNMENT RECORDS COUNCIL
Administrative Complaint Disposition – Not a Valid OPRA Request

GRC Complaint No.: 2011-305

Complainant: David J. Roundtree

Custodian: New Jersey Department of State, Division of Elections
Records Custodian – Robert Giles

Date of Request: No date listed on request.¹

Date of Complaint: October 5, 2011²

Complaint Disposition: The Complainant submitted a non-form written request that did not reference OPRA. The Custodian did not respond to the Complainant's request. The GRC's authority is limited to adjudicating denial of access complaints based on valid OPRA requests.³

Applicable OPRA Provision: "A person who is denied access to a government record by the custodian of the record, at the option of the requestor, may ... in lieu of filing an action in Superior Court, file a complaint with the Government Records Council established pursuant to [OPRA]." N.J.S.A. 47:1A-6.

"The Government Records Council shall ... receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to a government record by a records custodian ..." N.J. S.A. 47:1A-7.b.

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: October 25, 2011

Prepared By: Harlynn A. Lack, Esq.
Case Manager

¹ The Complainant also does not list a date of his OPRA request on the Denial of Access Complaint.

² The GRC received the Denial of Access Complaint on said date.

³ In Renna v. County of Union, 407 N.J. Super. 230 (App. Div. 2009), the Appellate Division held that although requestors shall continue to use public agencies' OPRA request forms when making requests, no custodian shall withhold such records if the written request for such records, not presented on the official form, contains the requisite information prescribed in the section of OPRA requiring custodians to adopt a form. *Id.* Therefore, requestors may submit correspondence that requests records from a custodian under OPRA, as long as the request properly invokes OPRA.



Approved By: Catherine Starghill, Esq.
Executive Director

Date: October 25, 2011

Distribution Date: October 26, 2011